

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Community Office Resource Assessment Center
Appeal No. 10-15

Hearing Date: February 18, 2011

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 involves a three-story building located at 257 Jefferson Avenue, in Danville, built in the early 1900s and used as a hospital, nursing school, women's college and apartment building. The building has been vacant since 1995 and was partially fire damaged in 1996.

In 2004, the property, including the building, was sold at public auction and purchased by Cora D. Tucker (Tucker), a resident of North Carolina.

An order to demolish the building under Part III of the USBC (the Virginia Maintenance Code, or VMC) was issued by the Danville Department of Community Development in February of 2006.

Tucker appealed the demolition order in September of 2006 to the Danville Local Board of Building Code Appeals (City appeals board), which upheld the demolition order.

Tucker further appealed to the Review Board in October of 2006 and requested time to work with the City to obtain building permits and repair the building prior to a hearing before the Review Board.

In September of 2008, Tucker withdrew the appeal to the Review Board.

The property was sold, or changed ownership, to Rebecca Small, of North Carolina, in late 2008, and the City pursued a demolition order for the building against the new owner.

In March of 2010, the ownership of the property changed back to Tucker.

In April of 2010, the City issued a demolition order for the building to Tucker and in April and May of 2010, the City published the demolition order in local newspapers and had the order recorded in the Clerk's Office of the Danville Circuit Court.

In June of 2010, ownership of the property again changed to an entity known as the Community Office Resource Assessment Center (CORAC), of which Tucker was president.

In July of 2010, Tucker, on behalf CORAC, appealed the demolition order to the City appeals board, which heard the appeal in August of 2010. In the appeal to the City appeals board, City representatives argued that the appeal was not filed within the 14 days required by the VMC. The City appeals board ruled that the appeal was timely and ruled to uphold the demolition order.

Tucker, on behalf of CORAC, further appealed to the Review Board in August of 2010.

III. FINDINGS OF THE REVIEW BOARD

The demolition order under appeal was issued by the City on April 6, 2010 and recorded in the Clerk's Office on April 8, 2010. A return receipt for a certified mail delivery was provided by the City as part of the record, signed by Tucker on April 20, 2010. It is not clear whether the return receipt was for the April 6, 2010 order, or the April 8, 2010 recording, or for some other mailing to Tucker.

However, the demolition order was published in local newspapers on May 2 and May 9, 2010.

Tucker filed the appeal to the City appeals board on July 9, 2010, well beyond 14 days from the last publishing of the demolition order in the newspaper. In addition, CORAC became owner of the property on June 22, 2010, so even if that date is used as the day from which the appeal timeframe starts to run, CORAC's appeal was not filed within 14 days.

The Review Board has consistently ruled that the timeframes for appeal in the USBC are mandatory, unless the local enforcing agency agrees to waive the timeframes. In this case, the City did not agree to waive the timeframe, so CORAC's appeal is therefore invalid.

IV. FINAL ORDER

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders the decision of

the City appeals board that CORAC's appeal was timely to be, and hereby is, reversed; the decision of the City appeals board on the merits of CORAC's appeal to be, and hereby is, vacated and CORAC'S appeal to the Review Board, to be, and hereby is, dismissed.

/s/*

Chairman, State Technical Review Board

Nov. 18, 2011

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.**