

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Thomas Gilbert
Appeal No. 08-9

Hearing Date: June 19, 2009

DECISION OF THE REVIEW BOARD

I. PROCEDURAL BACKGROUND

The State Building Code Technical Review Board ("Review Board") is a Governor-appointed board established to rule on disputes arising from application of the Virginia Statewide Fire Prevention Code (the "SFPC") and other regulations of the Department of Housing and Community Development. Enforcement of the SFPC in other than state-owned buildings is by local city, county or town fire prevention departments, when such localities choose to enforce the code. See § 27-98 of the Code of Virginia. An appeal under the SFPC is first heard by a local board of appeals and then may be further appealed to the Review Board. (Ibid.) The Review Board's proceedings are governed by the Virginia Administrative Process Act. See § 36-114 of the Code of Virginia.

II. CASE HISTORY

Thomas Gilbert ("Gilbert"), a Virginia registered architect and property manager, responded to a notice of violation issued under the SFPC by the Dinwiddie County fire marshal ("fire marshal") for violations found at the Rohoic Wood Apartments, located at 6105 Duncan Road, in Petersburg.

Gilbert and the fire marshal settled all the outstanding issues in the notice except one citation, a requirement to have a key box installed for each apartment building to contain a key to the sprinkler room for each building. Gilbert appealed this issue.

Dinwiddie County, along with several other localities, historically had an agreement with an entity within the Crater Planning District Commission known as the Crater Regional Building Code Appeals Board ("local appeals board"), which served as the appeals board under the SFPC and the Virginia Uniform Statewide Building Code for those localities. When contacted by the fire marshal concerning Gilbert's appeal, a representative of the local appeals board indicated that the board was inactive, but they would contact the localities participating to see if the board could be reconstituted.

A number of months later, the local appeals board did meet to consider Gilbert's appeal. After a hearing, the local appeals board ruled that key boxes were not required under the SFPC.

At the time of the local appeals board hearing, Gilbert requested the local appeals board to address two other issues: the time it took for the local appeals board to schedule the appeal and the fee charged by the local appeals board. The chairman of the local appeals board indicated that he believed that they were outside of the purview of the board's responsibilities, noted the concerns for the record and the board took no action on them.

Gilbert then appealed to the Review Board raising only the issues of the time it took for the local appeals board to schedule his appeal and the fee charged by the local appeals board.

Review Board staff drafted an overview of the case ("Review Board staff document"), distributed it to Gilbert and the fire marshal for comments and scheduled a preliminary hearing for the Review Board members to decide whether Gilbert's appeal was proper. Along with the Review Board staff document, Review Board staff sent the parties a copy of the final order in a previous Review Board case addressing similar issues where the Review Board had determined that no appeal rights existed.

III. FINDINGS OF THE REVIEW BOARD .

The authority for the Review Board to hear appeals under the SFPC is addressed in state law in § 27-98 of the Code of Virginia and states in pertinent part that "[a]ppeals concerning the application of the [SFPC] by the local enforcing agency shall first lie to a local board of appeals and then to the [] Review Board."

As previously determined by the Review Board in Appeal No. 00-14 (Appeal of Wesley Stewart), appeal fees and providing compensation for lost time and expenses are not applications of the SFPC by a local enforcing agency and are therefore not issues which may be appealed under the SFPC.

This case is no different. The timeliness of Gilbert's appeal to the local appeals board and the fee charged by the local appeals board, while certainly of concern, are simply not applications of the SFPC by the fire marshal and are therefore not appealable. Gilbert may pursue recourse to these issues through other venues such as addressing the fees with the localities' governing bodies which authorize and set those fees and to suggest to those localities' governing bodies that they either form separate appeals boards which may meet in a more

timely manner or to keep the regional board duly constituted and ready to hear appeals when they are presented.

IV. FINAL ORDER

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders Gilbert's appeal to be, and hereby is, dismissed, as no application of the SFPC by a local enforcing agency was appealed.

Chairman, State Technical Review Board

July 17, 2009
Date Entered

As provided by Rule 2A:2 of the Supreme Court of Virginia, you have thirty (30) days from the date of service (the date you actually received this decision or the date it was mailed to you, whichever occurred first) within which to appeal this decision by filing a Notice of Appeal with Vernon W. Hodge, Secretary of the Review Board. In the event that this decision is served on you by mail, three (3) days are added to that period.

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of David Cover (Cover's Chimney Service)
Appeal No. 08-11

Hearing Date: June 19, 2009

DECISION OF THE REVIEW BOARD

I. PROCEDURAL BACKGROUND

The State Building Code Technical Review Board ("Review Board") is a Governor-appointed board established to rule on disputes arising from application of the Virginia Uniform Statewide Building Code ("USBC") and other regulations of the Department of Housing and Community Development. See §§ 36-108 and 36-114 of the Code of Virginia. Enforcement of the USBC in other than state-owned buildings is by local city, county or town building departments. See § 36-105 of the Code of Virginia. An appeal under the USBC is first heard by a local board of building code appeals and then may be further appealed to the Review Board. See § 36-105 of the Code of Virginia. The Review Board's proceedings are governed by the Virginia Administrative Process Act. See § 36-114 of the Code of Virginia.