

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Culpeper County
Appeal No. 19-09

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 regulations of the Department of Housing and Community Development. See §§ 36-108 and 36-114 of the Code of Virginia. The Review Board's proceedings are governed by the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

II. Case History

The Culpeper County Building Official appealed the decision of the Joint Board of Building Code Appeals of the Town and County of Culpeper (local appeals board), which overturned the enforcement action by the Culpeper County Building Department (County) under Part I of the 2012 Uniform Statewide Building Code (Virginia Construction Code or VCC) at the property owned by Patrick Sartori, located at 9408 Breezewood Lane, and located in Culpeper County. The dwelling was constructed by Graystone Homes (Graystone), a licensed Class A contractor.

On August 2, 2019, the County issued a Code Deficiency Notice (Notice) to Graystone for the dwelling located at 9408 Breezewood Lane. The Notice was issued due to the evidence of expansive soils, provided to the County in an engineering report by Sartori on June 6, 2019, and cited a violation of VCC Section R403.1.8 (Foundations and expansive soils).

In September of 2019, Graystone filed an appeal to the local appeals board. The local appeals board granted the appeal, rejecting the soil report provided to the County, because the soils report did not contain the test locations on the property, the exact distance from the structure, or the depth from which the samples were collected. The local appeals board further ruled that another independent soils test should be conducted.

On October 11, 2019, Robert Orr (Orr), Culpeper County Building Official, further appealed to the Review Board. A virtual Review Board hearing was held July 17, 2020. Appearing at the Review Board hearing for Culpeper County were Robert Orr and Bobbi Jo Alexis, legal counsel. Anthony Clatterbuck of Graystone Homes and Patrick Sartori, property owner, also attended the hearing.

III. Findings of the Review Board

- A. Whether the local appeals board had the authority to determine an engineering report, approved by the County building official, was deficient.
- B. Whether the local appeals board had the authority to find the sole remedy for the appeal was to conduct another independent test to confirm or deny the results of the original test.
- C. Whether to uphold the decision of the County building official and overturn the local appeals board that a violation of the VCC Section R403.1.8 (Foundations and expansive soils) exists.

The County argued that shortly after the completion of Sartori's home, he approached the County about a few matters of concern with his home, one of which was the possibility of expansive soils on the site. Sartori provided the County with an engineering report confirming expansive soils were present. The County argued that after review of the engineering report, the County felt there was enough evidence to warrant issuing a Notice and further investigation of the soils to see if any additional measures were needed. During its arguments, the County clarified

that the County policy, based on the soils maps the County relies on which did not indicate the site was indicative of expansive soils, did not require soil testing prior to issuance of permits. The County further clarified that it was unsure of whether the local appeals board had acted within the scope of its authority when ruling on the validity of the engineering report provided to the County or its direction that another independent test should be performed.

Graystone argued that substantial issues existed in the engineering report, provided by Sartori and relied on by the County, such as, the method of collection of the soil samples as well as the location and depth at which the soil samples were taken. Graystone further argued that the engineering report referenced the incorrect code under which the home was constructed. Graystone also challenged the competence of the lab that conducted the tests in his arguments. Graystone argued that because the soils test contained several flaws a new test was merited. Graystone also argued that the local appeals board had the authority to determine the validity of the engineering report and made the appropriate decision to find the report deficient and require that another independent test should be performed.

Sartori argued that the engineering report he provided to the County was adequate, accurate, and clearly depicted the conditions present at his home. Sartori also argued that there is no difference in the 2012 and 2015 codes related to expansive soils.

All parties acknowledged that expansive soils exists on the property and that some of the expansive soil issues have already been addressed by Graystone.

The Review Board agrees with the County in its acceptance of the engineering report. The Review Board finds that expansive soils do exist at the property and that a violation of VCC Section R403.1.8 still exists. The Review Board also finds that the questions of whether the local appeals board had the authority to determine an engineering report, approved by the County building official, was deficient and whether the local appeals board had the authority to find the

sole remedy for the appeal was to conduct another independent test to confirm or deny the results of the original test to be moot.

IV. Final Order

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders as follows:

- A. Whether the local appeals board had the authority to determine an engineering report, approved by the County building official, was deficient.

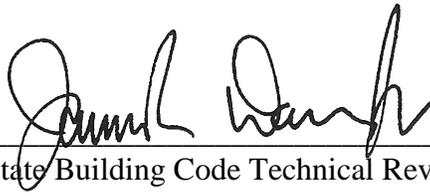
The decision of the local appeals board to determine the engineering report approved by the County building official was deficient is moot.

- B. Whether the local appeals board had the authority to find the sole remedy for the appeal was to conduct another independent test to confirm or deny the results of the original test.

The decision of the local appeals board to require another independent test to confirm or deny the results of the original test is moot.

- C. Whether to uphold the decision of the County building official and overturn the local appeals board that a violation of the VCC Section R403.1.8 (Foundations and expansive soils) exists.

The decision of the County that a violation of VCC Section R403.1.8 is upheld and the decision of the local appeals board is overturned.



Chair, State Building Code Technical Review Board

Date entered _____September 18, 2020_____

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 W. Travis Luter, Sr., 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.