

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Danville Historical Society
Appeal No. 08-5

Hearing Date: January 23, 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.

II. CASE HISTORY

The appeal is made by the Danville Historical Society (the "Society"), a not for profit corporation formed to foster preservation of historic sites in the City of Danville.

The historical site in the center of this controversy is part of the Dan River Mill complex and is known as the Long Mill property (the "property").

In or around 1999, after the closing of the Dan River Mill, the property was acquired by the Society. The Society then leased the property to Riverside Mills Redevelopment Group, LLC and to secure financing for the redevelopment of the property, jointly entered into a Deed of Trust which permitted the sale of the property as security of the note. The Deed of Trust contained restrictions protecting the interest of the Society.

In or around 2002, the property was sold at public auction and purchased by MCD Investments, LLC, which later became River Partnership, LLC (the "Partnership"). The restrictions protecting the interest of the Society purportedly passed in the chain of title with the sale of the property.

In 2005 and 2006, the City of Danville's Department of Community Development (the "building official"), through enforcement of the USBC, and the City's Fire Department, through enforcement of the Virginia Statewide Fire Prevention Code, issued

several orders to the Partnership to maintain or demolish the buildings on the property. The Partnership demolished one of the buildings and took a number of other actions in attempting to address the condition of the buildings on the property.

In June of 2007, the building official conducted an additional inspection and issued an order condemning the remaining buildings that existed on the property at that time. In response, the Partnership obtained a permit from the building official to demolish the buildings.

In July of 2007, the Society filed an appeal to the City of Danville Board of Building Code Appeals ("City USBC board"), seeking a reversal of the condemnation order.

The building official, unsure of how to question whether the Society had standing to appeal, filed a suit for declaratory judgment to the City of Danville Circuit Court, to establish the rights of the parties.

The Society also filed a complaint for injunctive relief with the Court seeking to stay the demolition of the buildings on the property.

As an end result of the court actions, the City USBC board heard the Society's appeal in April of 2008 and ruled to uphold the building official's issuance of the condemnation order.

The Society then further appealed to the Review Board and a hearing was held with all parties and their respective counsel

present. At the time of the hearing before the Review Board, all buildings on the property had been demolished except for two of the mill buildings, identified as the #5 and #7 mill buildings, which were in a state of partial demolition.

III. FINDINGS OF THE REVIEW BOARD

While the issue of whether the Society has standing to appeal the building official's condemnation order under the USBC and its authorizing statutes would normally be within the purview of the Review Board, as the City of Danville Circuit Court addressed that issue, the Review Board defers to the judgment of the Court and moves to the issue of whether the appeal is moot due to the demolition of the buildings, and if not, whether to overturn the building official's issuance of the condemnation order.

Since two of the buildings still remain, the Review Board finds that a ruling of whether to overturn the condemnation order relative to those two buildings is property before it.

Given the testimony and evidence concerning the state of deterioration of the #5 and #7 mill buildings, the lack of an active fire protection system in the buildings or other means to effectively control the spread of fire and the determination by the City of Danville Circuit Court to deny the Society's request for injunctive relief based on condition of the buildings and the significant risks to the general public, the Review Board finds

that the issuance of the condemnation order by the building official was the correct application of the USBC.

IV. FINAL ORDER

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders the decisions of the building official in issuing the condemnation order and the decision of the City USBC board in upholding the building official's issuance of the condemnation order relative to the #5 and #7 mill buildings to be, and hereby are, upheld.

/s/*

Chairman, State Technical Review Board

March 20, 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.

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