

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Randolph W. Griffith
Appeal No. 04-3

Decided: July 16, 2004

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 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 government 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.

II. CASE HISTORY

Randolph W. Griffith, ("Griffith"), a former building official of Culpeper County and the City of Fredericksburg, and now sole proprietor of Griffith Group, Ltd, a private company providing code consulting/plans examiner/inspection services, appeals a February 2004 determination by William R. Myers ("Myers"), the current building official of Culpeper County, preventing Griffith from performing third party inspections under the USBC in Culpeper County.

Myers' decision resulted from action taken by the Culpeper County Board of Supervisors in reaffirming a policy established in 1991 to require third party USBC inspectors to be Virginia licensed architects or engineers.

Griffith had been approved as a third party inspector under an initial policy established by Myers when he became building official in Culpeper County in 1998. Myers was not aware of the 1991 decision of the Board of Supervisors when establishing his initial third party inspector policy.

Griffith first appealed Myers' February 2004 decision to the Culpeper County Board of Building Code Appeals ("County USBC

board"), which upheld Myers's decision. Griffith then further appealed to the Review Board. The Review Board conducted a hearing with both parties and their respective counsel present.

III. FINDINGS OF THE REVIEW BOARD

Myers argues that § 109.3 of the USBC, which states in pertinent part that "[t]he building official is permitted to delegate duties and powers subject to any limitations imposed by the locality[,] " authorizes the Culpeper County Board of Supervisors to establish the limitation that only Virginia licensed architects or engineers be accepted as third party inspectors since the use of third party inspectors is a delegated duty and, under § 109.3 of the USBC, delegated duties are subject to limitations imposed by the locality.

The Review Board finds that while an inspection performed by a third party inspector may be taking the place of an inspection which would otherwise be performed by the building official, the USBC, in § 115.8.1, clearly gives the building official the authority to accept inspection reports and to determine the qualifications and reliability of individuals and agencies performing third party inspections. Section 115.8.1 is set out in pertinent part below:

115.8.1. Approved inspection agencies. The building official may accept reports of

inspections and tests from approved individuals or approved inspection agencies, which satisfy qualifications and reliability requirements.

Since the responsibility for approving third party inspectors lies with Myers and not with the Culpeper County Board of Supervisors, the current policy is not binding upon Myers and for that reason and since the third party inspection program approved by Myers prior to the latest action by the Board of Supervisors did not require a third party inspector to be an architect or engineer licensed in Virginia, we believe the case should be remanded to Myers for the establishment of criteria for the approval of third party inspectors. Should Griffith then be informed that he is not approved as a third party inspector, he would have the right to appeal such new decision to the County USBC board.

IV. FINAL ORDER

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders Myers' decision and the decision of the County USBC board to be, and hereby are, set aside and the appeal remanded to Myers for the establishment of criteria for the approval of third party inspectors.

The appeal is granted in part and remanded.

/s/*

Chairman, State Technical Review Board

9-17-2004

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.

***Note: The original signed final order is available from Review Board staff.**