

VIRGINIA:

BEFORE THE  
STATE BUILDING CODE TECHNICAL REVIEW BOARD (REVIEW BOARD)

IN RE: Appeal of Richard Clayton  
Appeal No. 12-5

Hearing Date: January 25, 2013

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. See § 36-114 of the Code of Virginia.

II. CASE HISTORY

Richard Clayton (Clayton), the owner of Condominium #300, located at 120 Roberts Lane in the City of Alexandria, appeals a decision of the City's fire official under the Virginia Statewide Fire Prevention Code (SFPC).

In March of 2012, Clayton requested the City fire official to enforce § 703.1 of the International Fire Code (IFC), a nationally recognized model code incorporated by reference in the SFPC, which he believed would require the condominium association to perform an annual inspection of accessible fire-resistance-rated construction in his condominium unit and in other units in the complex.

After corresponding with the fire official, being convinced that no proper enforcement would be ensued, Clayton filed an appeal to the City of Alexandria Local Board of Fire Code Appeals (City appeals board).

An appeal hearing was held in August of 2012 and the City appeals board ruled that § 703.1 of the IFC was not applicable. Clayton further appealed to the Review Board.

### III. FINDINGS OF THE REVIEW BOARD

The issue in this appeal is whether § 703.1 of the IFC, which requires owners to perform an annual visual inspection of fire-resistance-rated construction, is fully enforceable under the SFPC as written or whether its requirements are superseded by differing requirements in the SFPC.

The IFC is incorporated by reference to be part of the SFPC in § 103.1. Chapter 1 of the IFC is specifically deleted and replaced by Chapter 1 of the SFPC by the wording in § 103.1.1.

Section 103.2 of the SFPC states that "[a]ll requirements of the referenced codes and standards that relate to fees, permits, unsafe notices, disputes, condemnation, inspections, scope of enforcement and all other procedural, and administrative matters are deleted and replaced by the provisions of the Chapter 1 of the SFPC."

Clayton argues that the "referenced codes and standards" referred to in § 103.2 do not include the IFC, but only include the codes and standards referenced in the IFC; therefore, § 703.1 of the IFC is not affected by the language in § 103.2 of the SFPC.

The Review Board disagrees. Section 103.2 is part of Section 103, entitled "Incorporation by Reference." The purpose of the section is to incorporate the IFC as part of the SFPC and to set out how the IFC is to be used. Section 103.2 is entitled "Amendments." Accordingly, the text in the section addresses how the SFPC provisions amend provisions in the IFC which are administrative in nature or outside of the scope of the IFC. See also § 103.2.1 of the SFPC, which, as a subsection of § 103.2, specifically notes that the IFC and its referenced standards contain some areas of regulation outside of the scope of the SFPC.

To read § 103.2 of the SFPC to be applicable to only the codes and standards referenced by the IFC and not to the IFC

itself, as Clayton suggests, is clearly a misreading of the section.

Further, the Review Board finds that the portion of § 703.1 of the IFC in question is a requirement which relates to inspection and is therefore deleted and replaced by the provisions of Chapter 1 of the SFPC. Chapter 1 addresses inspections in § 106.3 and states in pertinent part that "[t]he fire official is authorized to conduct such inspections as are deemed necessary to determine the extent of compliance with the provisions of this code... ." Therefore, under the SFPC, owners are not required to perform inspections of fire-resistance-rated construction and the fire official has discretion in determining what inspections the enforcing agency will conduct.

#### 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 of Alexandria fire official and the City appeals board to be, and hereby is, upheld.

/s/\*

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Chairman, State Technical Review Board

Mar. 15, 2013

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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.