AGENDA

STATE BUILDING CODE TECHNICAL REVIEW BOARD

Friday, July 19, 2019 – 10:00am

Virginia Housing Center
4224 Cox Road Glen Allen, Virginia

I. Roll Call (TAB 1)

II. Approval of May 17, 2019 Minutes (TAB 2)

III. Approval of May 20, 2019 Retreat Minutes (TAB 3)

IV. Approval of Final Order (TAB 4)
   In Re: Appeal of Karen Hobbs
   Appeal No 18-21

V. Approval of Interpretation (TAB 5)
   In Re: Jeff Brown (DHCD)
   Interpretation No. 04-19

VI. Public Comment

VII. Appeal Hearing (TAB 6)
   In Re: Freemason Street Area Association
   Appeal No 18-22

VIII. Preliminary Hearing (TAB 7)
   In Re: Jack Singleton
   Appeal No 19-01

IX. Potential Code Change Proposal #183 by Kenney Payne (Tab 8)

X. Secretary’s Report
   a. E. G. Middleton Resignation
   b. Alan Givens Review Board position
   c. Board Policy Process and upcoming Board Retreat
   d. September meeting update
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James R. Dawson, Chairman  
(Virginia Fire Chiefs Association)

W. Shaun Pharr, Esq., Vice-Chairman  
(The Apartment and Office Building Association of Metropolitan Washington)

Vince Butler  
(Virginia Home Builders Association)

J. Daniel Crigler  
(Virginia Association of Plumbing-Heating-Cooling Contractors and the Virginia Chapters of the Air Conditioning Contractors of America)

Alan D. Givens  
(Virginia Association of Plumbing-Heating-Cooling Contractors and the Virginia Chapters of the Air Conditioning Contractors of America)

Christina Jackson  
(Commonwealth at large)

Joseph A. Kessler, III  
(Associated General Contractors)

Eric Mays  
(Virginia Building and Code Officials Association)

Joanne D. Monday  
(Virginia Building Owners and Managers Association)

Patricia S. O’Bannon  
(Commonwealth at large)

J. Kenneth Payne, Jr., AIA, LEED AP BD+C  
(American Institute of Architects Virginia)

Richard C. Witt  
(Virginia Building and Code Officials Association)

Aaron Zdinak, PE  
(Virginia Society of Professional Engineers)

Vacant  
(Electrical Contractor)
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Call to Order

The meeting of the State Building Code Technical Review Board (“Review Board”) was called to order at approximately 10:00 a.m. by Chairman Dawson.

Roll Call

The roll was called by Mr. Luter and a quorum was present. Mr. Justin I. Bell, legal counsel for the Board from the Attorney General’s Office, was also present.

Approval of Minutes

The draft minutes of the March 15, 2019 meeting in the Review Board members’ agenda package were considered. Mr. Witt moved to approve the minutes with the removal of the word “the” in the second line of the third paragraph on page nine of the agenda package. The motion was seconded by Ms. Monday and passed with Messrs. Crigler and Middleton abstaining.

Final Orders

Appeal of Greg Wooldridge (ODU)

Appeal No. 18-17:

After review and consideration of the final order presented in the Review Board members’ agenda package, Mr. Witt moved to approve the final order with an editorial change replacing the word “detectors” with the word “alarms” to align with Section 102.7 (Inspections for USBC requirements) in lines three and four of the last paragraph of the first page of the final order (shown on page 17 of the agenda package) and adding the words “who is the” in the last sentence in the last paragraph of page two of the final order (shown on page 19 of the
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Final Orders (continued) agenda package). The motion was seconded by Ms. Jackson and passed with Messrs. Crigler and Middleton abstaining.

Appeal of Raymond M. Parker Sr.
Appeal No. 18-20:

After review and consideration of the final order presented in the Review Board members’ agenda package, Mr. Witt moved to approve the final order with the editorial corrections in the spelling of the word “statute” in the first sentence of the first paragraph and the removal of the word “an” in the last sentence of the last paragraph of page three of the final order (shown on page 27 of the agenda package). The motion was seconded by Ms. O’Bannon and passed with Messrs. Crigler and Middleton abstaining.

Appeal of Karen Hobbs
Appeal No. 18-21:

After review and consideration of the continuance order presented in the Review Board members’ agenda package, Ms. Monday moved to approve the final order as presented. The motion was seconded by Mr. Witt and passed with Messrs. Crigler and Middleton abstaining.

Reconsideration of Appeal of AMcL, LLC
Appeal No. 18-14:

After review and consideration of the reconsideration order presented in the Review Board members’ agenda package, Ms. Jackson moved to approve the final order with the removal of the words “since the County rescinded the cited violation and application of the code, AMcL, LLC does not have a right to appeal” to be replaced with the words “because it lacked merit” (shown on page 33 of the agenda package). The motion was seconded by Mr. Kessler and passed with Messrs. Crigler and Middleton as well as Ms. O’Bannon abstaining.

Appeal of AMcL, LLC.
Appeal No. 18-14
(Action Requests)

The Board was made aware of the action requests filed by AMcL, LLC. No action was taken by the Board.
Public Comment
Chairman Dawson opened the meeting for public comment. Mr. Luter advised that no one had signed up to speak. With no one coming forward, Chairman Dawson closed the public comment period.

New Business

Appeal of Karen Hobbs; Appeal No. 18-21:

A hearing convened with Chairman Dawson serving as the presiding officer. The appeal involved citations under the 2012 Virginia Maintenance Code related to the property owned by Karen Hobbs located at 11812 Breton Court, Unit #2, in the County of Fairfax.

The following persons were sworn in and given an opportunity to present testimony:

Karen Hobbs, Owner
Catherine Lunsford, Fairfax County Investigator
C. P. Fitzhugh, Fairfax County Property Maintenance Appeals Coordinator
Jessica McLemore, Animal Control Officer, Fairfax County Police Department

Also present was:

Douglas Crockett, Esq., legal counsel for Karen Hobbs
Marc Gori, Esq., legal counsel for Fairfax County

After testimony concluded, Chairman Dawson closed the hearing and stated a decision from the Review Board members would be forthcoming and the deliberations would be conducted in open session. It was further noted that a final order reflecting the decision would be considered at a subsequent meeting and, when approved, would be distributed to the parties and would contain a statement of further right of appeal.

Decision: Appeal of Karen Hobbs; Appeal No. 18-21:

After deliberations, Mr. Mays moved that in accordance with the 2012 Virginia Maintenance Code Section 104.1 (Scope of Enforcement) the County made a reasonable effort to obtain consent to enter the property from the owner and did in fact gain that consent. The motion was seconded by Mr. Witt. The motion passed unanimously.

After further deliberation Mr. Pharr, as a member who voted in the affirmative, moved for reconsideration of Mr. Mays’ earlier motion for the purposes of addressing whether Ms. Hobbs was under duress or
(Page left blank intentionally)
New Business
(continued)

was coerced, into allowing the inspection. Mr. Mays second the motion.

Mr. Pharr’s subsequent motion was that in accordance with the 2012 Virginia Maintenance Code Section 104.1 (Scope of Enforcement) the County made a reasonable effort to obtain consent to enter the property from the owner and did in fact gain that consent conditionally which was not offered as a result of coercion or duress. The motion did not receive a second and was withdrawn by Mr. Pharr in favor of the original motion. The original motion stands.

After further deliberations, Mr. Mays moved uphold the Property Maintenance Official and local appeals board that violations of sections 305.1 and 308.1 of the 2012 Virginia Maintenance Code exist; to overturn the Property Maintenance Official and local board of appeals that a violation of section 702.1 exists; and to confirm that the violation of second 202 of the 2012 Virginia Maintenance Code is not properly before the Board because the violation was previously abated on November 15, 2018. Ms. Jackson second the motion. After further deliberation Mr. Mays amended his motion. In Mr. Mays amended motion Mr. Mays moved that in relation to the structure being unfit for human occupancy, since that has been abated the issue is not properly before the Board. Mr. Crigler second the amended motion and the motion passed with Messrs. Butler, Payne, and Pharr voting in opposition.

After further deliberation Mr. Mays moved to uphold the Property Maintenance Official and local appeals board that a violation of sections 305.1 of the 2012 Virginia Maintenance Code exists. Mr. Butler second the motion and motion passed with Mr. Crigler voting in opposition.

After further deliberation Mr. Mays moved to uphold the Property Maintenance Official and local appeals board that a violation of section 308.1 of the 2012 Virginia Maintenance Code exists. Ms. O’Bannon second the motion and motion passed with Messrs. Crigler, Payne, Pharr, Butler, Witt as well as Ms. Monday voting in opposition.

After further deliberation Mr. Mays moved to overturn the Property Maintenance Official and local appeals board that a violation of section 702.1 of the 2012 Virginia Maintenance Code exists because based on the County’s testimony the egress violation had been resolved on November 15, 2018. Ms. Jackson second the motion and motion passed with Mses. O’Bannon and Jackson voting in opposition.
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<tr>
<th><strong>New Business (continued)</strong></th>
<th><strong>Appeal of Eagle Properties and Investments, LLC; Appeal No. 18-15:</strong></th>
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<tr>
<td></td>
<td>Eagle Properties and Investments, LLC filed a Notice of Dismissal of Appeal on May 9, 2019. The Board was made aware of the notice. No action was taken.</td>
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<th><strong>Interpretation Request</strong></th>
<th><strong>An interpretation request from Jeff Brown, Director of the State Building Codes Office was considered concerning the 2015 Virginia Uniform Statewide Building Code (USBC), on Section 102.3 Exemptions concerning whether or not utility companies are regulated pertaining to solar farms.</strong></th>
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<td>After deliberations, Mr. Witt moved to approve the interpretation with the editorial change adding a note after each question that reads “<em>No exempt equipment, wiring, or support structure may create an unsafe condition prohibited by the USBC</em>”. The motion was seconded by Mr. Mays. The motion passed with Mr. Givens voting in opposition.</td>
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| **Secretary’s Report** | **No report provided.** |

| **Adjournment** | **There being no further business, the meeting was adjourned by proper motion at approximately 6:00 p.m.** |

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**Approved: July 19, 2019**

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**Chairman, State Building Code Technical Review Board**

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**Secretary, State Building Code Technical Review Board**
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# STATE BUILDING CODE TECHNICAL REVIEW BOARD
## RETREAT MINUTES
### May 20, 2019
#### Glen Allen, Virginia

<table>
<thead>
<tr>
<th>Members Present</th>
<th>Members Absent</th>
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<tr>
<td>Mr. James R. Dawson, Chairman</td>
<td>Mr. Alan D. Givens</td>
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<tr>
<td>Mr. W. Shaun Pharr, Esq., Vice-Chairman</td>
<td>Ms. Christina Jackson</td>
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<td>Mr. Vince Butler</td>
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<td>Mr. Eric Mays, PE</td>
<td>Mr. Richard C. Witt</td>
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### Call to Order
The retreat of the State Building Code Technical Review Board (“Review Board”) was called to order at approximately 10:00 a.m. by Chairman Dawson.

### Roll Call
The roll was called by Mr. Luter and a quorum was present. Mr. Justin I. Bell, legal counsel for the Board from the Attorney General’s Office, was also present. Ms. Lockerman from the Attorney General’s Office and Cindy Davis, Deputy Director, Division of Building and Fire Regulation were also present.

### FOIA, COIA, and APA Presentation
Mr. Bell provided three presentations. The three presentations focused on the Freedom of Information Act (FOIA), Conflict of Interest Act (COIA), and Administrative Procedure Act (APA) as they related to the Review Board members.

### Review Board Policies and Manual Discussion
The Review Board discussed adopting a Review Board policy manual. The Review Board discussed three sample policies and made the following recommendations:

1. Place time limits on each portion of an appeals hearing per party such as:
   - Opening statement – 5 minutes
   - Testimony – 20 minutes
   - Cross examination – 10 minutes
   - Board Q&A – 10 minutes
   - Closing statement/argument – 5 minutes
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Review Board Policies and Manual Discussion (continued)

**Note 1:** Provide shorter timeframes for jurisdictional issues hearings.

**Note 2:** Provide a list to the parties for guidance outlining what the opening statement should include.

**Note 3:** Create a way for the parties to request a longer or shorter time limit.

**Note 4:** Target time to complete each hearing 90 minutes and the Chairperson has the authority to adjust the time limits at his/her discretion based on the case before the Review Board.

2. When a party or Review Board staff identify a potential jurisdictional issue with an appeal application, that jurisdictional issue is to be brought before the Review Board for consideration prior to processing the appeal application on the merits of the case.

    **Note:** When this occurs, Review Board staff is to schedule the jurisdictional issue(s) for the first available meeting and then, schedule the merits of the case for the following meeting.

3. Research the use of Adobe meeting as an option for parties to use during jurisdictional issue hearings.

Mr. Payne moved not to create a policy requiring the use of a specific appeal application form to file an appeal; however, all appeal applications must be in writing. He further moved that the appeal application form be completed within a reasonable timeframe. Mr. Witt second the motion and it passed unanimously.

After the lengthy discussion on just three sample policies, the Board directed Cindy Davis, Deputy Director, Division of Building and Fire Regulation to work with Mr. Bell to draft the needed policies and to bring them back to the Review Board at another retreat to be scheduled later this year.

During this discussion the Review Board directed the Secretary to make two changes to the appeal application provided for use by the department.

Adjournment

There being no further business, the meeting was adjourned by proper motion at approximately 4:15 p.m.
Approved: July 19, 2019

_______________________________________________
Chairman, State Building Code Technical Review Board

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Secretary, State Building Code Technical Review Board
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BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD (REVIEW BOARD)

IN RE: Karen Hobbs
Appeal No. 18-21

DECISION OF THE REVIEW BOARD

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).

Case History

Karen M. Hobbs (Hobbs) owner of the property located at 11812 Breton Court, Unit 2 in Fairfax County, appealed the enforcement action by the County of Fairfax Department of Code Compliance (County) under Part III of the Uniform Statewide Building Code (Virginia Property Maintenance Code or VMC).

In October of 2018, the County, in enforcement of the Virginia Property Maintenance Code, issued a notice of violation to Ms. Hobbs for her property located at 11812 Breton Court, Unit 2. The notice cited three VMC violations, one violation each for Sections 305.1 (General), 308.1 (Accumulation of rubbish and garbage), and 702.1 (General). The County also issued a Notice of Structure Unfit of Human Occupancy in accordance with VMC Section 202 (Definition).

The local appeals board heard Ms. Hobbs’ appeal on October 22, 2018 and ruled to uphold the decision of the County. Ms. Hobbs then further appealed to the Review Board on December 5, 2018 after receipt of the local board’s decision.
(Page left blank intentionally)
Findings of the Review Board

A. Whether the County made a reasonable effort to obtain consent to enter the property for an inspection.

Douglas Crockett, legal counsel for Ms. Hobbs, argued that Ms. Hobbs did not provide consent to the County to enter her property. Mr. Crockett argued that the County had approximately four to six employees present for the inspection which lasted over four hours. Mr. Crockett further argued that the building manager and a locksmith were also present at the time of the inspection and that they threatened entry to Ms. Hobbs property. Mr. Crockett also argued that the presence of so many individuals at the property coupled with the actions of those individuals constituted coercion, intrusive conduct, and undue influence which put Ms. Hobbs under duress; therefore, her consent was not voluntary.

Fairfax County, through legal counsel, argued that Ms. Hobbs did in fact provide consent to enter the property the following day at 9:00 a.m. and placed restrictions on that consent; the inspection was not to include the bedrooms and bathrooms. The County, through testimony of Ms. Lunsford, clarified that the locksmith was contacted by the property manager, not the County, and that the threat of entry was not made by the County, but rather by the property manager through his authority. The Review Board finds that the County did make every reasonable effort to obtain consent and did in fact gain that consent as Ms. Hobbs had ample time to change her mind: however, she did not.

B. Whether to overturn the decision of the County and the local board that a violation of the VMC Section 305.1 (General) exists.

Mr. Crockett argued that unsanitary conditions do not exist within the structure; therefore, the cited violations did not exist. Mr. Crockett further argued that the items identified by the County as feces and urine on the floor of the structure was likely shredded cardboard.
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Fairfax County argued that the conditions in the structure were unsanitary as there was a strong ammonia order, commonly associated with animal urine, that could be detected in the parking lot and became more and more intense the closer you got to Ms. Hobbs’ structure. The County further argued that upon entry, the ammonia order in the structure was so overwhelming that the inspectors had a hard time breathing and their eyes began to water. The County argued that animal feces and urine were present on the floor. The County also argued that there was rotting food in the kitchen area where the presence of flies was noted. Lastly, the County argued that flies were swarming around the entry door to the structure. The Review Board finds that violations of VMC Section 305.1 (General) exist due to the strong smell of ammonia, commonly associated with animal urine, apparent from the parking lot coupled with the other conditions found within the structure.

C. **Whether to overturn the decision of the County and the local board that a violation of the VMC Section 308.1 (Accumulation of rubbish and garbage) exists.**

Mr. Crockett argued that the cited violations do not exist. Mr. Crockett further argued that the boxes referred to by the County were Ms. Hobbs’ personal belongings, files, and other pertinent documents. Mr. Crockett further argued that Ms. Hobbs only used the dining room for storage.

Fairfax County argued that there was an excessive amount of cardboard boxes, papers, and other flammable material throughout the structure. The County further argued that such boxes were stacked to the ceiling in some areas. The County again argued that there was rotting food in the kitchen area. The Review Board finds that violations of VMC Section 308.1 (Accumulation of rubbish and garbage) exist based on the abundance of boxes and other flammable material found throughout the structure as well as the rotting food found in the kitchen area.

D. **Whether to overturn the decision of the County and the local board that a violation of the VMC Section 702.1 (General) exists.**

Mr. Crockett argued that the cited violations do not exist. Mr. Crockett argued that the inspection took place in the middle of Ms. Hobbs cleaning her structure whereby she was preparing
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to get rid of a few items such as the large couch in the middle of the living room. Mr. Crockett further argued that the shampooer, vacuum, brooms, etc. found in the hallway were there temporarily and were not typically stored in the hallway. Mr. Crockett also argued that Ms. Hobbs was in the midst of cleaning and working on her refrigerator and dishwasher so they were moved away from the wall; the moving of these appliances required Ms. Hobbs to move everything on her counters so now those items were also out of place.

Fairfax County argued that the hallway was impassable and the dining room was totally inaccessible. The County further argued that in several areas of the structure the inspector had to turn sideways to maneuver through the stacks of boxes and furniture. The Review Board finds that violations of VMC Section 702.1 (General) do not exist because the inspectors reasoning for citing this was related to the sliding rear door of the structure which is not a part of the means of egress.

E. Whether to overturn the decision of the County and the local board that in accordance with VMC Section 202 (Definition) the structure is unfit for human occupancy.¹

Mr. Crockett argued that the determination of the structure to be unfit for human occupancy based on the cited violations was excessive. Mr. Crockett further argued that Ms. Hobbs had not made any substantial changes to the appearance of the structure since the original inspection by the County, rather she had simply performed routine cleaning of the structure.

Fairfax County argued that based on the entirety of the cited violations the structure was unfit for human occupancy. The County further argued that during the subsequent inspection after the local board hearing Ms. Hobbs had made substantial progress in abating the cited violations

¹ See Review Board Case No. 03-3 and 17-9. See also Review Board Case Nos. 98-8, 98-16, 00-2, 00-14, 11-9&10, and 16-6.
therefore, the property was no longer unfit for human occupancy and removed the placard and allowed Ms. Hobbs to return to the property.

The right to appeal is laid out by statute and by the building code. The Virginia Maintenance Code reads in part:

107.5 Right of appeal; filing of appeal application. Any person aggrieved by the local enforcing agency's application of this code or the refusal to grant a modification to the provisions of this code may appeal to the LBBCA.

The Maintenance Code clearly states that the right of appeal is for applications of the code and being aggrieved by those applications of the code. The Review Board consistently interpreted that the right to appeal is tied to applications of the code and the aggrievement by applications of the code. In other words, without applications of the code or being aggrieved by applications of the code, there is no right to appeal.

After the local board hearing Ms. Hobbs allowed the County to re-inspect the property. During the inspection the County determined substantial progress in abating the cited violations had been made; therefore, the property was no longer unfit for human occupancy. The County removed the placard and allowed Ms. Hobbs to return to the property; therefore, the application of the code was also removed. The removal of the application ended whatever aggrievement there was against Ms. Hobbs. Therefore, without the cited violation there is no right to appeal. The Review Board finds that Ms. Hobbs’ partial compliance with the NOV and subsequent determination by the County of the structure as no longer unfit for human occupancy, the County rescinded the cited violation and application of the code. So, Ms. Hobbs no longer has a right to appeal the cited violation.

**Final Order**

\(^2\) Id.
The appeal having been given due regard, and for the reasons set out herein, the Review Board orders as follows:

A. Whether the County made a reasonable effort to obtain consent to enter the property for an inspection.

The decision of the local appeals board that the County made a reasonable effort to obtain consent to enter the property for inspection and did in fact gain that consent to be, and hereby is, upheld.

B. Whether to overturn the decision of the County and the local board that a violation of the VMC Section 305.1 (General) exists.

The decision of County and the local appeals board that a violation of Section 305.1 exists to be and hereby is, upheld.

C. Whether to overturn the decision of the County and the local board that a violation of the VMC Section 308.1 (Accumulation of rubbish and garbage) exists.

The decision of County and the local appeals board that a violation of Section 308.1 exists to be and hereby is, upheld.

D. Whether to overturn the decision of the County and the local board that a violation of the VMC Section 702.1 (General) exists.

The decision of County and the local appeals board that a violation of Section 702.1 exists to be and hereby is, overturned.

E. Whether to overturn the decision of the County and the local board that in accordance with VMC Section 202 (Definition) the structure is unfit for human occupancy.

The Review Board concluded that this cited violation had already been rescinded prior to the Review Board hearing; therefore, no right of appeal exists.
Date entered: July 19, 2019

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.
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Interpretation Number: 1/2019


Section No(s): Section 102.3

102.3 Exemptions. The following are exempt from this code:

1. Equipment and wiring used for providing utility, communications, information, cable television, broadcast or radio service in accordance with all of the following conditions:

   1.1. The equipment and wiring are located on either rights-of-way or property for which the service provider has rights of occupancy and entry.

   1.2. Buildings housing exempt equipment and wiring shall be subject to the USBC.

   1.3. The equipment and wiring exempted by this section shall not create an unsafe condition prohibited by the USBC.

2. Support structures owned or controlled by a provider of publicly regulated utility service or its affiliates for the transmission and distribution of electric service in accordance with all of the following conditions:

   2.1. The support structures are located on either rights-of-way or property for which the service provider has rights of occupancy and entry.

   2.2. The support structures exempted by this section shall not create an unsafe condition prohibited by the USBC.

3. Direct burial poles used to support equipment or wiring providing communications, information or cable television services. The poles exempted by this section
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shall not create an unsafe condition prohibited by the USBC.

4. Electrical equipment, transmission equipment, and related wiring used for wireless transmission of radio, broadcast, telecommunications, or information service in accordance with all of the following conditions:

4.1. Buildings housing exempt equipment and wiring and structures supporting exempt equipment and wiring shall be subject to the USBC.

4.2. The equipment and wiring exempted by this section shall not create an unsafe condition prohibited by the USBC.

5. Manufacturing, processing, and product handling machines and equipment that do not produce or process hazardous materials regulated by this code, including those portions of conveyor systems used exclusively for the transport of associated materials or products, and all of the following service equipment:

5.1. Electrical equipment connected after the last disconnecting means.

5.2. Plumbing piping and equipment connected after the last shutoff valve or backflow device and before the equipment drain trap.

5.3. Gas piping and equipment connected after the outlet shutoff valve. Manufacturing and processing machines that produce or process hazardous materials regulated by this code are only required to comply with the code provisions regulating the hazardous materials.

6. Parking lots and sidewalks, that are not part of an accessible route.

7. Nonmechanized playground or recreational equipment such as swing sets, sliding boards, climbing bars, jungle gyms, skateboard ramps, and similar equipment where no admission fee is charged for its use or for admittance to areas where the equipment is located.

8. Industrialized buildings subject to the Virginia Industrialized Building Safety Regulations (13VAC5-91) and
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manufactured homes subject to the Virginia Manufactured Home Safety Regulations (13VAC5-95); except as provided for in Section 427 and in the case of demolition of such industrialized buildings or manufactured homes.

9. Farm buildings and structures, except for a building or a portion of a building located on a farm that is operated as a restaurant as defined in Section 35.1-1 of the Code of Virginia and licensed as such by the Virginia Board of Health pursuant to Chapter 2 (Section 35.1-11 et seq.) of Title 35.1 of the Code of Virginia. However, farm buildings and structures lying within a flood plain or in a mudslide-prone area shall be subject to flood-proofing regulations or mudslide regulations, as applicable.

10. Federally owned buildings and structures unless federal law specifically requires a permit from the locality. Underground storage tank installations, modifications and removals shall comply with this code in accordance with federal law.

11. Off-site manufactured intermodal freight containers, moving containers, and storage containers placed on site temporarily or permanently for use as a storage container.

12. Automotive lifts.

**QUESTION #1:** Are equipment, wiring and support structures that will be under the control of an electric company exempt from the USBC?

**ANSWER:** Yes, as long as the equipment wiring or support structures in question are located on property for which the electric company has rights of occupancy and entry.

**Note:** No exempt equipment, wiring, or support structure may create an unsafe condition prohibited by the USBC.

**QUESTION #2:** Are equipment, wiring and support structures that are under the control of an electric company, but are located on property that is leased, exempt from the USBC?

**ANSWER:** Yes, exempt equipment, wiring and support structures can be located within utility rights-of-way, land owned or leased by
(Page left blank intentionally)
the electric company, or on property that the electric has rights of entry and occupancy.

**Note:** No exempt equipment, wiring, or support structure may create an unsafe condition prohibited by the USBC.

**QUESTION #3:** Are equipment, wiring or support structures that are installed by a contractor or an entity other than the electric company, but the electric company will control the equipment, wiring or support structures once they are installed and will have rights of occupancy and entry to the property, exempt from the USBC?

**ANSWER:** Yes, regardless of who installs wiring, equipment or support structures, if they will be controlled by the electric company upon completion, they are exempt from the USBC and permits are not required.

**Note:** No exempt equipment, wiring, or support structure may create an unsafe condition prohibited by the USBC.

**QUESTION #4:** Are equipment, wiring or support structures that are under the control of the electric company and the electric company maintains rights of occupancy and entry to the property, but the wiring, equipment or support structures are being maintained and operated by a contractor or an entity other than the electric company, exempt from the USBC?

**ANSWER:** Yes, if the electric company utilizes a 3rd party contractor to operate or maintain wiring, equipment or support structures, but the electric company maintains control, the wiring, equipment or support structures in question are exempt from the USBC.

**Note:** No exempt equipment, wiring, or support structure may create an unsafe condition prohibited by the USBC.

**QUESTION #5:** Are equipment, wiring and support structures that are under the control of an entity that is not an electric company exempt from the USBC?

**ANSWER:** No.

**Note:** No exempt equipment, wiring, or support structure may create an unsafe condition prohibited by the USBC.
(Page left blank intentionally)
This Official Interpretation was issued by the State Building Code Technical Review Board at its meeting of May 17, 2019.

Chairman, State Building Code Technical Review Board
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VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Freemason Street Area Association
Appeal No. 18-22

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VIRGINIA:

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

IN RE: Appeal of Freemason Street Area Association Inc.
Appeal No. 18-22

REVIEW BOARD STAFF DOCUMENT

Suggested Summary of the Appeal

1. On August 14, 2018, the City of Norfolk Neighborhood Development Department (City), in enforcement of the Virginia Property Maintenance Code (VMC), issued a notice of violation to Mark Sinesi for his property located at 355 W. Freemason Street. The notice deemed the property unsafe and uninhabitable and cited one VMC violation per Section 105.1 (General).

2. Freemason Street Area Association Inc. (Freemason) filed an appeal to the City of Norfolk Board of Building Code Appeals (local appeals board) on October 23, 2018.

3. The local appeals board conducted a hearing in November of 2018 and upheld the decision of the City while also finding the appeal to be untimely. Freemason filed an application for appeal to the Review Board on December 17, 2018 after receipt of the local appeals board decision via email from Norfolk Building Commissioner, Rick Fortner, on December 12, 2018.

4. Review Board staff conducted an informal fact finding conference (IFFC) in March of 2019 to clarify the issues in the appeal to the Review Board. The IFFC was attended by Virginia Van de Water, Greta Gustavson, Madeline Sly, and Jack Kavanaugh, members of the Freemason Board; counsel for Freemason, Joe Sherman; Norfolk Building Commissioner, Rick Fortner; Norfolk City Attorney, Cynthia Hall; and counsel for Mark Sinesi, F. Sullivan Callahan.

5. In route to the IFFC, Review Board staff visited the subject property site and found that the building no longer existed on the site. All parties concurred that the building had been demolished prior to the appeal.
6. The jurisdictional issues were discussed at the IFFC. During the IFFC Mr. Sherman informed Review Board staff that Freemason believes they should have been properly notified of the violations by the City; therefore, are an aggrieved party. When asked by Review Board staff what Freemason hoped to gain from the appeal, Mr. Sherman stated that Freemason wanted to ensure that historical associations became a required party to be notified of such violations pursuant to the building code so that this situation did not occur again. Review Board staff advised Mr. Sherman that this appeal was only for this specific property and case and any desire to make changes to the notification portion of the building code could be done through the code change process during the next cycle. Discussions during the IFFC revealed that Freemason filed court action for an injunction to stop the demolition of the structure and lost all the way to the Virginia Supreme Court.

7. Concerning the merits of the appeal, the parties agreed that the only issue for resolution by the Review Board is whether a violation of VMC Section 105.1 (General) exists.

8. Subsequent to the IFFC, Review Board staff drafted this staff document and forwarded it, along with a copy of all documents submitted, to the parties and opportunity given for the submittal of additions, corrections or objections to the staff document, and the submittal of additional documents or written arguments to be included in the information distributed to the Review Board members for the appeal hearing before the Review Board.

Suggested Issue for Resolution by the Review Board

1. Whether to dismiss the appeal as untimely.

2. Whether to dismiss the appeal as not properly before the Board due to Freemason not being an aggrieved party.

3. If necessary to hear the merits of the appeal, whether to overturn the decision of the City and the local appeals board that a violation of the VMC Section 105.1 (General) exists.
Basic Documents
(Page left blank intentionally)
August 14, 2018

Sinesi, Mark  
7939 North Shore Rd  
Norfolk VA 23505-1736

NOTICE OF VIOLATION

Inspection No: INS-0102998-18  
Property Address: 355 W FREEMASON STREET

Dear: Sinesi, Mark

This is to inform you that an inspection has been made at the building or structure located at: 355 W FREEMASON STREET. Our findings are that the structure located at this site is unsafe and uninhabitable. The attached violations of the Virginia Uniform Statewide Building Code (USBC), Part III render the structure unsafe and uninhabitable.

Pursuant to Section 105.1 of the Virginia Uniform Statewide Building Code as adopted by the City of Norfolk, it is hereby ordered that this structure must be repaired or demolished and removed within 10 days of the date of this notice.

All permits must be obtained prior to starting any repair work or demolition.

Under Part III, Sections 105.4 and 105.9 of the USBC, should you fail to repair or demolish and remove the structure the City of Norfolk, through the Code Official will cause the structure to be demolished and removed by contract or arrangement with a private demolition contractor. The cost of demolition and removal shall be charged against the real estate upon which the structure is located and a lien shall be placed upon the real estate.

In accordance with the provisions of the USBC Part III, Section 106.5 you have the right to appeal this notice and order by filing a written application to the Local Board of Building Code Appeals of the City of Norfolk. The application for appeal must be filed within (14) days after this notice is served upon you. The appeal shall be based on a claim that the true intent of the code or the rules legally adopted there under have been incorrectly interpreted, the provisions of the code do not fully apply, or the requirements or the code are adequately satisfied by some other means.

Failure to submit an application for appeal within the time specified shall constitute acceptance of the Code Official's decision. Should you have any questions or if we may be of help in your decision, please contact your Code Specialist, Christina Jackson at 757-664-6612 or christina.jackson@norfolk.gov.

Sincerely,

Sherry Johnson, Division Head  
Division of Neighborhood Quality  
Department of Neighborhood Development

401 Monticello Ave, 1st Floor Norfolk VA 23510  
Phone: 757-664-6500 Fax: 757-664-6898
Inspection No: INS-0102998-18
Address: 355 W FREEMASON STREET

Section 105.1 -- To be corrected by: 2018-08-24

105.1 Unsafe Structures Unfit for Human Occupancy

- This section shall apply to existing structures which are classified as unsafe or unfit for human occupancy. All conditions causing such structures to be classified as unsafe or unfit for human occupancy shall be remedied or as an alternative to correcting such conditions, the structure may be vacated and secured against public entry or razed and removed. Vacant and secured structures shall still be subject to other applicable requirements of this code.

Notwithstanding the above, when the code official determines that an unsafe structure or a structure unfit for human occupancy constitutes such a hazard that it should be razed or removed, then the code official shall be permitted to order the demolition of such structures in accordance with applicable requirements of this code.

- Due to the declarations that the property is structurally unsound and otherwise dilapidated and deteriorating it is hereby declared unsafe and unsound which must be demolished. All permits for demolition can be obtained at the Development Service Center 810 Union St-city Hall.

401 Monticello Ave, 1st Floor Norfolk VA 23510
Phone: 757-664-6500 Fax: 757-664-6898
The Virginia Uniform Statewide Building Code, Part I, Section 119.5 states in part: Right of appeal; filing of appeal application. Any person aggrieved by the local building department's application of the USBC or the refusal to grant a modification to the provisions of the USBC may appeal to the LBBCA.

Appeals of Building Official's decision must be submitted within 30 calendar days of receipt of decision.

The Virginia Uniform Statewide Building Code, Part III, Section 106.5 states in part: Right of appeal; filing of appeal application. Any person aggrieved by the local enforcing agency's application of this code or the refusal to grant a modification to the provisions of this code may appeal to the LBBCA.

Appeals of the Maintenance Code Official must be submitted within 14 calendar days of receipt of decision.

I (we)/name(s): FLEMING STREET AREA ASSOCIATION, INC.

(mailing address) 321 COLLEGE PLACE, NORFOLK, VA 23510

respectfully request that the Local Board of Building Code Appeals review the decision made by the Norfolk Building Official/Norfolk Maintenance Code Official concerning.

Property address on which hearing is based:

355 W. FLEMING STREET

My interest in the property is:

- Owner
- Contractor
- Owner's Agent
- Other (Explain)

OWN A NEGATIVE EASEMENT

Application for appeal must be based on one of the following reasons:

(Check one)

- Decision: 8/14/19 (Copy must be submitted)

Refusal of the Building Official to grant a modification on the provisions of the USBC, Part I. Description of decision(s) appealed:

(Attach the decision of the Building Official/Maintenance Code Official and any other pertinent documents)

Applicant signature: ____________________________ Date: 10/23/18

Note: Please make check payable to Norfolk City Treasurer in the amount of seventy-five ($75.00) dollars for processing requested appeal. Due at time of application.

Six (6) complete copies of plans and appeal data must be submitted with six (6) copies of application.

Applicant will be notified in writing of the scheduled appeal date.
Freemason Street Area Association, Inc., as an association of historic district property owners which own negative easements over 355 W. Freemason Street, makes this appeal of the Notice of Violation letter dated August 14, 2018, and all associated demolition permits issued by the City of Norfolk.

I. True intent of the code has been incorrectly interpreted

Part III of the Virginia Maintenance Code (2012) requires that the “code official shall inspect any structure” reported as unsafe and “shall prepare a report” which “shall include ... the nature and extent of any conditions found.” § 105.2. Relevant portions attached as Exhibit A.

As to the demolition authorized for 355 W. Freemason Street, the City’s Building Commissioner never inspected the interior of the property. Transcript of testimony attached as Exhibit B.

The true intent of the building code was not interpreted well in this instance as using a third-party report cannot qualify as fulfilling the “shall inspect” portion of the code official’s duties. The report which the Building Commissioner did produce does not meet the intent of the building code because it does, and cannot, report on the conditions found during his inspections.

II. Requirements of code satisfied by some other means

The property at 355 W. Freemason Street is a historic property and should be afforded additional protections than a property not subject to the Va. Const. art XI, § 2, and Va. Code § 15.2-2306. The engineering report on which the City relied, in lieu of an inspection and report of its own, included conclusions that the porch structure was in danger of imminent collapse and the rest of the building was unlikely to collapse. Relevant portions attached as Exhibit C.

Since this is a historic property with the exterior multi-wythe walls in sound condition, the requirements of the building code are better satisfied by emergency repairs to reinforce and stabilize interior features pursuant to § 105.9. These repairs, combined with demolition of the porch, would serve to satisfy the emergency conditions threatening the safety of persons inside the building and preserve the structure.

III. Conclusion

The demolition permit issued to 355 W. Freemason Street did not fulfill the letter or the spirit of the building code. Procedures necessary to document emergency conditions were not verified or reported and the report relied on to reach an emergency conclusion was taken out of context and utilized a cost and reasonableness feasibility analysis rather than a preservation-minded approach appropriate for this property. The proper result would require a combination of demolition to the porch and stabilization of other interior features to allow the preservation process to follow its normal statutory process.
Local Board of Building Code Appeals
Resolution

WHEREAS, the City of Norfolk Local Board of Appeals is duly appointed to resolve disputes arising out of enforcement of the Virginia Uniform Statewide Building Code; and

WHEREAS, an appeal has been filed and brought to the attention of the board of appeals; and

WHEREAS, a hearing has been held to consider the aforementioned appeal; and

WHEREAS, the board has fully deliberated this matter; now, therefore, be it

RESOLVED, That the matter of

Appeal Date: October 23, 2018

Inspection No: INS-0102998-18

Property Address: 355 W. Freemason Street

IN RE: Freemason Street Area Association, Inc v. Norfolk Property Maintenance and Building Commissioner

The appeal is hereby denied, for the reasons set out below:

1. Pursuant to Section 105.1 of the Virginia Uniform Statewide Building Code the order to demolish the structure. Denied
2. Application for appeal within time specified of notice. Denied

Hearing Date: November 29, 2018

Signature _____________________________________________
Chairman of Norfolk Local Board of Appeals

Note: Any person who has a party to the appeal may appeal to the State Building Code Technical Review Board by submitting an application to such board within 21 calendar days upon receipt by certified mail of this resolution. Application forms are available from the Office of the State Review Board, 600 East Main Street, Richmond, VA 23219, (804) 371-7150.
COMMONWEALTH OF VIRGINIA
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
State Building Codes Office and Office of the State Technical Review Board
Main Street Centre, 600 E. Main Street, Suite 300, Richmond, Virginia 23219
Tel: (804) 371-7150, Fax: (804) 371-7092, Email: sbco@dhcd.virginia.gov

APPLICATION FOR ADMINISTRATATIVE APPEAL

Regulation Serving as Basis of Appeal (check one):

☑ Uniform Statewide Building Code
☐ Statewide Fire Prevention Code
☐ Industrialized Building Safety Regulations
☐ Amusement Device Regulations

Appealing Party Information (name, address, telephone number and email address):
Freemason Street Area Association, Inc.
312 College Place
Norfolk, Virginia 23510

Opposing Party Information (name, address, telephone number and email address of all other parties):
City of Norfolk
810 Union Street
Norfolk, Virginia 23510

Additional Information (to be submitted with this application)
  ☐ Copy of enforcement decision being appealed
  ☐ Copy of record and decision of local government appeals board (if applicable and available)
  ☐ Statement of specific relief sought

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of December, 201_, a completed copy of this application, including the additional information required above, was either mailed, hand delivered, emailed or sent by facsimile to the Office of the State Technical Review Board and to all opposing parties listed.

Note: This application must be received by the Office of the State Technical Review Board within five (5) working days of the date on the above certificate of service for that date to be considered as the filing date of the appeal. If not received within five (5) working days, the date this application is actually received by the Office of the Review Board will be considered to be the filing date.

Signature of Applicant: ____________________________________________

Name of Applicant: Joseph Sherman, Esq.
(please print or type)

RECEIVED
DEC 17 201_
OFFICE OF THE REVIEW BOARD
COMMONWEALTH OF VIRGINIA
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
State Building Codes Office and Office of the State Technical Review Board
Main Street Centre, 600 E. Main Street, Suite 300, Richmond, Virginia 23219
Tel: (804) 371-7150, Fax: (804) 371-7092, Email: sbco@dhcd.virginia.gov

APPLICATION FOR ADMINISTRATIVE APPEAL

Regulation Serving as Basis of Appeal (check one):

☑ Uniform Statewide Building Code
☐ Statewide Fire Prevention Code
☐ Industrialized Building Safety Regulations
☐ Amusement Device Regulations

Appealing Party Information (name, address, telephone number and email address):
Freemason Street Area Association, Inc.; Joseph V. Sherman, Esq.
324 West Freemason Street, Norfolk, Virginia 23510
(757) 350-8308; joe@lawfirmJVS.com

Opposing Party Information (name, address, telephone number and email address of all other parties):
City of Norfolk Department of Planning; Rick Fortner, CBO, CFM
401 Monticello Avenue, First Floor, Norfolk, Virginia 23510
(757) 664-6511; richard.fortner@norfolk.gov

Additional Information (to be submitted with this application)
- Copy of enforcement decision being appealed
- Copy of record and decision of local government appeals board (if applicable and available)
- Statement of specific relief sought

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of January, 2019, a completed copy of this application, including the additional information required above, was either mailed, hand delivered, emailed or sent by facsimile to the Office of the State Technical Review Board and to all opposing parties listed.

Note: This application must be received by the Office of the State Technical Review Board within five (5) working days of the date on the above certificate of service for that date to be considered as the filing date of the appeal. If not received within five (5) working days, the date this application is actually received by the Office of the Review Board will be considered to be the filing date.

Signature of Applicant: ____________________________

Name of Applicant: JOSEPH V. SHERMAN
(please print or type)
December 17, 2018

VIA ELECTRONIC MAIL: travis.luter@dhcd.virginia.gov

W. Travis Luter, Sr.
STATE TECHNICAL REVIEW BOARD
600 East Main Street
Richmond, Virginia 23219

Re: Appeal of Local Board of Building Code Appeals Resolution

Dear Mr. Luter:

Please accept this letter as a statement of specific relief sought as part of an appeal of the enclosed resolution and corresponding enforcement decision. The case deals with an “emergency” demolition of a historic property. Freemason Street Area Association, Inc., seeks two specific rulings:

(1) the notice of violation failed to comport with § 105.1 as it did not follow the applicable requirements of the uniform statewide building code; and

(2) notice of violation, and thus appeal procedures, were not provided to all persons of interest and so a subsequent denial for failure to appeal within the specific time of the notice violation is inconsistent with the spirit of the uniform building code.

First, there was no emergency justifying the demolition. Code § 105.9 requires “[t]o the extent permitted by the locality, the code official ... shall be permitted to cause the structure to be demolished.” The local zoning ordinance requires actual emergency to demolish historic structures.\(^1\) The report relied on by the City of Norfolk evaluated the feasibility and *reasonableness* of restoring the house.\(^2\) Attached are photos of the structure contemporaneous to its “emergency” condition.\(^3\)

---

\(^1\) *City of Norfolk Zoning Ordinance* § 2.4.10(B)(2)(c) (requiring “such condition could reasonably be expected to cause death or serious physical harm”). Attached as Exhibit A.

\(^2\) See 355 West Freemason Street Structural Investigation dated August 9, 2018, p. 48-49 (finding “exterior multi-wythe walls appear to be in sound condition. ... the best and most reasonable course of action for this structure is complete demolition.”) (emphasis added). Report attached as Exhibit B.

\(^3\) Photographs attached to Structural Investigation dated August 9, 2018, attached as Exhibit C.
Second, the City gave no notice of the appeal procedures consistent with § 104.5.4 to the historic district, and then relied on its failure to appeal to dismiss the complaint. As an aggrieved party, the historic district should get an opportunity to prevent abuse of the emergency exception to the historic review process. The note in Code § 105.9 shows that such notice to historic districts is contemplated by the spirit of the code, suggesting newspaper publication is required until the owner has an opportunity for a hearing. In this case, the historic district owns a right to object to use of the property for purposes other than demolition and should likewise have a right to notice of appeal procedures necessary to assert its rights. The City did not serve or otherwise publish the notice of violation which included the appeal procedures and corresponding deadline to appeal.\footnote{Notice of Violation dated August 14, 2018, attached as Exhibit D.}

The historic district did get notice of the demolition itself, by virtue of notice to the City’s Architectural Review Board on which the district has a seat, but that notice failed to include the appeal procedures, timeline, and requirements.\footnote{Memorandum from Robert J. Tajan dated August 13, 2018, attached as Exhibit E.}

The City, in collusion with the owner, subverted the historic review process by pursuing a demolition which stretches the word “emergency” so thin that the exception consumes any protection of the rule. The City gave no indication of appellate process or requirements to the historic district until the fourteen (14) day period had lapsed.

Please consider overturning the enforcement actions and recommending future modifications to the building code to prevent this injustice again in the future.

If you have any questions please do not hesitate to call my office: (757) 350-8308.

Sincerely yours,

Joseph V. Sherman

Enclosures

cc: Freemason Street Area Association, Inc. (without enclosures)
Richard Potts (via electronic mail: Richard.potts@dhcd.virginia.gov)
Cindy Hall, Esq. (without enclosures)
(Page left blank intentionally)
Documents Submitted
By Freemason Street
Area Association
EXHIBIT A
C. DEVELOPMENT CERTIFICATE REVIEW STANDARDS

A Development Certificate shall be approved if the Planning Commission finds that all of the following standards are met:

1. The development proposed with the minor modification is compatible with surrounding land uses;
2. The development proposed is consistent with the comprehensive plan;
3. The uses proposed are allowed in the base and overlay districts where the development is located;
4. The modifications in development standards requested in the development certificate do not exceed those established in for the applicable zoning district.
5. Any modifications are the absolute minimum necessary to accommodate the development proposal; and
6. The proposed development complies with all applicable proffers and conditions applicable to the land.

D. EFFECT

Approval of a development certificate authorizes only the particular regulatory relief approved. It does not exempt the applicant from the responsibility to obtain all other approvals required by this Ordinance and any other applicable laws, and does not indicate that the development for which the development certificate is granted should receive other permits or development approvals under this Ordinance unless the relevant and applicable portions of this Ordinance or any other applicable laws are met.

E. EXPIRATION

Unless otherwise specified in the development certificate, an application for a building permit or a Certificate of Occupancy shall be applied for and approved within five years of the date of the approval of the development certificate, or the approval shall become null and void, and automatically expire, subject to the vesting provisions of the Code of Virginia. Permitted timeframes do not change with successive owners.

2.4.10. CERTIFICATE OF APPROPRIATENESS

A. PURPOSE

The purpose of this section is to identify the appropriate review procedure and special standards for any development proposed within a Historic or Historic Overlay District, or a designated Norfolk Historic Landmark, to ensure architectural compatibility with the historic character of the district or landmark.
### B. APPLICABILITY

#### (1) General

Unless exempted in accordance with subsection (2), below, a Certificate of Appropriateness (COA) shall be approved before any of the following development occurs within a Historic or Historic Overlay District, or on the site of a designated Norfolk Historic Landmark:

(a) Alteration of the exterior appearance of any building or structure (this includes any exterior alteration without regard to whether such alteration requires a building permit, if it will change the exterior appearance of a building or structure, including but not limited to, replacement of doors, windows, window sashes, porch railings, floors and ceilings, roofs or portions of roofs, installation, removal, or replacement of trim detail, shutters, gutters or down spouts, exterior mechanical and lighting fixtures, and sign face changes).

(b) Construction, reconstruction, or relocation of a building or structure;

(c) Installation of a driveway to access property;

(d) Construction or installation of a site feature or appurtenance, including but not limited to, walls, fences, arbors, paved parking areas, patios, decks, garages, tool sheds, other accessory structures, or signs, if any part of the feature or appurtenance is visible from a public right-of-way or a public space;

(e) Demolition or removal of all or any significant part of a structure located within an Historic or Historic Overlay District or designated as a Norfolk Historic Landmark all in accordance with Section 2.4.10.D(3): Demolition, below.

#### (2) Exemptions

The following shall be exempt from the requirements of this section:

(a) **Minor Works and Ordinary Maintenance**

Minor works or actions determined by the ZA as not having a permanent effect on the historic or architectural character of the site of a designated Norfolk Historic Landmark or the Historic or Historic Overlay District. Minor works and actions shall include, but are not limited to, the following:

(i) Antennas, skylights, and solar collectors located so as not to be visible from a public street right-of-way;

(ii) Alterations or repainting of the interiors of buildings that do not impact exterior appearance or functionality;

(iii) Ordinary maintenance, such as repainting of previously painted surfaces, or repair of any building or any structure using the same materials having the same appearance as those being repaired.
2.4 Application-Specific Procedures

2.4.10 Certificate of Appropriateness

(Replacement of a building element, feature or appurtenance shall not be interpreted to constitute ordinary maintenance for purposes of this provision unless it is a like-for-like replacement in all respects of material, function, and exterior appearance and the material is acceptable based on the adopted historic or architectural standards and guidelines applicable to the building or structure.); and

(iv) Ordinary yard maintenance and maintenance and care of existing landscaping on the premises of a property.

(b) Emergency Repairs

Where a building or structure within an Historic or Historic Overlay District or on the site of a designated Norfolk Historic Landmark is damaged due to a fire, flood, or other natural disaster or similar event beyond the control of the landowner, emergency repairs to the building or structure may be made without a COA, provided if a COA would otherwise be required by this section an application for a COA is submitted within 30 days of the event creating the need for the emergency repairs.

(c) Emergency Demolition

The emergency demolition of any structure or any portion of a structure which is in such a dangerous, hazardous or unsafe condition that it has been ordered demolished by the Building Commissioner or the Fire Marshal when they have determined that such condition could reasonably be expected to cause death or serious physical harm. The Building Commissioner or Fire Marshal, as appropriate, shall notify the ZA about the demolition of the structure and the ZA shall notify the chairperson of the ARB and any other interested person as soon as practicable after such a determination has been made by the Building Commissioner or Fire Marshal.

(d) Temporary Signs

The location of temporary signs on property.

(e) Certain Alterations or Improvements

(i) The alteration or improvement of any portion of the exterior appearance of a building located within the Ghent Historic and Cultural Conservation Districts (HC-G1, HC-G2 and HC-G3) or the West Freemason Historic and Cultural Conservation Districts (HC-WF1 and HC-WF2) or the Norfolk & Western Historic Overlay District (HO-N&W), or any portion of the exterior of a Norfolk Historic Landmark that is not visible from a public right-of-way.

(ii) The alteration or improvement of any portion of the exterior appearance of a building located within the Downtown Historic Overlay District (HO-Downtown) or the East Freemason Historic
Article 2: Administration
2.4 Application-Specific Procedures
2.4.10 Certificate of Appropriateness

and Cultural Conservation District (HC-EF) that is not visible from a public right-of-way other than an alley.

(3) Failure to Comply

(a) Except as otherwise provided in section (b) below, failure to receive approval of a COA when it is required by this section constitutes a violation of this Ordinance.

(b) Failure to receive approval for a COA when it is required in accordance with this section shall not constitute a violation of this Ordinance if application is made within 30 days of receiving notice that a COA is required, and upon timely consideration and approval by the ARB. Applications for an after-the-fact review shall require the payment of the application fee plus an after-the-fact filing fee, as established in accordance with this Ordinance.

(c) If a COA is required, no other permit or development approval of the proposed development shall be reviewed until receipt of the COA in accordance with this section.

C. CERTIFICATE OF APPROPRIATENESS PROCEDURE

COA applications shall be reviewed using the procedures outlined in Section 2.3.4, Architectural Review Board Procedure.

D. COA REVIEW STANDARDS

A Certificate of Appropriateness shall be approved if it is demonstrated the proposed development complies with the following standards:

(1) Historic or Historic Overlay District

If the proposed development is located in an Historic or Historic Overlay District, it shall:

(a) Be architecturally compatible and appropriate with the character, appearance and efficient functioning of the district and not adversely affect the primary character of the district; and

(b) Be generally consistent with any applicable design guidelines adopted by the ARB for the district.

(2) Norfolk Historic Landmark

If the proposed development is on the site of a designated a Norfolk Historic Landmark, it shall be architecturally compatible with the historic nature of the building or landmark and preserve its distinguishing characteristics and historic character.

(3) Demolition

If the proposed development involves the demolition or razing of a building or structure, any or all of the following factors shall be considered in addition to those in subsections (1) and (2), above:
DISCUSSION OF FINDINGS

The overall condition of the building can be best described as extremely poor and is largely in a state of disrepair. No portion of the structure is considered safe for inhabitation in its current condition. That said, the severity of damage throughout the structure does vary. For the purpose of clarifying the severity and approximate extents of the damage, we have separated the building into zones to distinguish these extents. The zones are displayed in the ‘FIRE DAMAGE PLANS’ and ‘ZONE EXTENT CLARIFICATION SECTION’ in Appendix A. The zones are separated by vertical level and plan location as follows:

- Zone R: Roof Framing Zones (all roof framing):
  - R-A
  - R-B
  - R-C
  - R-D

- Zone A: Attic Framing Zones (attic framing and second-floor walls):
  - A-A
  - A-B
  - A-C
  - A-D

- Zone 2: Second-Floor Framing Zones (second-floor framing and first-floor walls):
  - 2-A
  - 2-B
  - 2-C
  - 2-D

- First-Floor Framing Zones (first-floor framing and basement supports):
  - 1-A
  - 1-B
  - 1-C
  - 1-D

- Basement Zones (all structure below the first-floor framing):
  - B-A
  - B-B
  - B-C
  - B-D
DISCUSSION OF FINDINGS (Continued):

The fire damage plans indicate which portions of framing are physically impossible to be salvaged due to the fire damage, those that could potentially be salvaged due to the fire damage, and those in which fire has not impacted the structure. However, it should be clear that simply because a framing member or support is theoretically salvageable it does not mean it is practical or feasible to be salvaged. This concept will be elaborated upon later in this report.

Overall Structural Condition By Zone:

Zone R: Roof Framing Zone:

The roof framing is in disrepair. We estimate over 60% of the roof is completely unsalvageable. However, due to the location of the severe damage, as it correlates to the various hips and valleys, it is impossible to salvage any of the roof framing. All roof framing must be demolished.

Zone A: Attic Framing Zone:

The attic framing is in disrepair. We estimate over 80% of the attic framing is completely unsalvageable. This is due to both the framing being directly damaged by fire; combined with the damage of the second-floor zone that support these members, which will render them unsalvageable upon their removal. All of the attic framing must be demolished.

Zone 2: Second-Floor Framing Zone:

The second-floor framing is in disrepair. We estimate over 80% of the second-floor framing is completely unsalvageable. This is due to both the framing being directly damaged by fire combined with the damage of the first-floor zone that support these members which will render them unsalvageable upon their removal. All of the second-floor framing must be demolished.

Zone 1: First-Floor Framing Zone:

The first-floor framing condition is extremely poor. All bearing walls, partition walls, and approximately 80% of the wood subflooring is unsalvageable. A majority of the first-floor joists appear to be unaffected by
DISCUSSION OF FINDINGS (Continued):

the fire, excluding the rear porch, which are also unsalvageable. Although it may be technically feasible to salvage portions of the floor, our recommendation is that all first-floor framing should be demolished.

The building’s exterior multi-wythe walls appear to be in sound condition. It is our opinion this is the only portion of the structure that is theoretically feasible to be salvaged. That said, as the wood portions of the framing are removed, the exterior walls will lose the lateral stability the roof and floors provide the exterior walls during a wind or seismic event. In order to salvage these exterior walls, a complex and expensive system of temporary shoring and lateral bracing utilizing structural steel struts, walers and bracing would be required to temporarily stabilize the walls during demolition of the wood framing. Site constraints such as the building’s proximity to the street would further complicate the feasibility of salvaging these walls.

The smoke damage described in the ‘Findings’ portion of this report is rampant throughout the structure. Excluding most of the floor joists over the basement level, nearly all walls and framing in the structure have been exposed to smoke damage. The cleaning and rehabilitation process for smoke damage this extensive would likely be an unrealistic task.

The porch structure, defined as Zone A in the ‘FIRE DAMAGE PLANS’, has already partially collapsed. The second-floor framing has partially collapsed on to the first floor and it appears that even the presence of a very light load, such as a trespasser walking on the second floor, could trigger a full collapse of the second floor which would in turn collapse the roof and first floor framing levels. The loss of the first-floor framing could destabilize and cause failure of the basement walls, which currently retain several feet of exterior soil. Although unlikely, the collapse of the three (3) story porch could potentially initiate collapses of the brick wall separating Zone A from Zone B due to the severity of damage found in Zone B. Because of this, we recommend the porch structure be demolished as soon as possible to prevent a potential hazard to the public.
CONCLUSION

Our investigation determined there are multiple structural deficiencies requiring repair. Generally, the deficiencies are major and cannot be readily repaired. It is our opinion salvaging any of the wood framing, excluding the limited amount within the basement is not feasible. Upon the removal of the wood framing, which dangerously stabilizes the exterior walls without a complicated bracing system, it is our opinion the best and most reasonable course of action for this structure is complete demolition.
EXHIBIT C
SOUTH ELEVATION
EAST ELEVATION
WEST ELEVATION
EXHIBIT D
City of Norfolk
Notice of Violation
Moved to the
Basic Documents
Additional Documents
Submitted By
Freemason Street
Area Association
(Page left blank intentionally)
EXHIBIT A
safe, decent and sanitary living conditions for the tenants of such property.

If a multifamily development has more than 10 dwelling units, in the initial and periodic inspections, the building department shall inspect only a sampling of dwelling units, of not less than two and not more than 10% of the dwelling units, of a multifamily development, that includes all of the multifamily buildings that are part of that multifamily development. In no event, however, shall the building department charge a fee authorized by this section for inspection of more than 10 dwelling units. If the building department determines upon inspection of the sampling of dwelling units that there are violations of this code that affect the safe, decent and sanitary living conditions for the tenants of such multifamily development, the building department may inspect as many dwelling units as necessary to enforce these provisions, in which case, the fee shall be based upon a charge per dwelling unit inspected, as otherwise provided in the fee schedule established pursuant to this section.

Upon the initial or periodic inspection of a residential rental dwelling unit subject to a rental inspection ordinance, the building department has the authority under these provisions to require the owner of the dwelling unit to submit to such follow-up inspections of the dwelling unit as the building department deems necessary, until such time as the dwelling unit is brought into compliance with the provisions of this code that affect the safe, decent and sanitary living conditions for the tenants.

Except as provided for above, following the initial inspection of a residential rental dwelling unit subject to a rental inspection ordinance, the building department may inspect any residential rental dwelling unit in a rental inspection district, that is not otherwise exempted in accordance with this section, no more than once each calendar year.

Upon the initial or periodic inspection of a residential rental dwelling unit subject to a rental inspection ordinance for compliance with these provisions, provided that there are no violations of this code that affect the safe, decent and sanitary living conditions for the tenants of such residential rental dwelling unit, the building department shall provide, to the owner of such residential rental dwelling unit, an exemption from the rental inspection ordinance for a minimum of four years. Upon the sale of a residential rental dwelling unit, the building department may perform a periodic inspection as provided above, subsequent to such sale. If a residential rental dwelling unit has been issued a certificate of occupancy within the last four years, an exemption shall be granted for a minimum period of four years from the date of the issuance of the certificate of occupancy by the building department. If the residential rental dwelling unit becomes in violation of this code during the exemption period, the building department may revoke the exemption previously granted under this section.

A local governing body may establish a fee schedule for enforcement of these provisions, which includes a per dwelling unit fee for the initial inspections, follow-up inspections and periodic inspections under this section.

The provisions of this section shall not in any way alter the rights and obligations of landlords and tenants pursuant to the applicable provisions of Chapter 13 (§ 55-217 et seq.) or Chapter 13.2 (§ 55-248.2 et seq.) of Title 55 of the Code of Virginia.

The provisions of this section shall not alter the duties or responsibilities of the local building department under § 36-105 of the Code of Virginia to enforce the USBC.

Unless otherwise provided for in § 36-105.1:1 of the Code of Virginia, penalties for violation of this section shall be the same as the penalties provided for violations of other sections of the USBC.

SECTION 104
ENFORCEMENT, GENERALLY

104.1 Scope of enforcement. This section establishes the requirements for enforcement of this code in accordance with § 36-105 of the Code of Virginia. The local governing body may also inspect and enforce the provisions of the USBC for existing buildings and structures, whether occupied or not. Such inspection and enforcement shall be carried out by an agency or department designated by the local governing body.

If the local building department receives a complaint that a violation of this code exists that is an immediate and imminent threat to the health or safety of the owner, tenant, or occupants of any building or structure, or the owner, occupant, or tenant of any nearby building or structure, and the owner, occupant, or tenant of the building or structure that is the subject of the complaint has refused to allow the code official or his agent to have access to the subject building or structure, the code official or his agent may present sworn testimony to a magistrate or court of competent jurisdiction and request that the magistrate or court grant the code official or his agent an inspection warrant to enable the code official or his agent to enter the subject building or structure for the purpose of determining whether violations of this code exist. The code official or his agent shall make a reasonable effort to obtain consent from the owner, occupant, or tenant of the subject building or structure prior to seeking the issuance of an inspection warrant under this section.
Note: Generally, official action must be taken by the local government to enforce the VMC. Consultation with the legal counsel of the jurisdiction when initiating or changing such action is advised.

104.1.1 Transfer of ownership. In accordance with § 36-105 of the Code of Virginia, if the local building department has initiated an enforcement action against the owner of a building or structure and such owner subsequently transfers the ownership of the building or structure to an entity in which the owner holds an ownership interest greater than 50%, the pending enforcement action shall continue to be enforced against the owner.

104.2 Fees. In accordance with § 36-105 of the Code of Virginia, fees may be levied by the local governing body in order to defray the cost of enforcement and appeals.

104.3 State buildings. In accordance with § 36-98.1 of the Code of Virginia, this code shall be applicable to state-owned buildings and structures. Acting through the Division of Engineering and Buildings, the Department of General Services shall function as the building official for state-owned buildings.

104.4 Local enforcing agency. In jurisdictions enforcing this code, the local governing body shall designate the agency within the local government responsible for such enforcement and appoint a code official. The local governing body may also utilize technical assistants to assist the code official in the enforcement of this code. A permanently appointed code official shall not be removed from office except for cause after having been afforded a full opportunity to be heard on specific and relevant charges by and before the appointing authority. DHCD shall be notified by the appointing authority within 30 days of the appointment or release of a permanent or acting code official and within 60 days after retaining or terminating a technical assistant.

Note: Code officials and technical assistants are subject to sanctions in accordance with the VCS.

104.4.1 Qualifications of code official and technical assistants. The code official shall have at least five years of building experience as a licensed professional engineer or architect, building, fire or trade inspector, contractor, housing inspector or superintendent of building, fire or trade construction or at least five years of building experience after obtaining a degree in architecture or engineering, with at least three years in responsible charge of work. Any combination of education and experience that would confer equivalent knowledge and ability shall be deemed to satisfy this requirement. The code official shall have general knowledge of sound engineering practice in respect to the design and construction of structures, the basic principles of fire prevention, the accepted requirements for means of egress and the installation of elevators and other service equipment necessary for the health, safety and general welfare of the occupants and the public. The local governing body may establish additional qualification requirements.

A technical assistant shall have at least three years of experience and general knowledge in at least one of the following areas: building construction, building, fire or housing inspections, plumbing, electrical or mechanical trades, fire protection, elevators or property maintenance work. Any combination of education and experience which would confer equivalent knowledge and ability shall be deemed to satisfy this requirement. The locality may establish additional certification requirements.

104.4.2 Certification of code official and technical assistants. An acting or permanent code official shall be certified as a code official in accordance with the VCS within one year after being appointed as acting or permanent code official. A technical assistant shall be certified in the appropriate subject area within 18 months after becoming a technical assistant. When required by a locality to have two or more certifications, a technical assistant shall obtain the additional certifications within three years from the date of such requirement.

Exception: A code official or technical assistant in place prior to April 1, 1995, shall not be required to meet the certification requirements in this section while continuing to serve in the same capacity in the same locality.

104.4.3 Noncertified code official. Except for a code official exempt from certification under the exception to Section 104.4.2, any acting or permanent code official who is not certified as a code official in accordance with the VCS shall attend the core module of the Virginia Building Code Academy or an equivalent course in an individual or regional code academy accredited by DHCD within 180 days of appointment. This requirement is in addition to meeting the certification requirement in Section 104.4.2.

104.4.4 Requirements for periodic maintenance training and education. Code officials and technical assistants shall attend periodic maintenance training as designated by DHCD. In addition to the periodic
maintenance training required above, code officials and technical assistants shall attend 16 hours of continuing education every two years as approved by DHCD. If a code official or technical assistant possesses more than one BHCD certificate, the 16 hours shall satisfy the continuing education requirement for all BHCD certificates.

104.4.5 Conflict of interest. The standards of conduct for code officials and technical assistants shall be in accordance with the provisions of the State and Local Government Conflict of Interests Act, Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2 of the Code of Virginia.

104.4.6 Records. The local enforcing agency shall retain a record of applications received, permits, certificates, notices and orders issued, fees collected and reports of inspections in accordance with The Library of Virginia's General Schedule Number Six.

104.5 Powers and duties, generally. The code official shall enforce this code as set out herein and as interpreted by the State Review Board and shall issue all necessary notices or orders to ensure compliance with the code.

104.5.1 Delegation of authority. The code official may delegate powers and duties except where such authority is limited by the local government. When such delegations are made, the code official shall be responsible for assuring that they are carried out in accordance with the provisions of this code.

104.5.2 Issuance of modifications. Upon written application by an owner or an owner's agent, the code official may approve a modification of any provision of this code provided the spirit and intent of the code are observed and public health, welfare and safety are assured. The decision of the code official concerning a modification shall be made in writing and the application for a modification and the decision of the code official concerning such modification shall be retained in the permanent records of the local enforcing agency.

104.5.2.1 Substantiation of modification. The code official may require or may consider a statement from a professional engineer, architect or other person competent in the subject area of the application as to the equivalency of the proposed modification.

104.5.3 Inspections. The code official may inspect buildings or structures to determine compliance with this code and shall carry proper credentials when performing such inspections. The code official is authorized to engage such expert opinion as deemed necessary to report upon unusual, detailed, or complex technical issues in accordance with local policies.

104.5.3.1 Observations. When, during an inspection, the code official or authorized representative observes an apparent or actual violation of another law, ordinance, or code not within the official's authority to enforce, such official shall report the findings to the official having jurisdiction in order that such official may institute the necessary measures.

104.5.3.2 Approved inspection agencies and individuals. The code official may accept reports of inspections or tests from individuals or inspection agencies approved in accordance with the code official's written policy required by Section 104.5.3.3. The individual or inspection agency shall meet the qualifications and reliability requirements established by the written policy. Reports of inspections by approved individuals or agencies shall be in writing, shall indicate if compliance with the applicable provisions of this code have been met, and shall be certified by the individual inspector or by the responsible officer when the report is from an agency. The code official shall review and approve the report unless there is cause to reject it. Failure to approve a report shall be in writing within five working days of receiving it, stating the reasons for rejection.

104.5.3.3 Third-party inspectors. Each code official charged with the enforcement of this code and who accepts third-party reports shall have a written policy establishing the minimum acceptable qualifications for third-party inspectors. The policy shall include the format and time frame required for submission of reports, any prequalification or preapproval requirements before conducting a third-party inspection, and any other requirements and procedures established by the code official.

104.5.3.4 Qualifications. In determining third-party qualifications, the code official may consider such items as DHCD inspector certification, other state or national certifications, state professional registrations, related experience, education, and any other factors that would demonstrate competency and reliability to conduct inspections.

104.5.4 Notices, reports and orders. Upon findings by the code official that violations of this code exist, the code official shall issue a correction notice or notice of violation to the owner or the person responsible for the maintenance of the structure. Work done to correct violations of this code subject to the permit,
inspection and approval provisions of the VCC shall not be construed as authorization to extend the time limits established for compliance with this code.

**104.5.4.1 Correction notice.** The correction notice shall be a written notice of the defective conditions. The correction notice shall require correction of the violation or violations within a reasonable time unless an emergency condition exists as provided under the unsafe building provisions of Section 105. Upon request, the correction notice shall reference the code section that serves as the basis for the defects and shall state that such defects shall be corrected and reinspected in a reasonable time designated by the code official.

**104.5.4.2 Notice of violation.** If the code official determines there are violations of this code other than those for unsafe structures, unsafe equipment or structures unfit for human occupancy under Section 105, the code official may issue a notice of violation to be communicated promptly in writing to the owner or the person responsible for the maintenance or use of the building or structure in lieu of a correction notice as provided for in Section 104.5.4.1. In addition, the code official shall issue a notice of violation for any uncorrected violation remaining from a correction notice established in Section 104.5.4.1. A notice of violation shall be issued by the code official before initiating legal proceedings unless the conditions violate the unsafe building conditions of Section 105 and the provisions established therein are followed. The code official shall provide the section numbers to the owner for any code provision cited in the notice of violation. The notice shall require correction of the violation or violations within a reasonable time unless an emergency condition exists as provided under the building provisions of Section 105. The owner or person to whom the notice of violation has been issued shall be responsible for contacting the code official within the time frame established for any re-inspections to assure the violations have been corrected. The code official will be responsible for making such inspection and verifying the violations have been corrected. In addition, the notice of violation shall indicate the right of appeal by referencing the appeals section of this code.

**104.5.5 Coordination of inspections.** The code official shall coordinate inspections and administrative orders with any other state or local agencies having related inspection authority and shall coordinate those inspections required by the Virginia Statewide Fire Prevention Code (13VAC5-51) for maintenance of fire protection devices, equipment and assemblies so that the owners and occupants will not be subjected to numerous inspections or conflicting orders.

**Note:** The Fire Prevention Code requires the fire official to coordinate such inspections with the code official.

**104.5.6 Further action when violation not corrected.** If the responsible party has not complied with the notice of violation, the code official shall submit a written request to the legal counsel of the locality to institute the appropriate legal proceedings to restrain, correct or abate the violation or to require the removal or termination of the use of the building or structure involved. In cases where the locality so authorizes, the code official may issue or obtain a summons or warrant.

**104.5.7 Penalties and abatement.** Penalties for violations of this code shall be as set out in § 36-106 of the Code of Virginia. The successful prosecution of a violation of the code shall not preclude the institution of appropriate legal action to require correction or abatement of a violation.

**SECTION 105**

**UNSAFE STRUCTURES OR STRUCTURES UNFIT FOR HUMAN OCCUPANCY**

**105.1 General.** This section shall apply to existing structures which are classified as unsafe or unfit for human occupancy. All conditions causing such structures to be classified as unsafe or unfit for human occupancy shall be remedied or as an alternative to correcting such conditions, the structure may be vacated and secured against public entry or razed and removed. Vacant and secured structures shall still be subject to other applicable requirements of this code. Notwithstanding the above, when the code official determines that an unsafe structure or a structure unfit for human occupancy constitutes such a hazard that it should be razed or removed, then the code official shall be permitted to order the demolition of such structures in accordance with applicable requirements of this code.

**Note:** Structures which become unsafe during construction are regulated under the VCC.

**105.2 Inspection of unsafe or unfit structures.** The code official shall inspect any structure reported or discovered as unsafe or unfit for human habitation and shall prepare a report to be filed in the records of the local enforcing agency and a copy issued to the owner. The report shall include the use of the structure and a description of the nature and extent of any conditions found.

**105.3 Unsafe conditions not related to maintenance.** When the code official finds a condition that constitutes a
serious and dangerous hazard to life or health in a structure constructed prior to the initial edition of the USBC and when that condition is of a cause other than improper maintenance or failure to comply with state or local building codes that were in effect when the structure was constructed, then the code official shall be permitted to order those minimum changes to the design or construction of the structure to remedy the condition.

**105.3.1 Limitation to requirements for retrofitting.** In accordance with Section 103.2, this code does not generally provide for requiring the retrofitting of any structure. However, conditions may exist in structures constructed prior to the initial edition of the USBC because of faulty design or equipment that constitute a danger to life or health or a serious hazard. Any changes to the design or construction required by the code official under this section shall be only to remedy the serious hazard or danger to life or health and such changes shall not be required to fully comply with the requirements of the VCC applicable to newly constructed buildings or structures.

**105.4 Notice of unsafe structure or structure unfit for human occupancy.** When a structure is determined to be unsafe or unfit for human occupancy by the code official, a written notice of unsafe structure or structure unfit for human occupancy shall be issued by personal service to the owner, the owner’s agent or the person in control of such structure. The notice shall specify the corrections necessary to comply with this code, or if the structure is required to be demolished, the notice shall specify the time period within which the demolition must occur. Requirements in Section 104.5.4 for notices of violation are also applicable to notices issued under this section to the extent that any such requirements are not in conflict with the requirements of this section.

Note: Whenever possible, the notice should also be given to any tenants of the affected structure.

**105.4.1 Vacating unsafe structure.** If the code official determines there is actual and immediate danger to the occupants or public, or when life is endangered by the occupancy of an unsafe structure, the code official shall be authorized to order the occupants to immediately vacate the unsafe structure. When an unsafe structure is ordered to be vacated, the code official shall post a notice with the following wording at each entrance: "THIS STRUCTURE IS UNSAFE AND ITS OCCUPANCY (OR USE) IS PROHIBITED BY THE CODE OFFICIAL." After posting, occupancy or use of the unsafe structure shall be prohibited except when authorized to enter to conduct inspections, make required repairs or as necessary to demolish the structure.

**105.5 Posting of notice.** If the notice is unable to be issued by personal service as required by Section 105.4, then the notice shall be sent by registered or certified mail to the last known address of the responsible party and a copy of the notice shall be posted in a conspicuous place on the premises.

**105.6 Posting of placard.** In the case of a structure unfit for human habitation, at the time the notice is issued, a placard with the following wording shall be posted at the entrance to the structure: "THIS STRUCTURE IS UNFIT FOR HABITATION AND ITS USE OR OCCUPANCY HAS BEEN PROHIBITED BY THE CODE OFFICIAL." In the case of an unsafe structure, if the notice is not complied with, a placard with the above wording shall be posted at the entrance to the structure. After a structure is placarded, entering the structure shall be prohibited except as authorized by the code official to make inspections, to perform required repairs or to demolish the structure. In addition, the placard shall not be removed until the structure is determined by the code official to be safe to occupy, nor shall the placard be defaced.

**105.7 Revocation of certificate of occupancy.** If a notice of unsafe structure or structure unfit for human habitation is not complied with within the time period stipulated on the notice, the code official shall be permitted to request the local building department to revoke the certificate of occupancy issued under the VCC.

**105.8 Vacant and open structures.** When an unsafe structure or a structure unfit for human habitation is open for public entry at the time a placard is issued under Section 105.6, the code official shall be permitted to authorize the necessary work to make such structure secure against public entry whether or not legal action to compel compliance has been instituted.

**105.9 Emergency repairs and demolition.** To the extent permitted by the locality, the code official may authorize emergency repairs to unsafe structures or structures unfit for human habitation when it is determined that there is an immediate danger of any portion of the unsafe structure or structure unfit for human habitation collapsing or falling and when life is endangered. Emergency repairs may also be authorized where there is a code violation resulting in the immediate serious and imminent threat to the life and safety of the occupants. The code official shall be permitted to authorize the necessary work to make the structure temporarily safe whether or not legal action to compel compliance has been instituted. In addition, whenever an owner of an unsafe structure or structure unfit for human habitation fails to comply with a notice to demolish issued under Section 105.4 in the time period stipulated, the code official shall be permitted to cause the structure to be demolished. In accordance with §§ 15.2-906 and 15.2-1115 of the Code of Virginia, the legal counsel of the locality
may be requested to institute appropriate action against the property owner to recover the costs associated with any such emergency repairs or demolition and every such charge that remains unpaid shall constitute a lien against the property on which the emergency repairs or demolition were made and shall be enforceable in the same manner as provided in Articles 3 (§ 58.1-3490 et seq.) and 4 (§ 58.1-3965 et seq.) of Chapter 39 of Title 58.1 of the Code of Virginia.

Note: Code officials and local governing bodies should be aware that other statutes and court decisions may impact on matters relating to demolition, in particular whether newspaper publication is required if the owner cannot be located and whether the demolition order must be delayed until the owner has been given the opportunity for a hearing. In addition, historic building demolition may be prevented by authority granted to local historic review boards in accordance with § 15.2-2306 of the Code of Virginia unless determined necessary by the code official.

105.10 Closing of streets. When necessary for public safety, the code official shall be permitted to order the temporary closing of sidewalks, streets, public ways or premises adjacent to unsafe or unfit structures and prohibit the use of such spaces.

SECTION 106
APPEALS

106.1 Establishment of appeals board. In accordance with § 36-105 of the Code of Virginia, there shall be established within each local enforcing agency a LBBCA. Whenever a county or a municipality does not have such a LBBCA, the local governing body shall enter into an agreement with the local governing body of another county or municipality or with some other agency, or a state agency approved by DHCD for such appeals resulting therefrom. Fees may be levied by the local governing body in order to defray the cost of such appeals. The LBBCA for hearing appeals under the VCC shall be permitted to serve as the appeals board required by this section. The locality is responsible for maintaining a duly constituted LBBCA prepared to hear appeals within the time limits established in this section. The LBBCA shall meet as necessary to assure a duly constituted board, appoint officers as necessary, and receive such training on the code as may be appropriate or necessary from staff of the locality.

106.2 Membership of board. The LBBCA shall consist of at least five members appointed by the locality for a specific term of office established by written policy. Alternate members may be appointed to serve in the absence of any regular members and as such, shall have the full power and authority of the regular members. Regular and alternate members may be reappointed. Written records of current membership, including a record of the current chairman and secretary shall be maintained in the office of the locality. In order to provide continuity, the terms of the members may be of different length so that less than half will expire in any one-year period.

106.3 Officers and qualifications of members. The LBBCA shall annually select one of its regular members to serve as chairman. When the chairman is not present at an appeal hearing, the members present shall select an acting chairman. The locality or the chief executive officer of the locality shall appoint a secretary to the LBBCA to maintain a detailed record of all proceedings. Members of the LBBCA shall be selected by the locality on the basis of their ability to render fair and competent decisions regarding application of the USBC and shall to the extent possible, represent different occupational or professional fields relating to the construction industry. At least one member should be an experienced builder; at least one member should be an RDP, and at least one member should be an experienced property manager. Employees or officials of the locality shall not serve as members of the LBBCA.

106.4 Conduct of members. No member shall hear an appeal in which that member has a conflict of interest in accordance with the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq. of the Code of Virginia). Members shall not discuss the substance of an appeal with any other party or their representatives prior to any hearings.

106.5 Right of appeal; filing of appeal application. Any person aggrieved by the local enforcing agency's application of this code or the refusal to grant a modification to the provisions of this code may appeal to the LBBCA. The applicant shall submit a written request for appeal to the LBBCA within 14 calendar days of the receipt of the decision being appealed. The application shall contain the name and address of the owner of the building or structure and, in addition, the name and address of the person appealing, when the applicant is not the owner. A copy of the code official's decision shall be submitted along with the application for appeal and maintained as part of the record. The application shall be marked by the LBBCA to indicate the date received. Failure to submit an application for appeal within the time limit established by this section shall constitute acceptance of a code official's decision.

106.6 Meetings and postponements. The LBBCA shall meet within 30 calendar days after the date of receipt of the application for appeal, except that a period of up to 45 calendar days shall be permitted where the LBBCA has regularly scheduled monthly meetings. A longer time period shall be permitted if agreed to by all the parties involved in the appeal. A notice indicating the time and place of the hearing shall be sent to the parties in writing to the addresses listed on the application at least 14 calendar
days prior to the date of the hearing, except that a lesser
time period shall be permitted if agreed to by all the parties
involved in the appeal. When a quorum of the LBBCA is
not present at a hearing to hear an appeal, any party in-
volved in the appeal shall have the right to request a post-
ponement of the hearing. The LBBCA shall reschedule
the appeal within 30 calendar days of the postponement, ex-
cept that a longer time period shall be permitted if agreed
to by all the parties involved in the appeal.

106.7 Hear

ings and decision. All hearings before the
LBBCA shall be open meetings and the appellant, the ap-
pellant's representative, the locality's representative and
any person whose interests are affected by the code offi-
cial's decision in question shall be given an opportunity to
be heard. The chairman shall have the power and duty to
direct the hearing, rule upon the acceptance of evidence
and oversee the record of all proceedings. The LBBCA
shall have the power to uphold, reverse or modify the deci-
sion of the official by a concurring vote of a majority of
those present. Decisions of the LBBCA shall be final if no
further appeal is made. The decision of the LBBCA shall
be by resolution signed by the chairman and retained as
part of the record of the appeal. Copies of the resolution
shall be sent to all parties by certified mail. In addition, the
resolution shall contain the following wording:

"Any person who was a party to the appeal may ap-
peal to the State Review Board by submitting an applica-
tion to such Board within 21 calendar days upon receipt by
certified mail of this resolution. Application forms are
available from the Office of the State Review Board, 600
East Main Street, Richmond, Virginia 23219, (804) 371-
7150."

106.8 Appe

als to the State Review Board. After final
determination by the LBBCA in an appeal, any person
who was a party to the appeal may further appeal to the
State Review Board. In accordance with § 36-98.2 of the
Code of Virginia for state-owned buildings and structures,
appeals by an involved state agency from the decision of
the code official for state-owned buildings or structures
shall be made directly to the State Review Board. The ap-
plication for appeal shall be made to the State Review
Board within 21 calendar days of the receipt of the deci-
sion to be appealed. Failure to submit an application within
that time limit shall constitute an acceptance of the code
official's decision. For appeals from a LBBCA, a copy of
the code official's decision and the resolution of the
LBBCA shall be submitted with the application for appeal
to the State Review Board. Upon request by the Office of
the State Review Board, the LBBCA shall submit a copy
of all pertinent information from the record of the appeal.
In the case of appeals involving state-owned buildings or
structures, the involved state agency shall submit a copy of
the code official's decision and other relevant information
with the application for appeal to the State Review Board.

Procedures of the State Review Board are in accordance
with Article 2 (§ 36-108 et seq.) of Chapter 6 of Title 36 of
the Code of Virginia. Decisions of the State Review Board
shall be final if no further appeal is made.
EXHIBIT B
THE COURT: You agree there's nothing preventing cars from parking next to the building right now, correct?

THE WITNESS: Agreed, yes, sir.

THE COURT: All right.

BY MR. SHERMAN:

Q. And you agree as the building inspector, you didn't inspect this property --

THE COURT: Building Commissioner.

MR. SHERMAN: I'm sorry.

BY MR. SHERMAN:

Q. You're in charge of inspections.

You're in charge of inspections, right?

A. I'm in charge of new construction inspections.

Q. Right. And this is not --

A. And I work very closely with the property maintenance official who is in charge of the inspectors that were inside this building. Miss Jackson is -- she was the inspector. So, yes, I communicated with her as well.

Q. And you personally never went in the building.

A. No, I did not.

Q. And you're aware that the City had
EXHIBIT C
Photograph
Provided by Review Board staff
(Page left blank intentionally)
City of Norfolk
Circuit Court Findings
Submitted to Review Board staff at the IFFC;
Approved by All Parties
Dear Counsel:

Today, the Court rules on a “Petition for Temporary Injunction” filed by the Freemason Street Area Association, Inc. (“Freemason”) seeking to enjoin Dr. Mark S. Sinesi and the City of Norfolk (the “City”) from demolishing the building located at 355 W. Freemason Street (“Grandy House”). Sinesi owns the structure, which is a contributing building to the West Freemason Street Area Historical District. The Court finds that, although Freemason has standing to challenge Sinesi’s City-ordered demolition of Grandy House, Freemason failed to satisfy the requirements for the Court to grant a temporary injunction. Specifically, the Court finds that—despite the possibility that Freemason may suffer irreparable injury in the absence of the requested temporary injunction—Freemason failed to prove that it is likely to succeed on the merits, that its potential harm without preliminary relief outweighs the potential harm to Sinesi with the temporary injunction, and that the requested temporary injunction is in the public interest. The Court therefore DENIES the “Petition for Temporary Injunction.”

1 Despite Freemason seeking relief from the City in its “Petition for Temporary Injunction,” the City is not a party to the petition. Additionally, Freemason did not file the associated “initial” pleading—a “Petition for Declaratory Judgment”—until after both the August 31, 2018, ex parte hearing and the September 19, 2018, hearing, at which both Freemason and Sinesi were represented. Because the City was not a party to the proceedings during the hearings on Freemason’s “Petition for Temporary Injunction,” the Court declines to entertain any request to enjoin the City.

2 The building, which is a Georgian Revival-style house, apparently served as the home and office of Dr. Charles Rollins Grandy, a pathologist and leader in the fight against tuberculosis.
Background

Grandy House was built in or about 1901 in the West Freemason Section of Norfolk, Virginia. (Pet’r’s Ex. 5.) The City of Norfolk established the West Freemason Historic District (the "Historic District") in 1978, and Grandy House is a contributing building to the Historic District. See Norfolk, Va., Zoning Ordinance § 3.6.8. Sinesi purchased the house in October 2015 with the intent to renovate it and make it his primary residence. (Pet’r’s Ex. 10.) He apparently developed construction plans that were approved by the City’s Architectural Review Board ("ARB") and expended significant funds in support of this effort.

On December 16, 2016, an arsonist set the house on fire, extensively damaging the porch structure and the interior of the building. (Pet’r’s Ex. 1.) In light of the damage, the City issued multiple citations to Sinesi, which required that he make certain improvements to the building. (Pet’r’s Ex. 2.) It is undisputed that Sinesi failed to make the required improvements, and there are pending enforcement actions in Norfolk General District Court. (Pet’r’s Ex. 11.)

On June 18, 2018—relying on a structural engineer’s February 7, 2018, letter and subsequent evaluation and recommendation “noting the damage to the framing of the building”—the City’s Building Commissioner determined that Grandy House was “structurally unsafe” according to the Virginia Uniform Statewide Building Code (the “USBC”). (Pet’r’s Ex. 3.)

On August 9, 2018, the structural engineer produced a new evaluation and report (the “Report”). (Id.) In the Report, the engineer recommended that Sinesi demolish the framing associated with the first floor, second floor, attic, and roof and that the “porch structure be demolished as soon as possible to prevent a potential hazard to the public.” (Id.) The engineer also opines that

[the second-floor framing has partially collapsed on to the first floor and it appears that even the presence of a very light load, such as a trespasser walking on the second floor, could trigger a full collapse of the second floor which would in turn collapse the roof and first floor framing levels. The loss of the first-floor framing could destabilize and cause failure of the basement walls, which currently retain several feet of exterior soil.

(Id.) The Report concludes that, although “[t]he building’s exterior multi-wythe [brick] walls appear to be structurally sound,” “[u]pon the removal of the wood framing, which dangerously stabilizes the exterior walls without a complicated bracing system, it is our opinion [that] the best and most reasonable course of action for this structure is complete demolition.” (Id.)

Based on the Report, the City’s Building Commissioner forwarded a memorandum to the City’s Zoning Administrator that same day. (Id.) In the memorandum, the Building

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Commissioner states that "this memorandum is being sent to notify you of the required
emergency demolition of the historic building located at 355 West Freemason Street" and-
based on "new information provided by the structural engineer and [his] professional
experience"-declares "the structure 'Unsafe' and, in such condition that could reasonably be
expected to cause death or serious physical harm to the public." (Id.)

On August 13, 2018, the Zoning Administrator notified, inter alia, various City officials,
the Architectural Review Board Chairman, and members of the City Architectural Review Board
of "the required emergency demolition of the historic building located at 355 West Freemason
Street," stating that "[t]he condition [of Grandy House] has deteriorated significantly since the
fire, and the Building Commissioner has determined that the building, if left in its current
condition, 'could reasonably be expected to cause death or serious physical harm.'" (Id.) The
Zoning Administrator also informed them that the City's Property Maintenance Official "has
been notified to take all necessary action to promptly compel the demolition of the property to
protect public safety." (Id.)

On August 14, 2018, the City issued Sinesi a "Notice of Violation" (the "Notice"). in
which it reported its finding that Grandy House was "unsafe and uninhabitable." (Resp't's Ex.
4.) The Notice ordered that, pursuant to the USBC, the structure "must be repaired or
demolished and removed within 10 days of the date of this notice." (Id. (referencing Va. Unif.
Statewide Bldg. Code § 105.1)). It went on to state that, per the USBC,

should you fail to repair or demolish and remove the structure[,] the City of Norfolk
.... will cause the structure to be demolished and removed by contract or
arrangement with a private demolition contractor[,] and the cost of demolition and
removal shall be charged against the real estate upon which the structure is located
and a lien shall be placed upon the real estate.

(Id.) The Notice further pointed out that, pursuant to Section 106.5 of the USBC, Sinesi had the
right to appeal to the Local Board of Building Code Appeals ("LBBCA") within fourteen days of
service of the Notice. (Id.) Sinesi testified that he subsequently commenced the process of
obtaining a demolition company to take down the structure.

Freemason filed a "Petition for Temporary Injunction" against Sinesi on August 30.
2018, asking the Court to enjoin Sinesi from taking any actions to demolish Grandy House. The
Court held an emergency ex parte hearing on August 31, 2018 (the "Initial Hearing"). During
that hearing, the Court commented to Freemason's counsel that Freemason needed to file a
responding initial pleading seeking permanent relief. At the conclusion of the hearing, the
Court granted a fourteen-day temporary injunction-enjoining Sinesi from taking any steps to
demolish Grandy House-in order to maintain the status quo while the parties made
arrangements for a hearing during which they both could appear before the Court. The Court did
not enjoin the City, as it was not a party to the temporary injunction action.

The Court held a subsequent hearing on the "Petition for Temporary Injunction" on
September 19, 2018 (the "Second Hearing"), during which both parties had representation. At
the conclusion of that hearing, the Court took the matter under advisement and granted the parties leave to file post-hearing briefs on the issue of whether the Court had subject matter jurisdiction. The Court also extended the temporary injunction issued at the conclusion of the Initial Hearing for thirty days or until further order from the Court, whichever occurred first.

Freemason filed a related "Petition for Declaratory Judgment" on September 21, 2018, naming both Sinesi and the City of Norfolk as defendants.

Positions of the Parties

Freemason's Position

Freemason argues that the City's determination that the post-arson condition of Grandy House demanded immediate demolition was arbitrary and capricious. (Mem. Supp. Mot. Temp. Inj. 4-5.) It notes that the decision was made more than twenty months after the arson and claims that the condition of the structure remained relatively unchanged throughout this time period, despite periodic extreme weather events. (Id. at 4-5.) Freemason further asserts that the City's determination was based on a structural engineer's report—obtained by Sinesi—which concluded that although the porch structure required immediate demolition, the exterior walls were stable. (Id. at 5.) The Report recommended complete demolition of the building only because renovation was not "feasible." (See Pet'r's Ex. 3.)

Freemason contends that Sinesi is manipulating the situation in order to, inter alia, bypass the review and appeal procedures of the Norfolk, Virginia, Zoning Ordinance (the "Zoning Ordinance") that pertain to historic districts, facilitate immediate demolition of his house, and make a financial profit through the sale of the lot without improvements and the concomitant historic district requirements. (Mem. Supp. Mot. Temp. Inj. 4-5.) Instead of relying on the emergency demolition procedures of the USBC, Freemason asserts that Sinesi should be required to proceed under the certificate-of-appropriateness demolition procedure of the Zoning Ordinance, which requires the applicant to demonstrate to the Architectural Review Board (the "ARB") that preservation of the contributing building is "economically infeasible." (Id. at 3, 5; Norfolk, Va., Zoning Ordinance§ 2.4.D(3). Further, Freemason points out that if an application for a demolition certificate of appropriateness is denied by the ARB and, if appealed, the disapproval is upheld by the City Council, Sinesi would be required to market the property—at a price reasonably related to its fair market value—for twelve months before the structure could be demolished. See Norfolk, Va., Zoning Ordinance§ 2.4.D(3)(c).

Sinesi's Position

Sinesi contends that, after purchasing Grandy House in October 2015, he developed plans that were approved by the ARB to make substantial improvements to the building. (Memo. Opp. Pet. Temp. Inj., i, 1, 5.) He asserts that an arsonist set fire to the structure in December 2016, which caused substantial damage to the building and resulted in the City ordering that he repair and remediate the damage. (Id. 1, i, 2-3.) Sinesi claims that he subsequently requested an engineering firm inspect Grandy House and prepare a structural engineering report. (Id. 116-7.)
Based largely on the Report, the City ultimately notified Sinesi to repair or demolish the structure. (Id. 8-9.) Sinesi asserts that he then took actions to have his house demolished until the Court entered an injunctive order. (Id 11, 12)

Sinesi argues that he simply was doing what the City properly ordered him to do. (Id. 15-16.) Based on the City Building Commissioner’s recommendation that complete demolition of Grandy House was required, the City ordered him to repair or demolish the structure within ten days. (Id. 8-9.) Sinesi testified that, according to the Notice, if he failed to demolish his house, the City could arrange for demolition and hold him responsible for all associated costs via a charge to the real estate and a lien. (See Resp’t’s Ex. 4.)

Sinesi asserts that the City’s Building Commissioner reasonably concluded that public safety concerns warranted emergency demolition of the structure. (Memo. Opp. Pet. Temp. Inj. 18.) He also contends that Freemason had the opportunity to appeal the Building Commissioner’s decision to the LBBCA but opted not to do so, thereby failing to exhaust its administrative remedies and making judicial intervention inappropriate. (Id., 11, 12, 17-18.)

Analysis

Legal Standard

Virginia’s Declaratory Judgment Act provides as follows:

In cases of actual controversy, circuit courts ... shall have power to make binding adjudications of right, whether or not consequential relief is, or at the time could be, claimed and no action or proceeding shall be open to objection on the ground that a judgment order or decree merely declaratory of right is prayed for. Controversies involving the interpretation of deeds, wills, and other instruments of writing, statutes, municipal ordinances and other governmental regulations, may be so determined, and this enumeration does not exclude other instances of actual antagonistic assertion and denial of right.


The City’s Zoning Ordinance provides procedures to obtain a certificate of appropriateness for any development proposed within a historic district to ensure compatibility with the historic character of the district. Norfolk, Va., Zoning Ordinance § 2.4.10. The ordinance provides several conditions that are exempt from the certificate-of-appropriateness requirements, including emergency demolition:

The emergency demolition of any structure or any portion of a structure which is in such a dangerous, hazardous or unsafe condition that it has been ordered

4 Of note, the City is not a party to Freemason’s "Petition for Temporary Injunction."
demolished by the Building Commissioner or the Fire Marshal when they have determined that such condition could reasonably be expected to cause death or serious physical harm. The Building Commissioner or Fire Marshal, as appropriate, shall notify the [Zoning Administrator] about the demolition of the structure and the [Zoning Administrator] shall notify the chairperson of the [Architectural Review Board] and any other interested person as soon as practicable after such a determination has been made by the Building Commissioner or Fire Marshal.

Id § 2.4.10.B.(2)(c).

Section 105 of the USBC provides as follows:

This section shall apply to existing structures which are classified as unsafe or unfit for human occupancy. All conditions causing such structures to be classified as unsafe or unfit for human occupancy shall be remedied or as an alternative to correcting such conditions, the structure may be vacated and secured against public entry or razed and removed.... Notwithstanding the above, when the code official determines that an unsafe structure or a structure unfit for human occupancy constitutes such a hazard that it should be razed or removed, then the code official shall be permitted to order the demolition of such structures in accordance with applicable requirements of this code.


Regarding required notice, the USBC provides, in pertinent part, as follows:

When a structure is determined to be unsafe or unfit for human occupancy by the code official, a written notice of unsafe structure or structure unfit for human occupancy shall be issued by personal service to the owner, the owner’s agent or the person in control of such structure. The notice shall specify the corrections necessary to comply with this code, or if the structure is required to be demolished, the notice shall specify the time period within which the demolition must occur.


The USBC further provides the following:

[W]henever an owner of an unsafe structure or structure unfit for human habitation fails to comply with a notice to demolish issued under Section 105.4 in the time period stipulated, the code official shall be permitted to cause the structure to be demolished. In accordance with...the Code of Virginia, the legal counsel of the locality may be requested to institute appropriate action against the property owner to recover the costs associated with any such emergency repairs or demolition and
every such charge that remains unpaid shall constitute a lien against the property on which the emergency repairs or demolition were made ....

Id § 105.9. The Code section has a note that states, in pertinent part, that "historic building demolition may be prevented by authority granted to local historic review boards in accordance with ... the Code of Virginia unless determined necessary by the code official." Id

The USBC defines an "unsafe structure" as

[a]n existing structure (i) determined by the code official to be dangerous to the health, safety and welfare of the occupants of the structure or the public, (ii) that contains unsafe equipment, or (iii) that is so damaged, decayed, dilapidated, structurally unsafe or of such faulty construction or unstable foundation that partial or complete collapse is likely. A vacant existing structure unsecured or open shall be deemed to be an unsafe structure.

Id § 202. It defines a "structure unfit for human occupancy" as

[a]n existing structure determined by the code official to be dangerous to the health, safety and welfare of the occupants of the structure or the public because (i) of the degree to which the structure is in disrepair or lacks maintenance, ventilation, illumination, sanitary or heating facilities or other essential equipment, or (ii) the required plumbing and sanitary facilities are inoperable.

Id.

Regarding rights of appeal, Section 106.5 of the USBC states the following:

Any person aggrieved by the local enforcing agency's application of this code or the refusal to grant a modification to the provisions of this code may appeal to the LBCCA. The applicant shall submit a written request for appeal to the LBCCA within 14 calendar days of the receipt of the decision being appealed .... The application shall be marked by the LBCCA to indicate the date received. Failure to submit an application for appeal within the time limit established by this section shall constitute acceptance of a code official's decision.

Id. § 106.5.

"[A movant] seeking a [temporary] injunction must establish [(1)] that he is likely to succeed on the merits, [(2)] that he is likely to suffer irreparable harm in the absence of preliminary relief, [(3)] that the balance of equities tips in his favor, and [(4)] that an injunction is in the public interest: • Winter v. Nat. Res. Def Council, Inc., 555 U.S. 7, 20 (2008).
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Discussion

The Court has considered the pleadings, evidence and oral arguments presented at the Second Hearing, and applicable authorities. The Court now rules as follows.

As an initial matter, the Court inquired of the parties during the Second Hearing whether, based on Freemason’s possible failure to exhaust administrative remedies, the Court had subject matter jurisdiction over the dispute and asked the parties to provide post-hearing briefs on the issue. The Court notes that courts have viewed the failure to exhaust administrative remedies inconsistently; some have viewed it as a jurisdictional bar, while others have viewed it as a required condition precedent often raised as an affirmative defense. See, e.g., Davis v. Fort Bend Cty., 893 F.3d 300, 303–04 (5th Cir. 2018) (discussing the different approaches). Virginia has not addressed the issue directly, although it appears to favor the latter position. See 1 A M.J., Administrative Law, § 17 (“The general requirement of the exhaustion of administrative remedies is not a jurisdictional doctrine, but is a matter of comity.” (relying in part on United States ex rel. Tobias v. Laird, 413 F.2d 936 (4th Cir. 1969); Sitwell v. Burnette, 349 F. Supp. 83 (W.D. Va. 1972))).

Although the Court considers this issue—in light of the evidence presented at the Second Hearing—in its evaluation of Freemason’s likelihood of success on the merits at trial, discussed infra, the Court declines at this time to rule on the issue of exhaustion of remedies without providing the parties an opportunity to present additional evidence.

A. Freemason Has Standing to Pursue this Matter.

As a threshold matter, the Court finds that Freemason has standing to request that the Court enjoin Sinesi from taking steps to demolish Grandy House.

The suit underlying the request for preliminary relief is a Petition for Declaratory Judgment. Under Virginia’s Declaratory Judgment Act, the Court has the power to issue declaratory judgments in “cases of actual controversy” and in “instances of actual antagonistic assertion and denial of right.” Va. Code § 8.01-184 (2015 Repl. Vol.). This statute is remedial and is to be “liberally interpreted and administered with a view to making the courts more serviceable to the people.” Id. § 8.01-191. “A plaintiff has standing to bring a declaratory judgment proceeding if he has ‘a justiciablc interest’ in the subject matter of the litigation, either in his own right or in a representative capacity.” Bd. of Supervisors v. Fralin & Waldron, Inc., 222 Va. 218, 223, 278 S.E.2d 859, 862 (1981) (quoting Lynchburg Traffic Bureau v. Norfolk & W. Ry., 207 Va. 107, 108, 147 S.E.2d 744, 745 (1966)).

In determining whether Freemason has a justiciablc interest in the potential demolition of Grandy House, the Court finds it instructive to analyze whether Freemason would have standing to challenge Sinesi’s demolition of his house pursuant to both the City’s Zoning Ordinance and the USBC, which Norfolk has adopted. See Norfolk City Code § 11.1-1.1
It is undisputed that Grandy House is a contributing building to the West Freemason Historic District. Under the Certificate of Appropriateness section of the Zoning Ordinance, “any person owning real property in the same Historic . . . District” has standing to appeal decisions of the ARB concerning applications for certificates of appropriateness, including for demolition. Norfolk, Va., Zoning Ordinance § 2.4.10.E. At the hearings in this matter, real property owners within the Historic District provided testimony. Moreover, Freemason—as an organization—has standing to seek relief as long as at least one property owner within the Historic District is a member of Freemason, which is the case here. See Philip Morris USA, Inc. v. Chesapeake Bay Found., Inc., 273 Va. 564, 577, 643 S.E.2d 219, 226 (2007) (citing Hunt v. Wash. State Apple Advertising Comm’n, 432 U.S. 333, 343 (1977)) (holding that representational standing requires that (a) at least one of the organization’s members would otherwise have standing to sue in their own right, (b) the interests the organization seeks to protect are germane to the its purpose, and (c) neither the claim asserted nor the relief requested requires participation of individual members in the lawsuit).

Of significant note, emergency demolition is exempt from the Zoning Ordinance’s section regarding historic districts. Norfolk, Va., Zoning Ordinance § 2.4.10.B.(2)(c); see also Va. Code § 36-105.C.6 (2014 Repl. Vol.). The ordinance states the following:

The emergency demolition of any structure . . . which is in such a dangerous, hazardous or unsafe condition that it has been ordered demolished by the Building Commissioner . . . when [he] ha[s] determined that such condition could reasonably be expected to cause death or serious physical harm. The Building Commissioner . . . shall notify the [Zoning Administrator] about the demolition of the structure and the [Zoning Administrator] shall notify the chairperson of the [Architectural Review Board] and any other interested person as soon as practicable after such a determination has been made . . . .

Norfolk, Va., Zoning Ordinance § 2.4.10.B.(2)(c). In the absence of governing historic district zoning procedures, the USBC governs because the USBC applies to all structures in the City of Norfolk. See Va. Code § 36-105; Norfolk City Code § 11.1-1.1. The USBC expressly addresses emergency demolition procedures.

This section shall apply to existing structures which are classified as unsafe or unfit for human occupancy. All conditions causing such structures to be classified as unsafe or unfit for human occupancy shall be remedied or . . . vacated and secured against public entry or razed and removed. [W]hen the code official determines that an unsafe structure or a structure unfit for human occupancy constitutes such a hazard that it should be razed or removed, then the code official shall be permitted to order the demolition of such structures in accordance with applicable requirements of this code.

The USBC further provides that “[a]ny person aggrieved by the local enforcing agency’s application of this code” can appeal that decision to the LBCCA within fourteen days of receiving the decision. *Id.* § 106.5 (emphasis added). Regarding the interpretation of “person ‘aggrieved,’” the Virginia Supreme Court has opined as follows:

The term “aggrieved” has a settled meaning in Virginia when it becomes necessary to determine who is a proper party to seek court relief from an adverse decision. In order for a petitioner to be “aggrieved,” it must affirmatively appear that such person had some direct interest in the subject matter of the proceeding that he seeks to attack. The petitioner “must show that he has an immediate, pecuniary and substantial interest in the litigation, and not a remote or indirect interest.” Thus, it is not sufficient that the sole interest of the petitioner is to advance some perceived public right or to redress some anticipated public injury when the only wrong he has suffered is in common with other persons similarly situated. The word “aggrieved” in a statute contemplates a substantial grievance and means a denial of some personal or property right, legal or equitable, or imposition of a burden or obligation upon the petitioner different from that suffered by the public generally.


Here, the demolition of Grandy House would have a direct impact—both cultural and financial—on the other property owners within the Historic District and on Freemason itself. Hence, Freemason has a direct interest in the subject matter of this proceeding, and this interest is different from that suffered by the non-Historic District public generally. The Court therefore finds that Freemason is a “person aggrieved” under the USBC.

Based on the language of Virginia’s Declaratory Judgment Act, and in the context of the Zoning Ordinance and the Building Code, the Court finds that Freemason has standing to pursue a temporary injunction against Sinesi.

**B. Freemason Has Not Adequately Demonstrated the Necessary Factors for a Temporary Injunction.**

A temporary injunction under Virginia law, like a federal preliminary injunction, is considered an extraordinary remedy. *Levisa Coal Co. v. Consolidation Coal Co.*, 276 Va. 44, 61, 662 S.E.2d 44, 53 (2008). Unfortunately, the Virginia General Assembly and Virginia appellate courts have not provided guidance regarding how Virginia circuit courts should evaluate motions for temporary injunctions. In 1988, when evaluating a federal preliminary injunction related to an underlying claim that the defendant had violated a Virginia statute, the U.S. Court of Appeals for the Fourth Circuit opined that “there is no great difference between federal and Virginia standards for preliminary injunctions” and that “[b]oth draw on the same principles.” *Capital Tool and Mfg. v. Maschinenfabrik Herkules*, 837 F.2d 171, 173 (4th Cir. 1988). Since then, many
Virginia circuit courts implicitly have relied on the Fourth Circuit’s proclamation and have applied federal preliminary injunction law when analyzing Virginia temporary injunctions.\(^3\)

Against a backdrop where virtually every federal circuit court of appeals evaluated preliminary injunctions differently, the United States Supreme Court in 2008 decided *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7 (2008). There, the Court held that “a [movant] seeking a preliminary injunction must establish [(1)] that he is likely to succeed on the merits, [(2)] that he is likely to suffer irreparable harm in the absence of preliminary relief, [(3)] that the balance of equities tips in his favor, and [(4)] that an injunction is in the public interest.” *Id.* at 20.

The first post-*Winter* preliminary injunction case presented to the Fourth Circuit was *The Real Truth About Obama, Inc. v. Federal Election Commission*, which was decided in 2009.\(^6\) 575 F.3d 342 (4th Cir. 2009), vacated on other grounds, *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310 (2010), aff’d, *The Real Truth About Obama, Inc. v. Fed. Election Comm’n*, 607 F.3d 355 (4th Cir. 2010) (per curiam). The Fourth Circuit held that “[b]ecause a preliminary injunction affords, on a temporary basis, the relief that can be granted permanently after trial, the party seeking the preliminary injunction must demonstrate by ‘a clear showing’ that, among other things, it is likely to succeed on the merits at trial.” *Id.* at 345 (quoting *Winter*, 555 U.S. at 22). The court then declared that “the Supreme Court articulated clearly what must be shown to obtain a preliminary injunction” and pointed out that “all four requirements must be satisfied.” *Id.* at 346. The court went on to state the following:

> Indeed, the Court in *Winter* rejected a standard that allowed the [movant] to demonstrate only a “possibility” of irreparable harm because that standard was “inconsistent with our characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the [movant] is entitled to such relief.”

*Id.* (emphasis added) (citations omitted). The Fourth Circuit reiterated that “*Winter* articulates four requirements, each of which must be satisfied as articulated.” *Id.* (emphasis added) (citations omitted).

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\(^3\) Notably, the *Virginia Civil Benchbook* clearly endorses this practice. See *Virginia Civil Benchbook for Judges and Lawyers* § 8.06[3][b] (2018-19 ed. Matthew Bender).

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Since the Fourth Circuit decided *Real Truth*, most Virginia circuit courts have evaluated temporary injunctions using the *Real Truth* sequential analysis. See, e.g., *CG Riverview, LLC v. 139 Riverview, LLC*, 2018 Va. Cir. LEXIS 3, at *8–9 (City of Norfolk, Jan. 9, 2018); In re *Volkswagen “Clean Diesel” Litigation*, 94 Va. Cir. 189, 206 (Fairfax Cty., 2016); *Wings, LLC v. Capitol Leather, LLC*, 88 Va. Cir. 83, 89 (Fairfax Cty., 2014); *McEachin v. Bolling*, 84 Va. Cir. 76, 77 (City of Richmond, 2011); *Strong Found. Youth Initiative LLC v. Ashford*, 2009 Va. Cir. LEXIS 140, at *1 (City of Richmond, Nov. 4, 2009). Consistent with this approach, the *Virginia Civil Benchbook* refers to the *Winter* four-factor test—and the Fourth Circuit’s interpretation of the *Winter* factors as applied in *Real Truth*—in the section regarding motions for temporary injunctions. See *Virginia Civil Benchbook for Judges and Lawyers* § 8.06[3][b] (2018-19 ed. Matthew Bender).

1. Freemason has demonstrated that it likely will suffer irreparable injury in the absence of preliminary relief.

As part of its four-part analysis, "*Winter requires that the plaintiff make a clear showing that it is likely to be irreparably harmed absent preliminary relief.*" *Real Truth*, 575 F.3d at 347 (emphasis added) (citing *Winter*, 555 U.S. at 19–23). Freemason’s alleged irreparable injury is the loss of a contributing building to an established historic district. In addition to the traditionally recognized uniqueness of real property, Grandy House is an acknowledged historical structure that is more than a century old. If demolished, it simply cannot be replaced.

When evaluating preliminary relief, the irreparable injury analyzed is the harm without the preliminary relief, i.e., prior to the trial on the merits. The implication of granting a temporary injunction is that judicial intervention will prevent the irreparable injury about which the movant is concerned. The Court notes that here, however, the potential irreparable injury is present with or without the requested temporary injunction. *Without* the injunction, Sinesi likely will immediately demolish Grandy House, as he has been ordered to do by the City. *With* the

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temporary injunction, the City potentially could nevertheless have the building demolished because it appears that the City has the authority to order demolition, it already has ordered the demolition, it has the right and ability to conduct the demolition itself, and it is not a party to Freemason’s request for preliminary relief.

Considering the facts as presented to the Court at this early juncture and in light of the express language of Winter, however, the Court finds that Freemason has demonstrated that it likely will suffer irreparable harm—the destruction of Grandy House—in the absence of preliminary relief.

2. Freemason failed to clearly show that it likely will succeed on the merits of its Petition for Declaratory Judgment.

"[T]he Supreme Court in Winter, recognizing that a preliminary injunction affords relief before trial, requires that the plaintiff make a clear showing that it likely will succeed on the merits at trial." Real Truth, 575 F.3d at 346 (emphasis added) (citing Winter, 555 U.S. at 19–20, 22–23). In other words, Freemason must prove that it is likely to succeed on the merits of its underlying claim, i.e., its petition for a declaration that the City’s decision ordering emergency demolition of Grandy House was improper.

Based on the facts known at this early stage of the case, it appears that the City Building Commissioner’s conclusion that emergency demolition of Grandy House was required—ostensibly considering the building’s contribution to the Historic District and the potential impact on the neighboring historic property owners—was based primarily on the findings and recommendations contained in the Report as well as his own professional experience. The Court notes that the Report does not expressly opine that immediate takedown of the building is necessary. Rather, it concludes that “the best and most reasonable course of action for this structure is complete demolition.” The Report does, however, recommend immediate demolition of the partially collapsed porch structure "to prevent a potential hazard to the public." It also opines that "a very light load, such as a trespasser walking on the second floor," could cause a catastrophic chain of events—collapse of the second floor, and then the roof, and then the first-floor framing, followed by failure of the basement walls and potentially the exterior walls, i.e., a collapse of the entire structure. Additionally, the Zoning Administrator noted in his memorandum that the condition of the structure “has deteriorated significantly since the fire,” implying that further deterioration can be expected absent intervening action.

At trial, “the duty of the court with respect to issues of fact shall be to determine whether there was substantial evidence in the agency record to support the agency decision.” Va. Code § 2.2-4027 (2017 Repl. Vol.). “The ‘substantial evidence’ standard, adopted by the General Assembly, is designed to give great stability and finality to the fact-findings of an administrative agency.” Va. Real Estate Comm’n v. Bias, 226 Va. 264, 269, 308 S.E.2d 123, 125 (1983).

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Freemason therefore will bear the heavy burden of proving at trial that, “considering the record as a whole, a reasonable mind would necessarily come to a different conclusion,” i.e., that emergency demolition of the structure is not required. Id. Based on the limited information known at this time, the Court finds that Freemason likely will not be able to satisfy this burden.

Perhaps more importantly, Freemason’s apparent failure to exhaust its administrative remedies could be fatal. Pursuant to the USBC, Freemason—as an aggrieved party—was required to note any appeal of the City’s decision ordering the emergency demolition of Grandy House to the LBBCA within fourteen calendar days. 9 Va. Unif. Statewide Bldg. Code § 105.5 (2012). On August 14, 2018, the City directed Sinesi to demolish Grandy House, and Sinesi testified that he received and made arrangements to comply with the Notice. Based on this evidence, it appears that the date on which Sinesi received the appealable decision was on or about August 14, 2018. It therefore appears that any aggrieved party, including Freemason, would have had to file an appeal with the LBBCA on or before August 28, 2018. Counsel for Freemason stated on September 19 at the Second Hearing—upon viewing the Notice when it was offered into evidence—that he had not previously seen the Notice. 10 The USBC expressly provides that “[f]ailure to submit an application for appeal within the time limit established by this section shall constitute a default of a code official’s decision.” Id. Hence, based on the evidence presented thus far, it appears that Freemason may have failed to exhaust its administrative remedies before resorting to judicial intervention.

Based on the facts as currently known, the Court finds that Freemason failed to clearly demonstrate that it likely will succeed on its Petition for Declaratory Judgment at trial.

Although the movant seeking a temporary injunction must satisfy all four temporary injunction factors in order to prevail, Real Truth, 575 F.3d at 346, the Fourth Circuit recently held that a district court did not err in denying preliminary injunctive relief by not evaluating other factors once it found that the movant failed to prove irreparable injury, Henderson v. Bluefield Hosp. Co., No. 16-2331/2332, 2018 U.S. App. LEXIS 24334, at *15 (4th Cir. Aug. 28, 2018). In light of the fact that Henderson involved the failure to demonstrate irreparable injury—which is not the case here—and the lack of clear precedent regarding what exactly constitutes a “clear showing” that the movant will succeed on the merits at trial, the Court elects to address the remaining preliminary relief factors.

the provisions of the Administrative Process Act (§ 2.2-4000 et seq.), except that an informal conference pursuant to § 2.2-4019 shall not be required.”).

9 Had Freemason’s appeal to the LBBCA been unsuccessful, it could have further appealed the decision to the State Review Board. Va. Unif. Statewide Bldg. Code § 106.5.

19 The Court makes no ruling at this time regarding whether Freemason, as a potentially aggrieved party, was entitled to receive a copy of the Notice. The Court notes, however, that recipients of the City’s Zoning Administrator’s August 13, 2018, memorandum included the “Architectural Review Board Chairman” and “Architectural Review Board Members.” Additionally, several of the witnesses for Freemason at the Second Hearing apparently are members of both the ARB and Freemason.
3. Freemason failed to show that the balance of the equities tips in its favor.

Freemason also must prove that the balance of the equities tips in its favor. Stated differently, Freemason must demonstrate that the harm it would suffer without a temporary injunction outweighs the harm to Sinesi with a temporary injunction. This analysis necessarily focuses on the pretrial time period.

The harm to Freemason without the requested preliminary relief flows from the anticipated demolition of Grandy House. In addition to the loss of this unique and irreplaceable structure, there likely would be an associated diminution in value of the individual neighboring historic properties as well as a decrease in the historical and cultural value of the Historic District as a whole. The harm to Sinesi with the temporary injunction, on the other hand, consists of the consequences associated with his failure to comply with the City’s Notice to demolish his house—including any concomitant civil fines and the potential assessment of the City’s costs to demolish the building11—as well as the potential liability for any injuries to third parties caused by the property’s condition, which injuries may not be insurable considering the current state of the structure. Additionally, the temporary injunction will prevent Sinesi from moving forward with demolition of Grandy House and any future plans he might have for the property.

Based on the limited evidence presented, the Court finds that Freemason has failed to demonstrate that the equities tip in its favor.

4. Freemason failed to demonstrate that the temporary injunction is in the public interest.

Lastly, Freemason must demonstrate that the requested temporary injunction is in the public interest, i.e., that prior to a trial on the merits without preliminary relief, the public interest outweighs the possible irreparable harm to Freemason. The United States Supreme Court discussed this factor at length in Winter, noting that the related analysis is far-reaching. See Winter v. Natural Resources Defense Council, Inc., 555 U.S. 7, 24–26 (2008) (pointing out in a marine environmental case that the public interests “must be weighed against the possible harm to the ecological, scientific, and recreational interests that are legitimately before this Court”). The Court opined that “[i]n exercising their sound discretion, courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction.” Id. at 24 (emphasis added) (quoting Weinberger v. Romero-Barcelo, 456 U.S. 305, 312 (1982)).

As discussed supra, the possible pretrial irreparable harm to Freemason without preliminary relief is the potential loss of Grandy House, which is a contributing building to the established Historic District. The countervailing public interest, or harm to the public with the temporary injunction, is infringement upon Sinesi’s and similarly situated property owners’ rights to possess and control their realty as they see fit in the context of the Historic District

11 As noted supra, the requested temporary injunction does not prevent the City from taking steps to demolish Grandy House.
zoning requirements and its emergency demolition exemption. More significantly, the City’s Building Commissioner assessed the current condition of Grandy House—which would be preserved if the Court granted preliminary relief—and declared “the structure ‘Unsafe’ and, in such condition that could reasonably be expected to cause death or serious physical harm to the public.” Based on this declaration, the City’s Zoning Administrator directed the City’s Property Maintenance Official “to take all necessary action to promptly compel the demolition of the property to protect public safety.” The City clearly concluded, and harbors great concern about, the possibility that the current state of the structure could immediately cause death or serious physical harm to the public. The Court recognizes that Freemason disagrees with the City’s assessment, but the Court is reluctant—based on the City’s concerns and the minimal evidence produced in support of the request for preliminary relief—to discount the City’s dire assessment. When the City issued the Notice, it was fully aware that Grandy House is a historic building, and the City has an interest in both preserving designated historic districts and protecting the public. In light of this, the Court feels bound to seriously heed the City’s conclusion that public safety outweighs the preservation of a historic building.

In consideration of the foregoing, the Court finds that the requested temporary injunction is not in the public interest.

Conclusion

The Court fully appreciates that Grandy House—at least prior to the 2016 arson—contributed to the historic and cultural status of the West Freemason Historic District and, more generally, the City of Norfolk. The Court also understands that the structure is irreplaceable in the eyes of the law, making the injury to Freemason stemming from its demolition irreparable. As discussed above, however, the Court finds that Freemason failed to adequately demonstrate that it is likely to succeed on the merits of its Petition for Declaratory Judgment, that the balance of the equities tips in its favor, and that the possible irreparable harm without preliminary relief outweighs the public interest. As such, the Court finds that Freemason has not satisfied all four temporary injunction factors and therefore cannot prevail.

The Court DENIES Freemason’s “Petition for Temporary Injunction,” despite the possibility that Freemason may suffer irreparable injury in the absence of the requested temporary injunction. The Court notes that, as is the case whenever a court denies preliminary relief, Freemason can seek monetary damages associated with any pretrial injury should it ultimately prevail at the trial on the merits.\footnote{The City’s Zoning Administrator’s memorandum stating that the Building Commissioner has determined that Grandy House “could reasonably be expected to cause death or serious physical harm” expressly identifies the structure as “the \textit{historic building} located at 355 West Freemason Street” (emphasis added).} \footnote{Because the movant must prove the inadequacy of damages, \textit{i.e.}, irreparable injury, to prevail at a trial on an equitable claim, money damages by definition will be insufficient to make the movant whole. Nonetheless, to the extent that the irreparable injury the movant sought to prevent via a temporary injunction already has occurred, money damages are the best a court can offer.}
Re: Freemason Street Area Association, Inc. v. City of Norfolk et al. (CL18-7735)
October 10, 2018
Page 17

Attached is an Order consistent with the ruling in this letter opinion. Signatures are waived pursuant to Rule 1:13 of the Rules of Supreme Court of Virginia. The parties shall file any objections with the Court within fourteen days.

Sincerely,

[Signature]

David W. Lanhetti
Circuit Court Judge

DWL/gbs
cc: City of Norfolk (Adam Melita, Esq.)
VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

FREEMASON STREET
AREA ASSOCIATION, INC.,
Petitioner,

v.

DR. MARK S. SINESI,
and

CITY OF NORFOLK
Respondents.

Civil Docket No.: CL18-7735

ORDER

For the reasons stated in the Court’s October 10, 2018, letter opinion, the Court DENIES the “Petition for Temporary Injunction.” The temporary injunction ordered by the Court on August 31, 2018, and extended on September 19, 2018, is hereby vacated.

Endorsements are waived pursuant to Rule 1:13 of the Rules of Supreme Court of Virginia. Any objections shall be filed within fourteen days. The Clerk shall send a copy of this order to Joseph V. Sherman, Esq., F. Sullivan Callahan, Esq., and Adam Melita, Esq.

IT IS SO ORDERED this 10th day of October, 2018.

[Signature]
David W. Lannetti
Judge
Final Documents
Submitted By
Freemason Street
Area Association
(Page left blank intentionally)
From: Pishko, Bernard <bernard.pishko@norfolk.gov>
Sent: Tuesday, October 23, 2018 2:22 PM
To: John Kavanaugh; joe@lawfirmjvs.com; Melita, Adam; Tajan, Robert
Cc: Alexander, Kenneth; McClellan, Andria; Doyle, Courtney
Subject: RE: Meeting

Jack, while not without issue, we think the best way to give you your day in court is for Joe to appeal the demolition permit to the Building Code Board. We will not rely upon the 14 day limitation period, its timeliness should not be an issue. The filing of the appeal will allow Rick Fortner to stay the demolition permit pending the outcome of your appeal of the permit. Joe, I have asked Adam to call you to explain the process of the proposed appeal.

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Sent from my iPhone

On Oct 22, 2018, at 10:47 PM, John Kavanaugh <ocs1062@cox.net> wrote:

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Bernard LSU the Mayor and Council aware that the Building Commissioner has never set foot into that historic home before ordering it demolished? And are they aware City inspectors took 11 months to visit the home only after I dragged Mr. Rogers and them to the site 11 months after the home was torched. And are they aware the fire department will not release the arson report saying it is still under investigation?

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On Oct 22, 2018, at 10:30 PM, Jack Kavanaugh <ocs1062@cox.net> wrote:

Bernard, is the Mayor and Council aware of the Criminal Case you have going against Dr. Sinesi?

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Sent: Monday, October 22, 2018 3:46 PM
To: John Kavanaugh <ocs1062@cox.net>; Melita, Adam <adam.melita@norfolk.gov>
Thank you for the e-mail. While it is the first that I have seen the e-mail, I have been advising the Mayor.

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Sent: Monday, October 22, 2018 3:33 PM
To: Melita, Adam <adam.melita@norfolk.gov>; Pishko, Bernard <bernard.pishko@norfolk.gov>
Cc: Alexander, Kenneth <Kenneth.Alexander@norfolk.gov>; Doyle, Courtney <Courtney.Doyle@norfolk.gov>; McClellan, Andria <Andria.McClellan@norfolk.gov>; joe@lawfirmjvs.com
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Bernard I think we need a meeting with the Mayor to discuss future liability the City may have in Federal Courts. Have you alerted him to the possibilities listed in Joe’s email?

Sent from my iPhone Jack Kavanaugh.

Begin forwarded message:

From: <joe@lawfirmjvs.com>
Date: October 22, 2018 at 2:43:03 PM EDT
To: "John Kavanaugh" <ocs1062@cox.net>
Subject: Meeting

Nobody wants this saga to go on any longer – me included. Yet the process so far employed failed the Freemason district and many of the residents believe they can sue in federal court to litigate whether the process itself satisfies basic due process. The City gave no notice of the administrative process to the neighborhood until the injunction hearing, at which point they argued the time to an appeal expired.

The building coming down will not just serve to end this mess, rather prolong it. Judge Lanetti’s opinion found individual standing for citizen members of the historic district to protest the process of historical demolition, so several of them plan to petition the federal court for a class action suit as individuals. The Building Commissioner never inspected the property so a federal judge might just find that he, and the City, exceeded their powers. Unlike the three days to prepare an injunction, an attorney has three years to file the federal case.

The alternative is revoke the building permits, inspect the property, and set an appeal with the building code appeals board so that City officials, FSAA experts, and Building Code inspectors can discuss the urgency of demolition in consideration of other emergency repairs to save and stabilize the building. World-class 1900 era homes, which this building
is, were built with multi-wythe brick to prevent the need to re-build the exterior if the interior burned, as open-flame heat systems used to warm and cook.

Now that we have formal notice of the procedures that are meant to be used in this situation, let’s use leadership to get our personalities out of the way of the right decision. The City does not need to get caught holding the bag for Sinesi. Thanks for consideration.
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Now that we have formal notice of the procedures that are meant to be used in this situation, let’s use leadership to get our personalities out of the way of the right decision. The City does not need to get caught holding the bag for Sinesi. Thanks for consideration.
The board will first consider timeliness and jurisdiction. The appeal application you submitted delineates the issues that will be considered by the Board, provided the issues raised in the application are within the authority of the Board to consider.
Which procedural issue? The fact that FSAA got no notice of the violation letter until the injunction trial or that the City failed to inspect the property?

Will we get to argue that the requirements of the building code can be satisfied by other means, such as demolishing the wooden porch and stabilizing the historic structure, as part of reviewing Sherry Johnson’s status report?

---

From: Hall, Cynthia <cynthia.hall@norfolk.gov>
Sent: Wednesday, October 24, 2018 4:09 PM
To: joe@lawfirmjvs.com; Pishko, Bernard <bernard.pishko@norfolk.gov>; 'John Kavanaugh' <ocs1062@cox.net>; Melita, Adam <adam.melita@norfolk.gov>; Tajan, Robert <Robert.Tajan@norfolk.gov>
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Subject: RE: Meeting

Joe, the written appeal application you provided to the Development Services office this morning was received. The hearing will be set for review on the procedural issue before the LBBCA and you will be notified of the hearing date. Thanks.

---

From: joe@lawfirmjvs.com <joe@lawfirmjvs.com>
Sent: Wednesday, October 24, 2018 1:27 PM
To: Pishko, Bernard <bernard.pishko@norfolk.gov>; 'John Kavanaugh' <ocs1062@cox.net>; Melita, Adam <adam.melita@norfolk.gov>; Tajan, Robert <Robert.Tajan@norfolk.gov>; Hall, Cynthia <cynthia.hall@norfolk.gov>
Cc: Alexander, Kenneth <Kenneth.Alexander@norfolk.gov>; McClellan, Andria <Andria.McClellan@norfolk.gov>; Doyle, Courtney <Courtney.Doyle@norfolk.gov>; Thomas, Martin <Martin.Thomas@norfolk.gov>
Subject: RE: Meeting

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As an aggrieved person under the building code, FSAA needs a hearing with the review board. Whether its on the Fortner memo or a Sherry Johnson report, we need a copy of the City’s notice of violation letter and notice of our right to appeal any code decision.

---

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The demolition permits are not stayed/suspended or otherwise changed. The appeal is time barred.

---

Thanks Adam. Can you confirm permits are suspended as promised during pendency of the LBBCA appeal? Thanks again,

Joe Sherman
(757) 350-8308

---

Joe,

You’d have to get with Cindy to be sure what she meant by “procedural issue,” but I think there is a chance the owner may raise the 14 day timeliness issue (which I think is “procedural”) even if the City opts not to.

As for the other things you asks about being allowed to raise, I don’t know of any rule that limits what you can and can’t raise before the LBBCA. It’s your appeal. I think you can raise whatever you think is relevant. Cindy, anything to add/clarify?

Adam

On Oct 25, 2018, at 4:46 PM, "joe@lawfirmjvs.com" <joe@lawfirmjvs.com> wrote:
Second attempt. Please confirm receipt.

From: joe@lawfirmjvs.com <joe@lawfirmjvs.com>  
Sent: Wednesday, October 24, 2018 4:42 PM  
To: 'Hall, Cynthia' <cynthia.hall@norfolk.gov>; 'Pishko, Bernard' <bernard.pishko@norfolk.gov>; 'John Kavanaugh' <ocs1062@cox.net>; 'Melita, Adam' <adam.melita@norfolk.gov>; 'Tajan, Robert' <Robert.Tajan@norfolk.gov>  
Cc: 'Alexander, Kenneth' <Kenneth.Alexander@norfolk.gov>; 'McClellan, Andria' <Andria.McClellan@norfolk.gov>; 'Doyle, Courtney' <Courtney.Doyle@norfolk.gov>; 'Thomas, Martin' <Martin.Thomas@norfolk.gov>  
Subject: RE: Meeting

Which procedural issue? The fact that FSAA got no notice of the violation letter until the injunction trial or that the City failed to inspect the property?

Will we get to argue that the requirements of the building code can be satisfied by other means, such as demolishing the wooden porch and stabilizing the historic structure, as part of reviewing Sherry Johnson’s status report?

From: Hall, Cynthia <cynthia.hall@norfolk.gov>  
Sent: Wednesday, October 24, 2018 4:09 PM  
To: joe@lawfirmjvs.com; Pishko, Bernard <bernard.pishko@norfolk.gov>; 'John Kavanaugh' <ocs1062@cox.net>; 'Melita, Adam' <adam.melita@norfolk.gov>; 'Tajan, Robert' <Robert.Tajan@norfolk.gov>  
Cc: 'Alexander, Kenneth' <Kenneth.Alexander@norfolk.gov>; 'McClellan, Andria' <Andria.McClellan@norfolk.gov>; 'Doyle, Courtney' <Courtney.Doyle@norfolk.gov>; 'Thomas, Martin' <Martin.Thomas@norfolk.gov>  
Subject: RE: Meeting

Joe, the written appeal application you provided to the Development Services office this morning was received. The hearing will be set for review on the procedural issue before the LBCCA and you will be notified of the hearing date. Thanks.

From: joe@lawfirmjvs.com <joe@lawfirmjvs.com>  
Sent: Wednesday, October 24, 2018 1:27 PM  
To: Pishko, Bernard <bernard.pishko@norfolk.gov>; 'John Kavanaugh' <ocs1062@cox.net>; 'Melita, Adam' <adam.melita@norfolk.gov>; 'Tajan, Robert' <Robert.Tajan@norfolk.gov>; Hall, Cynthia <cynthia.hall@norfolk.gov>  
Cc: 'Alexander, Kenneth' <Kenneth.Alexander@norfolk.gov>; 'McClellan, Andria' <Andria.McClellan@norfolk.gov>; 'Doyle, Courtney' <Courtney.Doyle@norfolk.gov>; 'Thomas, Martin' <Martin.Thomas@norfolk.gov>  
Subject: RE: Meeting

*** This is an EXTERNAL email. Please exercise caution. ***
As an aggrieved person under the building code, FSAA needs a hearing with the review board. Whether its on the Fortner memo or a Sherry Johnson report, we need a copy of the City’s notice of violation letter and notice of our right to appeal any code decision.

From: Pishko, Bernard <bernard.pishko@norfolk.gov>
Sent: Wednesday, October 24, 2018 12:08 PM
To: John Kavanaugh <ocs1062@cox.net>; joe@lawfirmjvs.com; Melita, Adam <adam.melita@norfolk.gov>; Tajan, Robert <Robert.Tajan@norfolk.gov>; Hall, Cynthia <cynthia.hall@norfolk.gov>
Cc: Alexander, Kenneth <Kenneth.Alexander@norfolk.gov>; McClellan, Andria <Andria.McClellan@norfolk.gov>; Doyle, Courtney <Courtney.Doyle@norfolk.gov>; Thomas, Martin <Martin.Thomas@norfolk.gov>
Subject: RE: Meeting

Jack, we have reviewed the prospect of your being heard by the Building Code Board and now know that the 14 day limitation period will prevent any hearing. In lieu of a hearing, planning is making arrangements for one of its inspectors to inspect and report. I believe Sherry Johnson will try to gain admittance today for the purpose of inspecting and reviewing the accuracy of the independent engineer.

From: Pishko, Bernard
Sent: Tuesday, October 23, 2018 2:24 PM
To: 'John Kavanaugh' <ocs1062@cox.net>; Joe@lawfirmjvs.com; Melita, Adam <adam.melita@norfolk.gov>; Tajan, Robert <Robert.Tajan@norfolk.gov>
Cc: Alexander, Kenneth <Kenneth.Alexander@norfolk.gov>; McClellan, Andria <Andria.McClellan@norfolk.gov>; Doyle, Courtney <Courtney.Doyle@norfolk.gov>
Subject: RE: Meeting

Jack, while not without issue, we think the best way to give you your day in court is for Joe to appeal the demolition permit to the Building Code Board. We will not rely upon the 14 day limitation period, its timeliness should not be an issue. The filing of the appeal will allow Rick Fortner to stay the demolition permit pending the outcome of your appeal of the permit. Joe, I have asked Adam to call you to explain the process of the proposed appeal.

From: Pishko, Bernard
Sent: Tuesday, October 23, 2018 6:58 AM
To: John Kavanaugh <ocs1062@cox.net>
Cc: Melita, Adam <adam.melita@norfolk.gov>; Alexander, Kenneth <Kenneth.Alexander@norfolk.gov>; Doyle, Courtney <Courtney.Doyle@norfolk.gov>; McClellan, Andria <Andria.McClellan@norfolk.gov>; Joe@lawfirmjvs.com; Thomas, Martin <Martin.Thomas@norfolk.gov>; Moye, LuAnne <luanne.moye@norfolk.gov>; Stone, Mary Lou <MaryLou.Stone@norfolk.gov>; Newcomb, Leonard <Leonard.Newcomb@norfolk.gov>
Subject: Re: Meeting

Jack, the mayor is agreeable to meeting with you if you would like. If so, please include whomever you think helpful. Lu and Mary Lou, please try to schedule for the first time that Kenny is available. Demolition could be imminent. Lu, please take the lead in scheduling, I will rearrange my schedule if needed to be available for the first time Kenny is available. Lu, in addition to Admiral Kavanaugh, include me and Lenny.

Sent from my iPhone
On Oct 22, 2018, at 10:47 PM, John Kavanaugh <ocs1062@cox.net> wrote:

*** This is an EXTERNAL email. Please exercise caution. ***

Bernard LSU the Mayor and Council aware that the Building Commissioner has never set foot into that historic home before ordering it demolished? And are they aware City inspectors took 11 months to visit the home only after I dragged Mr. Rogers and them to the site 11 months after the home was torched. And are they aware the fire department will not release the arson report saying it is still under investigation?

Sent from my iPhone Jack Kavanaugh.

On Oct 22, 2018, at 10:30 PM, Jack Kavanaugh <ocs1062@cox.net> wrote:

Bernard, is the Mayor and Council aware of the Criminal Case you have going against Dr. Sinesi?

---

From: Pishko, Bernard [mailto:bernard.pishko@norfolk.gov]
Sent: Monday, October 22, 2018 3:46 PM
To: John Kavanaugh <ocs1062@cox.net>; Melita, Adam <adam.melita@norfolk.gov>
Cc: Alexander, Kenneth <Kenneth.Alexander@norfolk.gov>; Doyle, Courtney <Courtney.Doyle@norfolk.gov>; McClellan, Andria <Andria.McClellan@norfolk.gov>; joe@lawfirmjvs.com
Subject: RE: Meeting

Thank you for the e-mail. While it is the first that I have seen the e-mail, I have been advising the Mayor.

---

From: John Kavanaugh [mailto:ocs1062@cox.net]
Sent: Monday, October 22, 2018 3:33 PM
To: Melita, Adam <adam.melita@norfolk.gov>; Pishko, Bernard <bernard.pishko@norfolk.gov>
Cc: Alexander, Kenneth <Kenneth.Alexander@norfolk.gov>; Doyle, Courtney <Courtney.Doyle@norfolk.gov>; McClellan, Andria <Andria.McClellan@norfolk.gov>; joe@lawfirmjvs.com
Subject: Fwd: Meeting

*** This is an EXTERNAL email. Please exercise caution. ***

Bernard I think we need a meeting with the Mayor to discuss future liability the City may have in Federal Courts. Have you alerted him to the possibilities listed in Joe’s email?

Sent from my iPhone Jack Kavanaugh.

Begin forwarded message:
From: <joe@lawfirmjvs.com>
Date: October 22, 2018 at 2:43:03 PM EDT
To: "'John Kavanaugh'" <ocs1062@cox.net>
Subject: Meeting

Nobody wants this saga to go on any longer – me included. Yet the process so far employed failed the Freemason district and many of the residents believe they can sue in federal court to litigate whether the process itself satisfies basic due process. The City gave no notice of the administrative process to the neighborhood until the injunction hearing, at which point they argued the time to an appeal expired. The building coming down will not just serve to end this mess, rather prolong it. Judge Lanetti’s opinion found individual standing for citizen members of the historic district to protest the process of historical demolition, so several of them plan to petition the federal court for a class action suit as individuals. The Building Commissioner never inspected the property so a federal judge might just find that he, and the City, exceeded their powers. Unlike the three days to prepare an injunction, an attorney has three years to file the federal case.

The alternative is revoke the building permits, inspect the property, and set an appeal with the building code appeals board so that City officials, FSAA experts, and Building Code inspectors can discuss the urgency of demolition in consideration of other emergency repairs to save and stabilize the building. World-class 1900 era homes, which this building is, were built with multi-wythe brick to prevent the need to re-build the exterior if the interior burned, as open-flame heat systems used to warm and cook.

Now that we have formal notice of the procedures that are meant to be used in this situation, let’s use leadership to get our personalities out of the way of the right decision. The City does not need to get caught holding the bag for Sinesi. Thanks for consideration.
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Cc: Alexander, Kenneth <Kenneth.Alexander@norfolk.gov>; Doyle, Courtney <Courtney.Doyle@norfolk.gov>; McClellan, Andria <Andria.McClellan@norfolk.gov>; joe@lawfirmjvs.com
Subject: RE: Meeting

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Now that we have formal notice of the procedures that are meant to be used in this situation, let’s use leadership to get our personalities out of the way of the right decision. The City does not need to get caught holding the bag for Sinesi. Thanks for consideration.
In light of recent events, is there a need to conduct the hearing before the Local Board of Building Code Appeals? Thanks.

Cynthia B. Hall
Deputy City Attorney
Department of Law
810 Union Street
Norfolk, VA 23510
757-664-4214 (telephone)
757-664-4201 (facsimile)
In The Matter Of:
Freemason Street Area Association v.  
Dr. Mark S. Sinesi

Proceedings Before the Court  
September 19, 2018
VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

Freemason Street Area
Association,

Plaintiff,

v.

Dr. Mark S. Sinesi,

Defendant.

Case No. CL18007735-00

TRANSCRIPT OF PROCEEDINGS

Norfolk, Virginia

Wednesday, September 19, 2018

BEFORE: THE HONORABLE DAVID W. LANNETTI
Appearances:

LAW OFFICES OF JOSEPH SHERMAN, PC
By: JOSEPH V. SHERMAN, ESQUIRE
324 Freemason Street
Norfolk, Virginia 23510
jvs@lawyer.com
Counsel for the Plaintiff

LAW OFFICE OF F. SULLIVAN CALLAHAN
By: F. SULLIVAN CALLAHAN, ESQUIRE
327 Duke Street
Norfolk, Virginia 23510
sully@fsullivancallahan.com
Counsel for the Defendant

Also Present:

Cynthia B. Hall, Deputy City Attorney
Adam Melita, Deputy City Attorney
### O N  B E H A L F  O F  T H E  P L A I N T I F F

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## Exhibit Table

### On Behalf of the Plaintiff

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<td>2</td>
<td>Collection of Citations</td>
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<td>City Memoranda with Attached Engineer's Report</td>
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<td>4</td>
<td>Two photos of the Subject Property</td>
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<td>Historic Picture of property and Building Permit from 1901</td>
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<td>A</td>
<td>Cacace Report</td>
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### On Behalf of the Defendant

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<td>Zoning ordinance Excerpts</td>
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(The court reporter was duly sworn.)

THE COURT: Please have a seat.

And good afternoon. We're here on the matter of Freemason Street Area Association, Inc. versus Dr. Mark Sinesi, CL18-7735.

Let me ask counsel to please introduce yourself so we can get you on the record as well as who you have with you today.

MR. SHERMAN: Joseph E. Sherman on behalf of the plaintiff Freemason Street Area Association. I've got the president Jack Kavanaugh, Admiral Jack Kavanaugh, with me.

THE COURT: All right. Thank you.

MR. CALLAHAN: F. Sullivan Callahan, and I represent Dr. Sinesi who's seated with me at counsel table.

THE COURT: Very good.

I also see Mr. Melita. Are you making an official appearance or just observing?

MR. MELITA: The City is here to observe today, Your Honor.

THE COURT: All right. The Court had received a petition for temporary injunction.
Based on that, the Court had a hearing on August 31st. It was an ex parte hearing.

Representation was made at that time that service of the petition was made on Dr. Sinesi, but the Court under the Virginia Code elected to go forward on an ex parte proceeding, did issue a temporary injunction, but I think the Court made it clear that the real concern was to get the parties both here to hear both sides of the story before we entertain any more preliminary or permanent relief.

That injunction, temporary injunction, it's my understanding, has now expired.

We didn't have a court reporter at that proceeding. So, Mr. Callahan, I know you're probably relying a little bit on hearsay on what happened there. So I'm going to make it clear from the outset that we're treating this as a new hearing. So anything that came in by way of evidence or anything that came in by way of testimony I'm going to put the plaintiff back -- the burden back on the plaintiff to present that material again.

MR. CALLAHAN: Thank you, Judge.

THE COURT: Have you received a copy of the petition for temporary injunction with the attachments?
MR. CALLAHAN: I have, Your Honor. I've also received the memorandum. We're ready to go forward today.

THE COURT: All right, very good.

That's where I was going next. The Court received yesterday a memorandum in support of motion for temporary injunction as well.

There was one minor change.

The Court did receive exhibits, and I understand they may not have been available on line, is why I mention this. They were basically the exhibits that were attached to the original petition with one exception.

Plaintiff's Exhibit C was a memorandum -- or two memoranda, I believe, involving the City, basically, and with that was attached the actual engineer's report from Speight Marshall.

And so the Court received that as Plaintiff's Exhibit 3 at that hearing.

I anticipate plaintiff's going to offer all these exhibits up again today, but I didn't know if you had a copy of that engineer's report.

MR. CALLAHAN: Judge, not only do I have a copy of the report, but I have the engineer here.

THE COURT: Very good.
Well, anticipating the motion, are you going to move the exhibits to come in?

MR. SHERMAN: I am, Your Honor.

THE COURT: Do you have any objection?

Do you need to lay a foundation on those?

MR. CALLAHAN: Judge, no, I do not have an objection on that report coming in.

What are the other two?

THE COURT: The first exhibit was, I forget how it was characterized, but it was -- let me ask the plaintiff to go ahead and characterize the exhibits.

MR. SHERMAN: The first exhibit was the Fire Marshal's report from December 17th, 2017.


MR. SHERMAN: 2016. Thank you, Your Honor.

THE COURT: Okay. And then the second report was a collection of citations from the City to the homeowner.

The third report was those two City memoranda with the attached engineer's report.

Then the fourth exhibit were two photographs, again, that were attached to the petition.

MR. SHERMAN: Yes, Your Honor.
THE COURT: Any objection to any of those exhibits coming into evidence?

MR. CALLAHAN: Judge, I've seen all those exhibits, and I have no objection --

THE COURT: Very well.

MR. CALLAHAN: -- to any of those.

THE COURT: They will be marked as they were at the prior hearing:

Plaintiff's Exhibit 1 will be the Fire Marshal's report, Plaintiff's Exhibit 2 will be the collection of citations, Plaintiff's Exhibit 3 will be the City memoranda with the attached engineer's report, Plaintiff's Exhibit 4 will be the two photographs of the subject property.

(Plaintiff Exhibit Numbers 1-4 were received.)

THE COURT: All right. I'll hear from the plaintiff.

MR. SHERMAN: Your Honor, I'd like to make a motion to separate the witnesses before we begin.

THE COURT: Mr. Callahan?

MR. CALLAHAN: Judge, it's a proper motion.

THE COURT: All right. Anybody who plans on testifying at the hearing this afternoon, I'm going
to ask you to have a seat outside. We'll call you in at
the appropriate time. If you stay in the courtroom, you
will not be testifying in this hearing. That's with the
exception of those at counsel table.

(The witnesses withdrew from the
courtroom.)

THE COURT: I think we had an hour
blocked off for this hearing. I wasn't anticipating
that number of witnesses.

MR. CALLAHAN: They won't be as long as
they appear -- as the line appears.

THE COURT: And I'll point out from the
start that to the extent you want to proffer without
opposition from opposing counsel, the Court's happy to
hear proffered testimony as well.

MR. CALLAHAN: Thank you, Judge.

THE COURT: All right. Mr. Sherman.

MR. SHERMAN: Thank you, Your Honor.

Your Honor, the more that I get to dig
into this case and appreciate the perspective of all the
stakeholders involved -- and you can see today that
there's a lot of people here because the neighborhood
does care about this issue and I think that folks beyond
the neighborhood care -- and as I appreciate everybody's
perspective, I can more and more appreciate the rational
actions that were taken by differing perspectives that led to this result.

And I think that's why this case is so important, because the process is important.

And the State has made law in Section 15.2-2306 which allows municipalities to create historic districts.

And enabling the Cities to do the same, the Cities are allowed to make historic districts with a board that governs historic issues and that rules on historic decisions and guidelines.

And so that's the process that normally takes place.

Norfolk has both. They've got an Architectural Review Board. The neighborhood is treated as a subcommittee to that board, the civic league, and there's a zoning ordinance and, additionally, design guidelines that applicants are expected to adhere to when they make certificates, applications for certificates in front of the Architectural Review Board.

All exterior rehabilitation, renovation, anything that can be seen from the street requires a certificate of appropriateness from the Architectural Review Board, including demolition.

THE COURT: Including emergency
MR. SHERMAN: Not including emergency demolition. Including demolition.

The defendant went to the Architectural Review Board to have the plans to rehabilitate the property approved and he should go to the Architectural Review Board for demolition.

The demolition process in the certificate process at the Architectural Review Board encourages preservation. In fact, all of the laws, Federal, State and local level, encourage preservation. That's the point.

At the demolition, if you move the Architectural Review Board for a certificate of appropriateness to demolish an historic structure, the committee will look at things that include economic feasibility. They will require that the property be marketed for fair market value for one year in this case because the value exceeds $90,000.

And in this case, the defendant had time to do that. We're 21 months past the fire.

So he's almost had enough time to do it twice and market the property for a whole twelve years [sic]. And the reason they encourage that is because they want to encourage preservation. Everybody who buys
in the neighborhood has to play by these rules, and the Federal, State and local governments have legislated to require these sorts of requirements because there's a public benefit to it.

And you're going to hear testimony on that today.

So we're going to put on testimony and evidence that there is market interest for this property at fair market value to rehabilitate and preserve the structure.

So I think the rational action on behalf of the defendant is that after he's picking up the pieces from this devastating fire and he's starting to market the property, he realizes that there's a lot more market interest for the property vacant than to rehabilitate the structure.

And so that's where the rational action creates a perverse incentive and results in a process where he voluntarily elected to avoid the process.

And I think that the totality of the circumstances show that he will make -- he made little or no repair to the building, he allowed it to continue to decline in condition, he obtained multiple continuances from the City on enforcement actions as the result of his hardship situation, you know, he was a
victim of a fire, of an arson, and I think that
leveraged him to getting preferential treatment from the
City who’s not trying to be too hard on a guy who’s a
victim in some sense.

And over time as the property continues
to deteriorate, he hires an engineering firm to justify
the demolition, because with the emergency exemption, as
you noted, Your Honor, that is a fail-safe that takes
the process out of the civic process, takes it out of
the Architectural Review Board's hands, out of the
appeals to City Council and corresponding appeal to
Circuit Court. The process is in placement to protect
all the stakeholders that you see here today.

The neighborhood, my client, is upset at
the lack of process here.

The certificate of appropriateness would
require their input, which they didn't get, even though
it's been 21 months. The Architectural Review Board
decision, there's an opportunity to appeal. And even
that City Council's decision can be appealed to Circuit
Court.

Any -- there's standing in the zoning
ordinance for any resident in the historic district to
appeal a demolition permit to Circuit Court showing that
this is an item of wide interest and it's meant to
preserve historic preservation because it helps the City at large, it helps the citizens, it helps the neighborhood.

The emergency exemption skips all that, and the, notably, the two people who can require an emergency exemption are the Fire Marshal and the Building Commissioner.

And the morning after the fire, the Fire Marshal made the report, and he did not require that the building came down. And I can imagine that if it was an actual need for that, that would be the first thing he did, having been in the building and seen the fire and put it out with his, with his team.

So that's notably absent in this case, that there is not evidence from the Fire Marshal, there's not testimony from the Fire Marshal to take that building down the day after the fire.

Instead, this is a demolition somewhat by arson but also by neglect, criminal neglect that's been prosecuted by the City.

And I think the defendant at this pint is taking advantage of the City because he's gotten multiple continuances, there's going to be evidence today he's got the enforcement hearing continued five times, six times if you include for this latest action,
and the leniency in enforcement has served to undercut
the process and it's taken advantage of the
neighborhood.

    Everyone else plays by the rules and
everybody else gets certificates of appropriateness.
And to allow somebody to use an exception when it's not
a true emergency dilutes the purpose of the fail-safe
and creates a perverse incentive for marketplace
participants who are buying into a neighborhood, knowing
they have to preserve the property.

    So the process is really at stake here.
There's going to be precedential value from the case
here and whether or not the emergency exemption is
expanded to swallow the process altogether.

    And I think that the rational economic
interest to demolish historic properties as we'll see in
this case is antithetical to preservation itself and the
complete opposite of the purpose of Federal, State and
local laws that encourage and make preservation a
priority for the City for the benefit of their citizens.

    The public interest and the equities
favor the neighborhood. The laws show that there's a
public interest in historic preservation.

    And the evidence that shows the economic
incentive and the windfall to the defendant for selling
the property vacant instead of preserving the structure
intertwines with the irreparable harm that neighborhood
will have from losing a structure that can't be
replaced.

So, Your Honor, the neighborhood's likely
to win in --

THE COURT: Well, what are you seeking?
What are you asking the Court to do?

MR. SHERMAN: I'm asking the Court to
enjoin demolition of that house until the Architectural
Review Board has had the process occur, until there's a
lawsuit on a declaratory judgment to declare the City's
emergency status arbitrary and capricious or until he
disposes of the property to someone who does want to
maintain it.

THE COURT: We went over this a little
bit last time. But you filed a motion for a temporary
injunction. Usually that is a motion that's part of a
larger suit. Maybe it's a declaratory judgment suit. I
don't know. But nothing has been filed yet.

It sounds like the declaratory judgment
you're seeking would be against the City; that the City,
finding, whether it's the Building Commissioner, the
Fire Marshal or someone else in the City, that their
decision was arbitrary and capricious, is that correct?
MR. SHERMAN: I think so.

THE COURT: Well, then wouldn't you have to sue the City? What's Dr. Sinesi have to do with that?

MR. SHERMAN: Well, I think that they're -- we had this strategy issue. And I think that we have to enjoin Dr. Sinesi from demolishing the property while we attack that underlying action and also put the process back where it should be which is at the Architectural Review Board.

THE COURT: But one of the four factors is the likelihood of success on the merits of the actual suit.

So success in what? Your declaratory judgment motion that's not been filed that the City is not involved in yet?

MR. SHERMAN: Yes, Your Honor. The petition asked for a remedy in equity and all those interests that are in the interest of justice and all those rulings that are in the interest of justice.

And so we had to move fast, given that the process was completely circumvented here.

And I would encourage the Court to consider that the underlying action here is an attack on the emergency status and that that emergency status was
arbitrary and capricious, and that if this is enjoined,
then it be enjoined for a time where we can have a trial
on that action and also he has, he has time to do the
process that he prefers.

THE COURT: Is there something that --
what gives me jurisdiction over the declaratory
judgment, for instance? Does this come under the APA
somehow, the City's decision to -- that demolition was
an emergency; that public safety was at risk? How do
you bring that before the Court?

MR. SHERMAN: Well, I think that we'll
bring it before the Court the same way we brought this
one, Your Honor. I think that the petition and the
prayer for relief in our first one gives you the
opportunity to stay this demolition until an
adjudication can be had either on the merits of a
declaratory action or on the process itself. He can go
get a certificate of appropriateness.

So all we're asking for here is time,
Your Honor.

And you can set it in a way that if I
were to file tomorrow and we don't get a court date at
the next available availability of the docket clerk,
then the action -- the injunction can expire.

THE COURT: What is the current posture
of the case? I mean, you show me the memos that
indicate that the City, I guess, was forwarding this up,
says, "The property maintenance official has been
notified to take all necessary action to promptly compel
the demolition of the property to protect public
safety." And that was over a month ago.

So has anything occurred that you're
aware of? Is there a document? What's the procedure
supposed to be?

MR. SHERMAN: Well, that's just the rub.
The procedure is supposed to go for a certificate in
front of the ARB.

THE COURT: I understand that. Under the
emergency provisions, though. I want to know --

MR. SHERMAN: We're really there.

THE COURT: They don't -- Dr. Sinesi is
not even copied on this memo. So there's going to be
something that has to go to him to tell him, "Make sure
it's vacant because the City's coming in to demolish it
or you're responsible for demolishing it"? I don't
know. But do you know what the next step would be under
the emergency demolition procedure?

MR. SHERMAN: My understanding is that
the City's been in touch with Dr. Sinesi telling him to
demolish it or else they will, yes.
THE COURT: So you think everything's in place such that he has the permissions he needs or the direction he needs to do -- actually demolish it today had it not been for court intervention.

MR. SHERMAN: The only thing stopping him is you and me.

THE COURT: All right. Let me hear from Mr. Callahan.

MR. CALLAHAN: Thank you, Judge. Judge, Dr. Sinesi bought this house, had planned a million dollars of renovations to the house. was looking forward to living in the Freemason Historic District, and all of a sudden an arsonist came in and burned it down, and he's unfortunately become persona non grata with the Freemason District.

THE COURT: He might appreciate their position had he really gone -- been a resident at some point, perhaps.

MR. CALLAHAN: Perhaps. But what we have here, though, Judge, is two different things, two different issues we're looking at here today.

Number one, the Statewide Building Code tells the officials exactly what they have to do as far as demolishing a building is concerned and what findings
that they have to make in order to do this on an emergency basis.

    Now, they talk about the timeline.

    Well, it took insurance -- when you have a building burn down, they don't just run out the next day and give you insurance money. They take a substantial amount of time. And the reason those cases in the General District Court were continued is because the insurance people never reached a settlement until I believe late in the spring of this year.

    So it took a substantial amount of time.

    The --

THE COURT: So the fire was back in December 2016?

MR. CALLAHAN: Right.

THE COURT: And you're saying it took into mid 2018 for the insurance to work out?

MR. CALLAHAN: That's correct.

THE COURT: All right.

MR. CALLAHAN: And so during that period of time, yes, we received citations to do the plumbing, the windows, every feature of the house that you can think of.

    And so they get -- kept getting continued. Judges downstairs continued those to give
him an opportunity to get it settled with the insurance
companies, which he basically did.

After that, he starts to go -- he'd taken
his plans to the Freemason people to get them approved.
But in order to do the construction, he goes after the
fire has taking place and hires Speight Marshall. You
have their report.

They are the ones that turned the leaning
tower of Granby Street, straightened it back up again.
They do historic --

THE COURT: You weren't at the last
hearing. Speight Marshall is well-recognized. I'm not
questioning that they are a reliable structural
engineer.

MR. CALLAHAN: So they come out with
their report. And if you've read that report, they are
concerned that the back portion of that house where the
porch is may fall down at any moment, could have fallen
down if that hurricane had come in this direction, could
have fallen down and done some damage to people,
require, you know, possibly the steps on the interior,
holding up the bricks on the outside as a result of
their report. It just seems astronomical or
unbelievable to do it.

Now, could it be done? Probably if you
had 5 or $6 million. Then you have a $950,000 house after you spent $5 million.

THE COURT: But I think the Association's questioning the procedure more than anything else; why not the certificate of appropriateness procedure for demolishing the property as opposed to the emergency demolition procedure?

MR. CALLAHAN: Because I've got three different people coming after Dr. Sinesi. I have the judges downstairs that want to fine him because he hasn't made the improvements to that house. Your Honor has enjoined him from demolishing the house. The City has sent us an order to demolish the house, and if we don't demolish it, they will demolish it.

Once the City issued its letter on August 14th --

THE COURT: Show me something. I haven't seen anything along those lines.

MR. CALLAHAN: The City issued its letter on August 14th saying that, "You have 14 days to appeal this decision, and if you don't appeal the decision, it becomes a thing decided."

Any aggrieved party can appeal that decision.

THE COURT: Which decision?
MR. CALLAHAN: The decision of the building --

THE COURT: Emergency demolition?

MR. CALLAHAN: That's correct, okay?

They could have appealed that decision.

They -- Dr. Sinesi had 14 days to appeal that, they had 14 days to appeal.

THE COURT: Are you saying they were served?

MR. CALLAHAN: They are an aggrieved party.

My understanding is they would have been aware of it based upon the Architectural Review Board would have known about it. And no one appealed that decision.

So that thing -- that is now a thing decided. It's not appealable.

THE COURT: Goes back to my earlier question to opposing counsel. What gives the Court jurisdiction? I didn't see that 14-day timeline in the zoning ordinance. Is that --

MR. CALLAHAN: I've got the -- Miss Hall is here with the City Attorney's Office, and she's got those letters to be able to present to the Court.

THE COURT: I understand there may be
letters. I'm questioning whether there's an ordinance that lays out -- that was one of my questions when I was researching. Seems there's a very methodical procedure to appeal decisions under the certificate of appropriateness route, but I didn't see anything, and seems opposing counsel came to the same conclusion, didn't see anything that allows you to appeal the emergency decision. I understand there may be a letter that says 14 days, but is it in the ordinance?

MR. CALLAHAN: Judge, I'll have to yield to Miss Hall on that.

THE COURT: Okay. We'll get back to that later.

MR. CALLAHAN: All right.

Judge, that's the first portion of it.

The second portion of it deals with just granting a temporary injunction. There are standards that the Court has to follow. There's no Virginia cases on point. There's Fourth Circuit law. There's law out of the Supreme Court that the --

THE COURT: Virginia follows the Fourth --

MR. CALLAHAN: Follows the Fourth Circuit to the Winter case out of the Supreme Court.

And so there's standards there, and they
have a burden to meet every one of those standards.

I think at the end of the hearing, they are going to have a difficult time meeting that, because we have building officials here that the Code says you shall demolish it. You shall do this and you shall do your duty.

The problem Dr. Sinesi has right now is he has a structure that the building official says -- excuse me, that the structural engineer says needs to be torn down.

He cannot get insurance on that building. If somebody goes in there and plays and does something and gets hurt, he's going to be liable for it.

And so it presents us with a very difficult burden.

I agree with the Court. The proper party here should be the City. It shouldn't be Dr. Sinesi. Dr. Sinesi is following the order of this Court, the order of the City and the order of the judges from downstairs.

And so, I mean, we wanted to be -- he wanted to be in the Freemason District and be a part of it. Unfortunately, that's not going to take place.

And I think the law's got to be followed. And I think at the end of the day, they are not going to
be able to meet their burden and, unfortunately, I think it's going to end up having to be torn down.

THE COURT: I'm going to ask you a question. I'm not going to require you to answer it if you don't want to.

But what are the plans if the Court's -- the Court's order, it's moot now, it's ended. Is Dr. Sinesi in a position where he plans to demolish it in the near future?

MR. CALLAHAN: Yes.

THE COURT: All right.

MR. CALLAHAN: We have a contract to demolish it. We've sent that to the City. There are -- I believe every one of the services, electrical, water, have all been disconnected. The only service that may not have been completed is the Verizon phone company because Verizon services the whole block. And so they've got to do a little bit more than just snipping the wires going in there.

THE COURT: All right. Before we go into testimony, I think I do need -- because it's a jurisdictional threshold, I would like some more information on whether you believe they are time-barred from even bringing this suit. So if -- again, I recognize the City's not a party, but to the extent
you'd like to offer any advice on that issue, I would appreciate it.

MR. CALLAHAN: I do, Judge.

THE COURT: Are you okay with Miss Hall addressing the issue?

MR. CALLAHAN: That's fine with me.

THE COURT: She was standing up. Looks like she was offering.

MS. HALL: Judge, if I could approach the podium.

THE COURT: Thank you.

MS. HALL: Good afternoon.

THE COURT: Thanks for coming. I appreciate it.

MS. HALL: Thank you.

Judge, there was an order issued by the City. I do have a copy of that order. I do believe it will be presented at some point in this hearing.

But the order is dated August 14th of 2018. That order was issued as a result of the Building Commissioner's memo indicating that the building needed to be, needed to be an immediate demolition.

THE COURT: For purpose of the record, that was the memorandum the day before that order.

MS. HALL: That's correct.
So the Building Commissioner, you'll hear from him later, I believe Mr. Callahan will call him, he immediately notified the Property Maintenance code official, who is also present today, and that notice went out to the property owner, which is Dr. Sinesi.

That order indicated that based on the condition of the property, based on that engineer's report that was received by the City, the building had to be repaired or demolished within ten days of the date of that notice.

Now, Judge, in that notice as required by the Uniform Statewide Building Code, which is the governing body of regulation that governs that question of emergency demolitions, in that actual letter is the requirement for -- it's the notification to the parties that if they fail to appeal that decision to the local Board of Building Code Appeals within the time period set forth in the statute for that appeal, that decision is a thing decided.

I do have with me today the Uniform Statewide Building Code which --

THE COURT: Well, who received that order? I assume it was just the homeowner, isn't it?

MS. HALL: That order was received by Dr. Sinesi.
I would also note that this injunction I believe was filed within the time period of that -- when that notice period proceeded with respect to the Uniform Statewide Building Code.

Now, I don't know myself if the plaintiffs in this matter have received that letter, so I'm not sure about that.

But that letter did provide that any person aggrieved by the decision relating to the emergency demolition could appeal that to the local Board of Building Code Appeals. That would be the proper body to evaluate that order to demolish the structure.

THE COURT: Can you read me the section from the Statewide Building Code that you think applies?

MS. HALL: Yes, sir. It's Section 106.5 of the Virginia Maintenance Code which is one of the parts of the Uniform Statewide Building Code, and it says, "Right of appeal. Any person aggrieved by the local enforcing agency's," which is our property maintenance official, "application of this Code has the right to submit a written request for appeal to the local Board of Building Board Appeals within 14 calendar days of the receipt of the decision being appealed."

So there is a process for an appeal of
that determination.

That section goes on to state that,

"Failure to submit an application for appeal within the timeline established by this section shall constitute acceptance of the code official's decision."

THE COURT: So how do I know that that applies to emergency demolitions as opposed in your case the normal certificate of appropriateness procedure?

MS. HALL: Judge, the certificate of appropriateness procedure is a zoning ordinance consideration.

This is under a totally separate body of law, totally separate statutory scheme.

THE COURT: So is it your position that any decision made regarding Building Code decisions is guided by -- mirror that language in the local ordinance?

MS. HALL: Judge, our local ordinance adopts it in its entirety under Section 11.1-1 of the City Code.

So we adopt the Uniform Statewide Building Code which includes this section which is the Virginia Maintenance Code.

So we adopt the entire Uniform Statewide Building Code as our code for building safety and
building-related repairs in the City of Norfolk.

THE COURT: And then it's the local zoning ordinance, though, that has the emergency demolition procedure with respect to historic districts, correct?

MS. HALL: Judge, it doesn't have a procedure. It has a carve-out or an exemption. If there's an emergency demolition ordered by the building official --

THE COURT: It's exempt from the certificate of appropriateness procedure.

MS. HALL: Yes.

So the certificate of appropriateness procedure in the zoning ordinance does carve out an exception to following the procedure to go through all the hearings and all the other requirements for appraisals and so forth for situations where there is a necessary or need for an emergency demolition.

THE COURT: But it's your position that the Statewide Building Code as adopted by the City still has a 14-day appeal.

MS. HALL: 14-day appeal period.

And, Judge, I would also note that the language in that statutory framework under the Building Code specifically states failure to follow that appeal
procedure constitutes a thing decided.

And there is a case out of the City of Norfolk, it's Dick Kelly Enterprises. I do have a copy of that here today.

THE COURT: If you'd pass that up.

MS. HALL: Yes, I'll get that out, Judge.

But that stands for the proposition that failure to file -- to follow administrative procedures and your administrative remedies prevents you from arguing about that determination.

So to shorten this, the City's position is that that order was made to demolish the structure, that we -- or the building official and the property maintenance official consider that structure to be unsafe and uninhabitable.

That decision is a thing decided before this Court today.

THE COURT: Is that your position that the filing of this action couldn't stay that, assuming this action was filed within the 14-day period?

MS. HALL: Judge, I'm not sure I understand what your question.

THE COURT: Assuming they filed the petition for temporary injunction within 14 days of that decision, would that stay the 14-day appeal period?
MS. HALL: Judge, they would have also
had to file an appeal before the local Board of Building
Code Appeals, is my position.

THE COURT: Very good. Thank you.

Any questions -- she's not testifying,
but if you have any questions that you want her to
clarify, I'm happy to entertain.

Mr. Sherman, anything? You may disagree
with her, and I'll let you comment on that. I wanted to
make sure you had an opportunity to have her clarify
anything if you think she --

MR. SHERMAN: I think she said that
she -- you concede we didn't get a copy of this and that
was only given to the landowner.

THE COURT: I don't know if you directly
answered that.

I asked you who all received the order.

You said Dr. Sinesi.

Are you aware it was served on anybody
else?

MS. HALL: I do not know, Judge, if it
was served on anybody else.

But I do have a copy of Dick Kelly. I'll
get that case for you.

THE COURT: Thank you.
MR. CALLAHAN: Judge, I also have a copy of the Statewide Building Code that had the sections in it that she referred to.

THE COURT: I'll let you bring that in evidence in your case in chief.

MR. CALLAHAN: Thank you, Your Honor.

THE COURT: All right. Plaintiff, call the first witness.

MR. SHERMAN: I'd like to call Paige Pollard.

THE COURT: The deputy will page her.

THE BAILIFF: Raise your right hand.

(The witness was duly sworn.)

THE COURT: Please have a seat.

We do have a court reporter, so if you'll make sure your responses are audible so she can write them down as opposed to shaking your head or something like that.
PAIGE POLLARD, called as a witness by
and on behalf of the Plaintiff, being first duly sworn,
was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SHERMAN:

Q. Good morning, Miss Pollard. Would you
please state your full name for the record?

A. Paige Pollard.

Q. And also your place of employment and
your employer's address for the record.

A. Commonwealth Preservation Group, 716 West
20th Street, Norfolk, Virginia.

Q. What type of work does the Commonwealth
Preservation Group do?

A. We're an historic preservation consulting
firm.

Q. And --

MR. CALLAHAN: Your Honor, we will
stipulate that she's an expert in that field. I've --

THE COURT: What field?

MR. CALLAHAN: Restoring historic
properties, because I have hired her myself to restore
my historic property.

So she is definitely an expert.
THE COURT: I'm not sure that's the proper basis to concede, but the Court will accept her -- Miss Pollard will be qualified as an expert in the field of restoring historic properties. She may render opinions in that field.

MR. SHERMAN: And, Your Honor, just for clarification, I was going to attempt to qualify her as an expert in historical preservation, including the processes involved in the State and local level.

THE COURT: Any objection?

MR. CALLAHAN: No objection.

THE COURT: She'll be so qualified.

BY MR. SHERMAN:

Q. Miss Pollard, could you please explain to the Court what levels of Government have incentivized historical preservation?

A. There are State historic rehabilitation tax credits that are available for historic properties. There are also Federal historic rehabilitation tax credits that are available for historic properties.

Q. And why do the State and Federal governments incentivize historical preservation?

A. The theory that's borne out by economic impact analysis is that historic preservation yields greater returns for the local economy, but it also
requires property owners to spend more on renovations, and so the idea is to offset the costs and encourage preservation.

Q. So the City at large, in this case, City of Norfolk, would benefit from historical preservation?
A. The economic impact analysis would say yes.

Q. In your opinion?
A. Yes.

Q. And do you think Norfolk has seen that in the last ten years in downtown alone?
A. Yes.

Q. Is part of that economical impact the increase in property values in historic districts?
A. The economic impact analysis typically takes into account real estate tax increases as well as expenditures by occupants in the building and the net value of reusing historic buildings rather than extending public infrastructure to new areas.

Q. Okay. So just trying to be clear. The theory, one of them, is that if you preserve historic structures, everybody's property value goes up, is that fair?
A. That's never been studied. The studies focus on the disparate buildings as well as the City or
State or Federal ledger.

Q. So the specific buildings at issue increase in value and the City's tax base increases.

A. Correct.

Q. And then what's the big difference between State and Federal tax credits?

A. A couple of big differences. The review standards are the same, but the State credits are available for all properties that are listed on the registers as contributing or individually listed. The Federal credits are only for income-producing properties. The credits are usable against passive income tax liability.

Q. So on the Federal level, you said it's income-producing properties are only eligible.

A. Correct.

Q. Versus State which single family residential would be eligible.

A. Correct.

Q. Okay. And the zoning in the historical Freemason District would allow both?

A. The zoning is about building use. The State and Federal tax credit program doesn't look at use. It looks at building treatment and impact of renovations.
But West Freemason is listed on the State and National Registers and separately it's also a local historic district.

Q. Okay. I'm getting ahead of my script. This subject property 355 is in an historic --

A. It's in a State and National Register District.

THE COURT: Is it also within the City zoning ordinance, as far as you know?

THE WITNESS: Yes, it's in the local district.

BY MR. SHERMAN:

Q. And the local zoning would allow uses that qualify for State and Federal tax credits.

A. Correct.

Q. Okay.

THE COURT: Mr. Callahan, are you willing to concede the subject property is within the historic district as recognized by the City of Norfolk zoning ordinance?

MR. CALLAHAN: Definitely, Your Honor.

THE COURT: Thank you.

MR. SHERMAN: And the contributing structure to the historic designation.
THE COURT: Just within the identified zoning district.

MR. CALLAHAN: And it's a contributing structure. It is not an historic house. It is a contributing house.

MR. SHERMAN: Right.

MR. CALLAHAN: Because it was built in 1900 as a lot of houses in Norfolk were built in 1900.

BY MR. SHERMAN:

Q. So can you get State and Federal tax credits for raw land?

A. No.

Q. So that --

A. Historic rehabilitation tax credits, no.

Q. So there's got to be a structure that either is an individual landmark or contributes to an historic district in order to be eligible.

A. Correct.

Q. So this property with the structure is eligible; without the structure, it's not.

A. In my opinion, it's eligible. A formal application hasn't been submitted since the fire.

Q. Thank you.

THE COURT: Was that your question or is your question if the question was raised, it would still
MR. SHERMAN: I think that -- that's my point which is that --

THE COURT: You agree if the improvements on the property were taken down, it would not qualify for tax credit?

THE WITNESS: Right.

MR. SHERMAN: And her point, you still have to do a formal application.

BY MR. SHERMAN:

Q. In your opinion, you say the structure would qualify, although you'd want to be certain to get an application approved?

A. Correct.

THE COURT: What is that based on? Have you been in the house?

THE WITNESS: I have been in the house. We actually filed an application prior to the fire and received approval but the fire obviously changed the circumstances in the house. Typically eligibility is based on exterior and, in my opinion, the exterior has not changed so dramatically as a result of the fire to render it noncontributing.

So in my opinion, I think it would be approved.
THE COURT: Assuming it would stay up.

BY MR. SHERMAN:

Q. We skipped all the qualification. But for the Judge's benefit, you've worked at the Virginia District of Historic Resources, right?

A. Yes.

Q. And you also have worked at the City of Norfolk in their historic -- as the historic preservation planner.

A. Yes.

Q. So you had experience on the municipal level and at the State level.

A. Yes.

Q. Both of which are separate yet concurrent processes that the property owner would pursue --

A. Right.

Q. -- to get rehabilitation tax credits. And now you're in private practice and you help clients obtain approvals from localities and State.

A. And Federal.

Q. And Federal.

A. Yes.

Q. And you practice up and down the
A. Yes.

Q. Have -- okay.

Would you briefly explain the application process?

A. For tax credits?

Q. Yes, please.

A. Three-part process. The first part establishes that the building's eligible and contributing to the district or individually listed. The second part is where you describe the existing conditions and the proposed work in the context of the building treatment standards they use to evaluate proposals. Upon approval of part one and part two, as long as you stick to the outline that was presented, you are eligible for credits. Then you do your construction, and at the end of the project you file the third part of the application which includes an accountant's cost certification and photography to document you complied with the application as previously presented. And upon approval of that, you've awarded credits.

THE COURT: Credits mean some kind of rebate check?

THE WITNESS: It's a credit against your
tax liability. And the State is 25 percent of rehab costs and the Federal is 20 percent of rehab costs.

BY MR. SHERMAN:

Q. And for this property at issue, you said you completed step one out of three?
A. Yes.

Q. Okay.

THE COURT: Before the fire?
THE WITNESS: Yes.

THE COURT: Okay.

BY MR. SHERMAN:

Q. And the second step, where did that stand?
A. The building treatment review is very strict. And based on some of the work the property owner wanted to undertake, my advice to them was it wouldn't be a successful tax credit application. And so they elected to stop the process after the part one. It really revolved around an outbuilding that was proposed, the garage.

Q. And that was before the fire?
A. The decision to not pursue credits was made before the fire, yes.

THE COURT: So your opinion, it was not going to qualify for historic tax credits?
THE WITNESS: Yes, because of new construction that they want to do on the site.

BY MR. SHERMAN:

Q. And let's -- that's worth refining. A plan could have been approved with the structure but not the one that the owner wanted to do.

A. Correct.

Q. Okay. So the building caught fire after the owner learned that his preferred plan was not going to receive State tax credits.

A. Well, we never ap- --

Q. Right.

A. We never received a formal response, but my advice, based on my experience, was that the garage outbuilding that they wanted to construct would have been too much to get approval for the historic rehabilitation.

Q. And would the City have the owner submitted plans for the design?

A. Yes, and that went through the review process for the local historic district and was successful.

Q. With the design that you advised them would not be acceptable for State credits?

A. Correct.
Q. And talk about the process to get that approved at the City level.

A. Currently or at the time that we filed the application?

       It's changed. So do you want to talk about what the process would be today or do you want to talk about the process we went through at the time?

Q. At the City level?

A. Um-hum.

Q. I want to talk about what the process was at the time.

A. Okay. At the time we filed an application. We provided it to the civic league for comments. I believe those comments were provided digitally. We went to the review board and received approval for all but the landscape plan and I believe there were a couple of material selections still in play.

       But we received approval to proceed while we refine the last details.

Q. You applied to the -- on the owner's behalf, you applied to --

A. The Department of Planning.

       At the time I think it was still the Design Review Committee. I have to check that.
Recently that Design Review Committee changed to the Architectural Review Board, and I don't remember the time that that occurred.

Q. May I refresh your recollection?

A. Sure.

THE COURT: Mr. Callahan is being very accommodating.

Give me a proffer. Where are we going with all this?

MR. SHERMAN: Well, we're going to go to --

THE COURT: I mean, I don't think there's any dispute that it's a contributing property, that it would have qualified for tax credits if certain plans were produced.

I'm not sure what any of this has to do with the temporary injunction.

MR. SHERMAN: Well, I wanted her to explain the process to the extent it helps Your Honor, and then I want to explain how the -- have her explain how the appeals process is utilized and then how the demolition is used in the same process, the same certificate and that it's also subject to appeals, and that today's case, the emergency exemption, circumvented that entire process and that the emergency exemption
defeats the purpose of the process and --

THE COURT: Let me just ask Mr. Callahan, do you want to concede any of those points? If you are, I think we can bypass some of the testimony. It seems like that's coming right out of the zoning ordinance.

MR. SHERMAN: Right.

MR. CALLAHAN: Judge, the zoning ordinance has two processes. One is the one he's describing that he wants us to go back to, and that's not the one we feel we're under.

THE COURT: Does Dr. Sinesi agree that the City -- his understanding -- that the City is proceeding under the emergency demolition procedure and is bypassing or using an exemption from the certificate of appropriateness procedure?

MR. CALLAHAN: That is correct.

THE COURT: Okay.

MR. SHERMAN: Okay.

Well, then let's get to the big finish.

BY MR. SHERMAN:

Q. In your professional opinion, is this case the one contemplated for an emergency exemption?

A. I think an emergency exemption is at the discretion of the Building Code official.

The term "emergency" needs to be defined.
And I think that the -- I was on the Preservation Committee when this change was made, and I can tell you what the intent was, was that the emergency exemption would be used for imminent threats. I'm not an engineer, so it's not my position to determine whether this is an imminent threat. But at the time that this emergency exemption was created, there was stated concern by the Preservation Commission at both of the neighborhoods that it not be utilized to degrade the standard demolition process -- or the standard certificate of appropriateness process for demolition.

THE COURT: Well, let me read into the record what I think is the appropriate sentence. Tell me if this is consistent with your opinion. It says, "The emergency demolition of any structure or any portion of a structure which is in such dangerous, hazardous or unsafe condition that it has been ordered demolished by the Building Commissioner or the Fire Marshal when they have determined that such condition could reasonably be expected to cause death or serious physical harm."

THE WITNESS: Correct.

THE COURT: All right.

BY MR. SHERMAN:

Q. And does this case create precedential
value for future use of that emergency exemption?

MR. CALLAHAN: I object. She's not been an expert in that category.

THE COURT: Response?

MR. SHERMAN: Well, we did stipulate she's an expert in the process and if other people are going to utilize this exemption, that --

THE COURT: I'll allow you to rephrase. Whether it's precedential whether she's seen something like this before, I'm going to sustain the objection.

MR. CALLAHAN: Thank you, Judge.

BY MR. SHERMAN:

Q. Does -- you mentioned the intent of the committee was not to subsume the rule itself, the process itself, right?

A. Yes.

Q. So is it fair to say that an abuse of the emergency exemption could have that slippery slope effect to impact the process itself?

A. There was concern that there was potential to abuse the emergency exemption at the time that it was created.

Q. And in this case where the traumatic event was 21 months ago, do you find it concerning on a procedural level?
A. It's certainly a unique set of circumstances that weren't contemplated at the time that the emergency exemption was discussed within the Preservation Committee.

Q. Is --

THE COURT: When you're talking about this change, was this a change to the local zoning ordinance or something else?

THE WITNESS: The emergency exemption was introduced in the last few years.

THE COURT: Introduced into what?

THE WITNESS: Introduced into the Code, into the local Code.

THE COURT: The Local Norfolk zoning ordinance.

THE WITNESS: Correct. It did not exist prior to that.

THE COURT: Got it.

BY MR. SHERMAN:

Q. Let me ask you this. Does the State enact a law that allows the City to create the local historical preservation rules and guidelines?

A. Yes, State Code enables the creation of local historic districts.

Q. And does it detail in specifics how you
can demolish an historic structure?

A. It has guidance and time constraints and mandates about how a demolition application should be reviewed.

Q. Does it provide any emergency exemption?

The State Code.

A. Not in the section about local historic districts, no.

Q. And in your opinion, is the demolition of significant historic resources inapposite to the purpose of historic preservation?

A. Yes.

MR. SHERMAN: No further questions, Your Honor.

THE COURT: All right. Mr. Callahan?

CROSS-EXAMINATION

BY MR. CALLAHAN:

Q. Miss Pollard, you would agree this building is subject to demolition -- is subject to the Statewide Building Code?

A. Yes.

Q. Okay. And it's also subject to being taken down, demolished and as a result of the Statewide Building Code.
A. Yes.

Q. And if the report -- Speight Marshall, you're familiar with them?
A. Yes.

Q. And you were involved with them regarding the leaning tower of Granby Street?
A. Um-hum.

THE COURT: You have to say yes or no.
THE WITNESS: Yes.

BY MR. CALLAHAN:

Q. All right. And you found them to be a very reputable engineering firm?
A. Yes.

Q. One of the best in the area?
A. I'm not going to evaluate that.

Q. All right. And if their report says that this building is structurally not sound and is such that it is a hazard to the community and not safe and it needs to be torn down, would that be the appropriate thing to do if that was their structural engineer's opinion?
A. I think as the Code says, that's a decision for the Building Code official.

Q. And if the Building Code official makes that decision, then that would be the proper decision by
the City officials.

A. I think that's the proper decision weighing the public interest of the local district.

MR. CALLAHAN: Thank you, ma'am.

THE COURT: Any redirect?

MR. SHERMAN: Yes, Your Honor.

REDIRECT EXAMINATION

BY MR. SHERMAN:

Q. Now, if that same report from that reputable engineering firm didn't say it was a hazard but said the most reasonable thing to do would be to take the building down for feasibility purposes, do you think that is the purpose of the emergency exemption?

A. I don't think the purpose of the emergency exemption is to allow for the most reasonable approach but to allow for demolition in instances where it is a public safety hazard.

Q. And if the property owner sought a certificate of appropriateness for demolition, would that -- would the Architectural Review Board weigh feasibility as a part of their decision-making process?

A. There is a clause for economic feasibility in the design guidelines that focuses not on the economics as it relates to the property owner's
pocketbook but economics in relation to the property
values in the surrounding area.

Q. Mr. Callahan mentioned the Building Code. Are you aware that there were Building
Code violations on this structure well before the
Building Code was invoked to obtain a demolition permit?
A. No, but that's outside of my area of
expertise.

Q. Well, if the exemption was the primary
vehicle for citizens to demolish historic property,
would you agree that that puts an emphasis on
enforcement at the City level?
A. Yes.

Q. And if it's proven or shown that there's
a struggle with enforcement as it is, would that in
itself create burden to a portion of the system that's
already failing?

MR. CALLAHAN: Judge, I'm going to
object. I don't see how that's relevant to what
Dr. Sinesi has to do here today.

THE COURT: Response?

MR. SHERMAN: I'm not sure I know what he
means "what Dr. Sinesi has to do here today."

THE COURT: Let him expound on the
objection.
Go ahead, Mr. Callahan.

MR. CALLAHAN: Dr. Sinesi is -- they are asking about whether the City -- whether or not it's appropriate for the City to do what they have done.

That's not Dr. Sinesi's...

THE COURT: Well, the Court has to evaluate this.

One of the factors is the reasonable likelihood of success on the merits.

I guess the Court's treating this as there may be some declaratory judgment coming questioning the City's actions. So I'll give him some leeway.

Overruled.

MR. CALLAHAN: Thank you, Judge.

BY MR. SHERMAN:

Q. Does this put burden on the enforcement at the City level?

A. Yes.

Q. And if there's no opportunity for the neighborhood to participate, will that create their only process -- if the neighborhood has no opportunity to participate in the civic process at the ARB because this is an exemption, will that create for them their only way to participate by hounding the City and the
enforcement officials?

A. I would expect that if the emergency demolition provision is invoked, there will be much higher scrutiny within the -- all of the local historic districts about the status of enforcement actions. I think that would be a natural result.

Q. Does Dr. --

A. Was that your --

Q. I think so.

I think the -- if you agree that the emergency exemption takes us out of the normal civic process, right, and at that point --

A. Yes.

Q. -- all everyone can do is look to the City for enforcement before it becomes too late.

A. Yes, I think that would be the outcome.

Q. Do you think that Dr. Sinesi should have gone to get a certificate of appropriateness in this case for demolition?

MR. CALLAHAN: Objection, Your Honor. I don't know how that's relevant. She's not an expert in that.

THE COURT: Sustained.

You can rephrase it, if you'd like.

MR. SHERMAN: Well, I'll try, Your Honor.
THE COURT: You can give her a hypothetical if you like.

BY MR. SHERMAN:

Q. Imagine that there's a beautiful historic structure at the epicenter of an historic district and it caught on fire in three places by an arsonist and it sat without any, little or no repair for 21 months and then the owner appealed for -- to the Building Commissioner for an emergency exemption.

Do you think that owner would have been better served, do you think the process would have been better served by seeking a certificate of appropriateness for demolition?

A. Yes.

MR. SHERMAN: No further questions.

THE COURT: Any need to hold the witness for possible re-call?

MR. SHERMAN: No, Your Honor.

MR. CALLAHAN: No, Your Honor.

THE COURT: All right. You're free to go, you're free to stay in the courtroom, if you'd like, but you're not required to stay in the courthouse.

Next witness?

MR. SHERMAN: Greta Gustavson.

Your Honor, we're going to stipulate that
this historic photograph from the Slover Sargeant Memorial Collection is the property, historic picture of the property and that this building permit from 1901 is relating to the building at issue.

THE COURT: You agree, Mr. Callahan?

MR. CALLAHAN: I do. No objection.

THE COURT: Plaintiff's Exhibit 5. It will be collectively.

MR. SHERMAN: Thank you.

MR. CALLAHAN: Thank you, Judge.

(Plaintiff Exhibit Number 5 was received.)

THE BAILIFF: Raise your right hand and turn to the Judge.

(The witness was duly sworn.)

THE COURT: Please have a seat.

We do have a court reporter, so if you'll make sure your responses are audible so she can write them down as opposed to saying yes or shaking your head. Thanks.
GRETA GUSTAVSON, called as a witness by and on behalf of the Plaintiff, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SHERMAN:

Q. Please state your full name and address for the record.

A. Greta Gustavson, 421 West Bute Street, Norfolk, Virginia.

Q. Do you have any civic affiliations relevant to this matter?

A. Yes, I do. I'm a long-time board member and former president of the Freemason Street Area Association. I also am a nonvoting member on the, the Oversight Committee, the FSAA's Historic District Committee.

Q. Do you think the neighborhood would be harmed by the loss of this structure?

A. Greatly.

Q. Do you think the structure could be replaced?

A. Very unlikely that it could be. It's a Flemish bond pattern with ionic columns. Just the work of the building is something that could not be very
MR. SHERMAN: Your Honor has already accepted both of these as exhibits without objection.

BY MR. SHERMAN:

Q. And so my last question is, do you think that the neighborhood benefits from historical preservation?

A. It, it definitely does. Prior to 1977 when it became a local historic district, many of the buildings had been abandoned or made into apartments or businesses. And with this particular building, the intent was to go from a business and back into a single-family home, which was wonderful. And that particular intersection is one that's very visible in the neighborhood, and the loss of that structure would be detrimental to the neighborhood.

MR. SHERMAN: No further questions.

THE COURT: All right. Let me ask you, ma'am. You mentioned you live at 421 West Bute Street. Is that also within the historic district?

THE WITNESS: Yes, it is.

THE COURT: Thank you.

Mr. Callahan?

MR. CALLAHAN: No questions, Your Honor.
THE COURT: Any reason to hold the
witness for possible re-call?

MR. SHERMAN: No, Your Honor.

THE COURT: All right. You're excused,
ma'am. You're free to stay in the courtroom, if you'd
like, or you can leave the courthouse, if you'd like.

THE WITNESS: Thank you.

MR. SHERMAN: Your Honor, I'd like to
call Gary Naigle.

THE BAILIFF: Turn and face the Judge and
raise your right hand.

(The witness was duly sworn.)

THE COURT: All right. Please have a
seat.

We do have a court reporter who's writing
everything down, so please say yes or no as opposed to
shaking your head or something like that when you
answer, okay?

THE WITNESS: Okay.

THE COURT: Thank you.
GARY NAIGLE, called as a witness by and on behalf of the Plaintiff, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SHERMAN:

Q. Would you please state your name and address for the record?
A. Gary Naigle, N-a-i-g-l-e, 421 West Bute Street, Number 206.

Q. And, Mr. Naigle, what is your professional background?
A. Well, I've been in construction since I was a teenager. But I was a City superintendent for five years and then three years building construction house -- houses out in Virginia Beach. In 1968 I was with the Norfolk Redevelopment and Housing, spent 30 years there.

Q. And what positions did you hold at NRHA?
A. I started out as a -- the first rehab specialist there, moved up to a supervisory position from there, and ended up with being the rehabilitation construction officer for the Redevelopment Authority.

Q. And as the officer, did you have a team of inspectors reporting to you?
A. Yes, I had, let's see, three inspectors from the Health Department and five rehabilitation specialists, and that varied from time to time.

Q. What kind of work was the NRHA doing at that time?

A. We were in the conservation projects for the City of Norfolk, rehabilitation of the old structures.

Q. At the time the City believed that that would benefit the citizens and the municipality at large, historic preservation?

A. Yes.

Q. What areas in Norfolk specifically did you work on?

A. Well, we worked -- we started out in Ghent and we went to Freemason, which was Downtown West at that time we called it, Park Place, Colonial Place, Riverview, Ocean View, Huntersville, Berkley. The main thing that would be close to this type housing would have been the Ghent project.

Q. And how did NRHA facilitate redevelopment?

A. Well, this wasn't redevelopment. This was conservation.

Q. Thank you.
How did they facilitate it as far as --

A. Conservation project ended up with standards. Standards were above the Minimum Housing Code.

Our office was in charge with doing the inspections.

And then the Federal Government had what's called a 312 home program and 115 grant program which allowed us to make low interest loans to the owners.

These are houses people owned. They weren't buying the house. They owned the house. And it will pay for the rehabilitation of that structure.

Q. How many properties would you guess that you inspected or supervised the construction of?

A. Like this one or do you want total?

Total all over the City would probably be in the couple thousand.

Q. How about just in the same construction?

A. In Ghent, we had 600 units and probably got 50 units in Downtown West.

Q. Of similar construction?

A. Similar construction.

Q. Building era to the subject property.

A. Right.
Q. And what conditions were those in, the 600 you mentioned?

A. It varied. They were inhabited, some were unfit for human habitation when we got them, some were shells. It was the whole spectrum.

Q. When you say uninhabitable, did that mean it will require demolition?

A. No.

Q. So a structure that was uninhabitable to be saved.

A. Yes.

Q. What was the standard construction method back then in 1900 when those 600 homes were built?

A. Well, in 1900, most of the houses like would be brick, it would be multi-brick which means wide, thick brick walls, solid brick some people call it, and a standard framing at the time would be platform with joist pockets. That's what holds your floor. Then they would build from the floor up.

Q. Can you explain a joist pocket to the Court.

THE COURT: Before you go too much further, I assume everyone conceded the subject property, at least prior to the fire, contributed to the historic district, Mr. Callahan?
MR. CALLAHAN: Yes, sir.

THE COURT: All right.

MR. SHERMAN: And, Your Honor, I want to make the point that he's got experience constructing, rehabilitating, conserving homes.

THE COURT: All right. We can agree to that point.

BY MR. SHERMAN:

Q. So how did the building materials in 1900 compare to modern construction?

A. Well, bricks are bricks. As far as -- what do you mean what do --

Q. Do they still tie in the framing to the --

A. There's different framing practices from 1900 to like 1920 there's even different framing. If it was a wooden building, it will be most likely balloon construction, but this house was built basically the same as every other house in Ghent or any other area that had 1900 houses.

Q. Okay. And the bricks are bricks. How about the lumber? Was the lumber similar or different?

A. Well, most of the time it's a rough-cut lumber instead of a nominal lumber like they have today.
which is dimensional.

Q. What about the maturity of the lumber?
A. Well, the forests and what have you weren't depleted like they are today. So lumber was much clearer and a better quality actually with the old houses.

Q. Better quality wood, would that mean denser? More mature?
A. Well, it's more mature, yes.

Q. Dimensions were the same or different?
A. Dimensions were different. Two-by-four would actually be two by four, not one by three.

Q. Okay. And then as far as the heavier rough-cut lumber, how would that, how would that catch fire different than a modern --
A. Basically it wouldn't, it wouldn't catch fire differently. It would ignite on the rough surface first, but as far as once it got going, it's going to go just as fast as...

Q. All right. Do you walk by your -- do you walk your dog by the structure on a regular basis, the subject structure?
A. Oh, yes.

Q. Are you in fear for your life on the sidewalk next to the structure?
A. No.

Q. In your opinion, is the house savable?

A. Yes.

MR. SHERMAN: No further question,

Your Honor.

THE COURT: Mr. Callahan?

MR. CALLAHAN: Thank you.

CROSS-EXAMINATION

BY MR. CALLAHAN:

Q. Mr. Naigle, you haven't been inside this house, have you?

A. Pardon me?

Q. Have you been inside the house?

A. No, I have not.

Q. Have you ever been inside of it?

A. No, I have not.

Q. Okay. And you said you were with the Norfolk Redevelopment and Housing Authority?

A. Yes, sir.

Q. Okay. And they were -- they were in the conservation of buildings; is that correct?

A. Yes, sir.

Q. Okay. And so they are the ones that tore down east Ghent?
A. That was not part of the conservation project.

Q. What was that?

A. That was redevelopment.

Q. Okay.

A. Two different horses.

Q. All right. And so none of the buildings over there would have been -- could have been conserved?

A. Probably, but that wasn't my job.

Q. Okay. And so just the ones that you're saying that are up by the Hague, those areas where along Colonial Avenue?

A. They go from the Hague to the Princess Anne, yeah.

Q. And that area went from the Hague to Redgate Avenue, didn't it?

A. That's correct.

Q. Okay.

All right. And there was some houses that were torn down in that area. New construction took place.

A. Most likely, yes.

Q. And some of those buildings there were not conserved.

A. That's right.
MR. CALLAHAN: Thank you.

THE COURT: Redirect?

MR. SHERMAN: No questions, Your Honor.

THE COURT: All right. Do you need to hold the witness?

MR. SHERMAN: No.

THE COURT: All right. You're excused, sir. You're free to stay in the courtroom, if you'd like, or you're free to leave the courthouse, if you would like.

Next witness?

MR. SHERMAN: I'd like to call Deborah Cacace.

(The witness was duly sworn.)

THE COURT: All right. Please have a seat.

The court reporter is writing everything that's being said today, so if you'll make your responses, use yes or no as opposed to shaking your head or something, okay?
DEBORAH CACACE, called as a witness by
and on behalf of the Plaintiff, being first duly sworn,
was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SHERMAN:

Q. Good afternoon, would you please state
your name and address for the record and spell it for
the court reporter.

A. Deborah Cacace, spelled C-a-c-a-c-e. My
address is 801 Lord Leighton Court, Virginia Beach,
Virginia.

Q. And where do you work?

A. Engineering and Testing Consultants,
Incorporated.

Q. And what is your role there?

A. I am the president.

Q. And how long have you been the president?

A. Since 1993.

Q. And would you explain for the Court your
educational background?

A. I have a bachelor of science in education
from Old Dominion University and bachelor of science in
civil engineering and technology from Old Dominion
University; in addition, various additional training,
seminars and things like that, probably about 800 hours.

Q. And can you explain some of your relevant experience to the situation at hand here?

A. My specialty is looking at problems with structures in relation to materials and how they perform. That includes a lot of old brick structures.

I've worked on projects for -- under the City of Norfolk contracts, some of the projects there such as Harrison Opera House and I've worked at the -- up in Annapolis, an admin building up there that was being rehabbed. That was an old brick building. Some residential structures including one that was built in 1750 in Windsor, several structures throughout the City of Norfolk, residential brick structures. Called upon to look at issues or just general structural soundness of those buildings.

Q. Thank you.

Any experience at the old Cavalier Hotel?

A. The old Cavalier Hotel as well, I did some work there while they were rehabbing that.

Q. Structural engineering work at the Chamberlain Hotel in Hampton?

A. Yes.

Q. And then how about for the Cape Charles Historical Society?
A. Cape Charles Historical Society, I've worked on their museum and the Palace Theater as well as a new project over there which is an old structure, an old pilothouse.

Q. Is this a copy of your resume? Is this an accurate copy of your resume?

A. Yes, it is.

Q. All right.

MR. SHERMAN: Your Honor, I'd like to move her resume into evidence and move to qualify her as an expert in structural engineering.

THE COURT: Any objection?

MR. CALLAHAN: Yes, I'm going to object to any structural engineering, Judge. I don't see --

THE COURT: I'll allow you to conduct additional voir dire, if you'd like.

MR. CALLAHAN: Thank you, Judge.

VOIR DIRE EXAMINATION

BY MR. CALLAHAN:

Q. Miss Cacace, do you have a license as a structural engineer?

A. I'm licensed as a professional engineer in the State of Virginia.

Q. Okay. And do you have a specialty in
A. I don't have a specialty in structural design engineering. I don't do new design work, only old structures.

Q. All right. And did you have -- and I see that you had a chance to review the report of Speight Marshall, did you not?

A. Yes.

Q. You had an opportunity to review that. But they are structural engineers, are they not?

A. They are structural design engineers.

Q. Okay.

A. Yes.

Q. And so you're not someone that a homeowner would have come in and do the structural engineering work for your home, are you?

A. I'm someone who a homeowner would have come in and evaluate structural issues and provide recommendations for repair. I don't do things like, "What size beam do I need? I want to take this wall out." I evaluate the existing, make repairs, bring things back into conformance or structural soundness.

Q. Okay. And so the report that you reviewed by the structural engineers made some
conclusions as to what the condition of the structure was inside and what should come down; is that correct?

A. Yes.

Q. And, for example, the back portion of the house, the porch, they recommended that it come down because it could fall down at any minute.

A. Yes.

Q. Is that correct and that --

THE COURT: She's not on cross right now.

She's just voir dire.

MR. CALLAHAN: Okay. Judge, I would suggest she does not qualify as an expert.

THE COURT: I'm going to ask you to get a little more specific with regards to her proposed designation.

BY MR. SHERMAN:

Q. You testified that your specialty was in reviewing the structural soundness of historic structures?

A. Historic and any structures, but historic structures is something that I've done a lot with, analyzing their condition and determining if they are sound or if repairs are needed, very similar to what was done in this report.

Q. Right.
And so based on your knowledge, skill and experience, is this a job that you would --

THE COURT: I don't want opinions yet. I just need to --

MR. SHERMAN: I know, I understand.

BY MR. SHERMAN:

Q. But I'm saying, is this a client that you'll feel comfortable taking into your practice? Whether it be the review of the report or view of the house, is this a structure that fits your specialty and your expertise?

A. Yes, my expertise is doing what they have done on this particular job with --

THE COURT: Tell me how you would characterize what you do. You're not a structural design engineer, so tell me again what you hold yourself out to be.

THE WITNESS: I don't do new design work. I do evaluation of existing materials and assemblies, which include structural systems, to determine if they are sound or if they need repair, but those repairs are --

THE COURT: Including the design of those repairs?

THE WITNESS: To a certain limit, yes,
the design of the repairs, I do that for many, many
structures. Some are beyond my expertise, some are not,
but I do that for many structures, the design of those
repairs.

BY MR. SHERMAN:

Q. Are you qualified to review the report of
another engineer and opine on whether or not --

MR. CALLAHAN: Judge, I'm going to
object. I don't think we're there yet for her to opine
on anything. I don't think this lady is qualified yet
as a structural engineer.

THE COURT: The Court is not going to
qualify her as a structural engineer.

The Court will entertain another more
limited designation, and I'd like you to offer what that
limited designation would be.

MR. SHERMAN: Okay.

BY MR. SHERMAN:

Q. You're a professional engineer in
Virginia.

A. Yes.

Q. And how many years experience do you
have?

A. 36.

Q. Okay. And have you performed and managed
projects that include historic structures built in the 1900 era?

   A. Yes.
   Q. Have you recommended for clients whether or not their structure was sound?
   A. Yes.
   Q. Have you recommended whether or not further repairs were necessary?
   A. Yes.
   Q. Have you recommended the types of repairs that were necessary?
   A. Yes.
   Q. Have you recommended at times that clients seek additional engineering from other companies if there was additional design work beyond the initial review?
   A. Yes.

MR. SHERMAN: So, Your Honor, I would offer her testimony which will assist you in understanding the evidence and understanding this report as far as the structural soundness of the structure and the, and the report for what it says and what it doesn't say as far as structural integrity of that building, not how to fix it, but whether or not it's an imminent threat.
MR. CALLAHAN: Your Honor, we would object. She's not a structural engineer.

What's been handed to me as her curriculum vitae says her expertise includes all aspects of construction materials testing and evaluation of existing materials and systems including soil, concrete, asphalt, et cetera, et cetera.

And so they are trying to offer her as someone to contradict the report that you have of a structural engineer who has made their findings as a structural engineer, which she is not.

MR. SHERMAN: That's not why we're offering her, Your Honor.

We're offering her to give an evaluation of a structural brick residence built in 1900, which is exactly what she does.

THE COURT: As I understand, I think what she's being offered for is the evaluation of historic structures, including structural soundness and design of associated repairs. Do you have a problem with that?

MR. CALLAHAN: The only problem I have with that, Judge, she's not been inside this building, so I don't know how --

THE COURT: That goes to the weight of her opinions, not whether she can render those opinions.
MR. CALLAHAN: All right.

THE COURT: She'll be qualified as an expert in the field of evaluation of historic structures, including structural soundness and the design of associated repairs and she may render opinions in those fields.

BY MR. SHERMAN:

Q. How did you get involved in this project?
A. I was contacted by a member of the Freemason Street Area Association and asked if I would review a structural report that was prepared for this residence that was used to obtain an emergency demolition order.

Q. Did you review any other documents?
A. I reviewed only that report and there were two memorandums from the City of Norfolk included.

Q. Did you, did you inspect the property?
A. No, I did not inspect the property.

Q. Okay. And so you reported on the report, is that fair?
A. Yes.

Q. Okay. So let's start with what the report does say.

How does the report describe the brick shell of the building?
A. The report describes the brick shell of the building as structurally sound with some minor deficiencies that at this time were not affecting its structural integrity.

Q. And in that 1900 era, was it common for homeowners to have open flames in the house?

A. Yes.

Q. Did that lead to fires?

A. Yes.

Q. So is it a common occurrence to have the inside catch on fire and, and the bricks on the exterior remain?

A. Yes, I would -- several houses that have had an issue with the fire on the interior and the brick is still in place.

Q. Is it fair to say that was somewhat common back in 1900?

A. Regularly happened, yes.

Q. Okay. And so the brick shell, how has it held up in the two years since the fire in this case?

A. Based on this report, there has not been any changes to that brick shell. The only issues that they pointed out were some minor cosmetic issues from long-term erosion, a little bit of erosion of the mortar and I think one crack.
Q. The report on page 48 has that quote that you just mentioned, the building's exterior multi-width walls appear to be in sound condition.

A. Yes.

Q. And do you disagree with his opinion in the next sentence that the brick walls are feasible to be salvaged?

A. No, I don't disagree with that.

Q. Okay. And then the third sentence is when the parade of horribles begins and the dominoes start to fall. That third sentence says, "As the wood portions of the framing are removed, the exterior walls will lose the lateral stability the roof and the floors provide the exterior walls."

A. Yes.

Q. If the interior did require extensive repairs, is that how you would do it? Would you rip it out all at once?

A. Typically they stage it and would do a floor at a time and they would provide bracing that would maintain the lateral support.

Q. Is that, is that a common renovation?

A. That's something that's done regularly when they rehab this type of a structure.

Q. Okay. And so in your opinion, is this
building at risk for imminent collapse?

A. No, except for the porch.

Q. Okay. And let's contrast the porch to the overall building, if we can.

On page 48 at the very, very bottom in bold, you see his recommendation as to the future of the porch?

A. Yes, they recommend it be demolished as soon as possible to prevent a potential hazard to the public.

Q. Okay. Can you compare and contrast that to his conclusion on page 49 at the bottom in bold for the overall structure?

A. That conclusion said --

MR. CALLAHAN: Judge, I've got to object because I don't think she can have --

THE COURT: The report says what it says. It's been accepted into evidence. I understand we're going to have someone from the firm that will be available for cross-examination. Having her read the report doesn't help me.

If you want to have her specifically agree or disagree with portions, I'm happy to go there. But the report's in evidence already.
BY MR. SHERMAN:

Q. Miss Cacace, I'm trying to have you contrast the two -- just for the Court, you mentioned that the porch is in danger of imminent collapse but the overall building, in your opinion, that it's not.

Can you contrast what in the report led you to that opinion that there may be two different outcomes for the porch as opposed to the structure?

A. Well, the report lists two different things. They said that the exterior was structurally sound and then they mentioned specifically that the porch was in imminent danger of collapse.

Q. So if the house was in danger of imminent collapse, would you -- what kind of language would you expect to be in the report?

A. The similar language to what they mentioned in the report, that the house was in danger or the entire structure was in danger of imminent collapse.

Q. Okay. Is this a true and accurate copy of your report on the report?

A. Yes.

Q. Okay. And would you for the record read the last two paragraphs of the second page?

MR. CALLAHAN: Your Honor, I've got to object. The report he put into evidence. The plaintiff
put the report into evidence. Now he wants to
ccontradict his own report.

Once he puts it into evidence, he's got
to live with what that report says. He can't then put
somebody else on the stand to contradict that report.
Massie v. Firmstone I think is the case. And so it's
long-standing.

THE COURT: I'm not sure he put the
report -- I mean, he's just relying on the report.

MR. SHERMAN: But he put it into
evidence.

THE COURT: Response?

MR. SHERMAN: Your Honor, I put the
report into evidence because that's what the Building
Commissioner used to justify demolition. So it is
evidence in this case, and it needs to be considered and
it needs to be attacked.

THE COURT: The Court is viewing that as
merely an exhibit to a memorandum that he's relying upon
to explain the situation.

So the Court is not going to find -- I'm
not saying this report is coming in, it hasn't been
offered yet, but the Court finds that he can go into a
counter report.
BY MR. SHERMAN:

Q. Miss Cacace, the last two paragraphs of the second page, would you read those into the record?

A. Okay. "Based on the report lacking any indication of damage to the exterior --"

THE COURT: I know there's no objection. Have her give me her opinion.

Is the report coming in or not?

MR. CALLAHAN: I've objected to it.

THE COURT: Okay. She's been qualified.

Ask her opinion. Her reading from another document is technically still hearsay.

So ask her the question and have her answer the question. I don't want her citing from the report, though.

BY MR. SHERMAN:

Q. I'd like you to give your opinion on the structural soundness and whether or not it's in need of imminent repair.

MR. CALLAHAN: Judge, I would ask that the report be removed from her because all she's going to do is read the report. If she doesn't have an opinion based on anything she knows --

THE COURT: I agree.

If you want to lay a foundation and try
to get the report in, that's one issue, but otherwise
she doesn't need to have it in front of her.

THE WITNESS: Okay. The summary of my
report that I provided after reviewing this report was
that based on what the Speight Marshall report had
described and had recommended that the exterior walls of
the house are structurally sound, they are still
standing, they have been standing without damage for two
years since the fire, almost two years since the fire,
and nothing has changed as far as those go. So that
they remain structurally sound as indicated in the
Speight Marshall report and that they are not in
imminent danger of collapse; that there were some
portions of the structure that were separate from the
brick walls, meaning the back porch was in danger of
collapse.

And my summary was that the overall
exterior structure, which in structural brick houses is
where the main structure gets its strength and support,
was intact and sound and did not require demolition at
this time.

BY MR. SHERMAN:

Q. Okay, thank you.

Did you prepare this report?

A. Yes.
Q. Does it fairly and accurately state your opinion?

A. Yes.

Q. Okay. And you mentioned that there were two portions of the structure that are in danger of imminent failure. What is your opinion on the portions of the structure that are in danger of imminent failure?

A. They appear to be described accurately based on the pictures I saw and based on the type of construction. The porch is wood frame, so it would have sustained a fair amount of damage from the fire, and that is in danger of further collapse. There was an area mentioned in regards to an interior stairwell where some of the stringers and beams were in danger of falling and people shouldn't walk on that stairwell, and that also is something that needed to be addressed if anybody's going to be inside that house.

MR. SHERMAN: Your Honor, I'd move to admit the report as evidence.

MR. CALLAHAN: Judge, I'm objecting to the report. She can testify, she has testified. What she's testified to has come into evidence. I don't think her report comes in.

THE COURT: I agree. The Court's not
going to accept it in as evidence. If you want to have her opine on anything else in her report. But she's a live witness, she can certainly testify.

MR. SHERMAN: Sure. Can I offer it and have it marked as rejected?

THE COURT: Sure. It will be marked as Plaintiff's Exhibit A that the Court will not be considering.

MR. SHERMAN: Thank you, Your Honor.

(Plaintiff Exhibit A was marked.)

BY MR. SHERMAN:

Q. Miss Cacace, the opinion on page 49 in the Speight report about the overall structure, that last sentence says that, "Upon the removal of the wood frame which dangerously stabilizes the exterior walls without a complicated bracing system, it is our opinion that the best and most reasonable course of action for this structure is complete demolition."

In your experience and in your professional opinion, is the most reasonable course of action the same as in the threat to public safety and health?

MR. CALLAHAN: Objection, Your Honor, that's not what she's qualified to tell us here today.

The opinion that's contained in there
1 says it should be demolished. Her opinion is associated
2 repairs and structural soundness. She's testified as to
3 the wall. She's not been in the interior. I don't
4 think she can give us that opinion.
5
6 THE COURT: I'm going to overrule because
7 I don't think that was the question. I think the
8 question is just whether she understands the term
9 reasonable to be the same as some other term.
10
11 So go ahead and rephrase the question, if
12 you would like.
13
14 BY MR. SHERMAN:
15
16 Q. It's your opinion that the overall
17 structure in this report does not demonstrate imminent
18 failure; is that right?
19
20 A. Yes.
21
22 Q. Okay. And so would you expect stronger
23 language in the report if it was in danger of imminent
24 failure?
25
26 A. Yes, I would.
27
28 What I think they are recommending here
29 is based on other factors that they have brought up
30 within their report which are true factors about it
31 requiring bracing for repairs and needing to be
32 addressed in a certain manner like we talked about
33 earlier about having to make sure things remain stable
while you do the interior work. And they also brought up cost factors and things like that which are not -- are separate issue from the structural issues.

But structurally their report says that the exterior brick is sound and stable and that the back porch needs to be removed and the interior has many, many issues that need to be removed and replaced for various reasons, some of those being smoke damage, which is really an odor issue and is something different than structural damage.

MR. SHERMAN: Okay. No further questions.

THE COURT: All right. Cross?

CROSS-EXAMINATION

BY MR. CALLAHAN:

Q. The bracing that you have described, that would be the bracing that you would have to start bracing it up at the top, is that correct, of the structure?

A. It depends on how they approach the rehab.

Q. And in order to do that bracing, those are steel beams that they use?

A. There's all different ways to do it. It
would be something that was specific to the structure that would -- there are different options. That's one way to do it.

Q. All right. And that would go out and possibly block the city street?
A. There's only one side that seems to be close to the city street based on the map I looked at. There was 10 or 15 feet to the front of the structure, looks like there's some area behind the structure and one side of the structure has what looks like a parking lot.

Q. Have you ever been by the structure?
A. I have not. I have only reviewed the maps.

Q. You've never been by -- the only thing you've seen is pictures and read the report.
A. I've also looked at it on Google Earth and the street maps to see where it lays in relation to the street.

Q. Okay. So other than those things and the report prepared by a structural engineer, that's all you've looked at then. You've never gone in the structure, never seen the structure in person.
A. No, I have not.

MR. CALLAHAN: I don't have any other
THE COURT: Redirect?

MR. SHERMAN: No, Your Honor.

THE COURT: Do you need the witness?

MR. SHERMAN: No.

THE COURT: Thank you very much. You're excused to stay in the courtroom, if you'd like, or you may leave the courthouse.

Any other witnesses for the plaintiff?

MR. SHERMAN: Yes, Your Honor. I'd like to call Andy McCullough.

THE COURT: All right. How much time do you think -- I scheduled an hour. I really need to be out by 5:30. Is that going to be an issue?

MR. SHERMAN: No, Your Honor. I've got two more.

THE COURT: All right.

MR. SHERMAN: And I would like to offer the opportunity to stipulate that the neighborhood and the City will be irreparably harmed by the loss of the structure which will prevent the need for any more citizens to make that point.

MR. CALLAHAN: Judge, if -- I know every one of these citizens would come in and say it was irreparably harmed, okay? I have no doubt they would
say that. So there's no need to parade 25 of them up here to say exactly --

    THE COURT: Ultimately it's a legal issue. But I understand that you're proffering -- if you want to put their names on the record, you're proffering that certain witnesses would testify that the loss of this structure will be irreparable harm to the association, to the local neighborhood.

    Sounds like Mr. Callahan is willing to stipulate that that's how they would testify.

    MR. SHERMAN: Thank you, Your Honor.

    MR. CALLAHAN: I am.

    (The witness was duly sworn.)

    THE COURT: You may have a seat.

    With that said, I don't know if anyone's waiting outside because they anticipated testifying. If someone wants to go out and let them know they are free to come in, that's fine as well.

    MR. SHERMAN: Could you do that for Mike Spencer? Thank you.

    THE COURT: All right. We do have a court reporter with us, so if you will make sure your responses are audible so she can write them down as opposed to shaking your head or something like that.
EDWARD ANDREW McCULLOUGH, called as a witness by and on behalf of the Plaintiff, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SHERMAN:

Q. Mr. McCullough, will you please state your name for the record and spell it for the court reporter?

A. Edward Andrew McCullough, M-c-C-u-l-l-o-u-g-h.

Q. And, Mr. McCullough, what is your educational background?

A. Electrical engineering from Virginia Tech and I did some graduate work in real estate analysis at Harvard.

Q. Okay, great.

And your career experience?

A. I was originally an engineer and did robotics and satellite work, followed by some construction and mechanical construction design, and I've been doing development since 1994, 1995. I started in the mid nineties doing recreation development all over the country and then shifted in 2002 or 2003, did a lot of Enterprise and Empowerment Zone work, office
warehouse development, and then in 2005 shifted to what I currently do which is mostly historic -- redevelopment of historic properties.

Q. And at this point in your career, what percentage of your work is historic redevelopment?
A. Almost all. I mean, certainly more than 90 percent.

Q. Has that been true for the last 13 years since 2005, as you mentioned?
A. Yes.

Q. All right. And what type of uses have you converted historic structures into?
A. We started initially with small projects that were condominiums, that evolved into apartments, mixed use with apartments, so a lot of retail, restaurants, things like that. We've done some commercial space, some regional headquarters for some self-owned companies in historic space.

Mostly now it's, because of the market, the financing, it's mostly a hundred percent apartments, residential.

Q. I see.

multi-family?
A. Yes.

Q. Have you done condos?
A. Yes.

Q. Have you done single family?
A. Yes.

Q. Have you done commercial?
A. Yes.

Q. Multi use?
A. Mixed use, like retail?
Q. Yes, sir.
A. Yes.

Q. Okay. And then what localities have the majority of your work been in?
A. Most of them local; Suffolk, Portsmouth, Norfolk, and Richmond.

Q. Okay. And then briefly your experience in Portsmouth?
A. We developed several blocks of buildings in the 600 block and 700 block of High Street. We developed some condominiums and homes on Dinwiddie Street, on Queen Street, on County Street.

Q. And then in Norfolk?
A. In Norfolk, we did a big project called Riverview Lofts which is down at the end of Colley Avenue, Fort Norfolk.

Q. How many units are in that multi-family?
A. 81.
Q. And then in Suffolk?
A. Suffolk we did -- actually, it was the first LEED certified historic -- it's a mixed use project of apartments and retail.

Q. Then last but not least, Richmond.
A. In Manchester, that's a 70-unit apartment building.

Q. Your website says you specialize in complicated and sensitive existing conditions. Can you explain that for the Court a little bit?
A. I guess the easiest way is that in historic tax credits, historic tax redevelopment, the biggest disallowed expense or cost is the acquisition of the property.

So we always say kind of the uglier, the tougher, the better, because you can usually acquire them cheaper. You don't get any credits on the acquisition and some other things related to the acquisition in addition to some other nonqualified uses.

So by default, we've -- the projects that we have found that seemed economically viable to us were projects where the buildings were not in good shape, were not wanted or sort of interested by maybe 20 bidders, maybe had to compete against a couple bidders.
And for that formula, that has sort of made us like those types of buildings.

Q. You can get ahead doing dirty work.
A. For those you can, yeah.

Q. All right. How many projects would you say you've done since -- historic redevelopment projects since 2005?
A. Like total --

Q. Maybe it's better to express it in total construction cost.

What's the big picture of your experience? How would you sum it up for the Court?

A. I'd estimate 20 buildings. And we just recently, but our website's a little outdated, we're looking at this, I'd say about $70 million debt and equity all in.

MR. SHERMAN: Your Honor, I'd move to qualify Mr. McCullough as an expert in historic redevelopment.

THE COURT: Any objection or additional voir dire?

MR. CALLAHAN: Yeah, I'd like to have some additional voir dire.

THE COURT: Go ahead.
VOIR DIRE EXAMINATION

BY MR. CALLAHAN:

Q. Mr. McCullough, the structures that you did in Richmond, how old were they?
A. Don't totally quote me on this. I think it was 1921, I think. But that's circa.
Q. Okay. And the buildings that you did in Portsmouth, how old were they?
A. They range, again, circa, somewhere between 1901, 1903 to 1930.
Q. Okay. And you are an engineer, electrical engineer?
A. Yes, sir.
Q. Okay. Are you currently licensed as an electrical engineer?
A. No, sir.
Q. So you don't hold any engineering degrees at this stage -- I mean, licenses as of this stage.
A. That's correct.
Q. Okay. And how many historic homes have you done? Anywhere in the State of Virginia.
A. Individual homes?
Q. Yes.
A. Historic homes, we've only done two -- three. One's a duplex, so three.
Q. And where are they located?
A. In Portsmouth.
Q. And how many in Norfolk?
A. No historic homes in Norfolk.
Q. Okay.

MR. CALLAHAN: Thank you.
THE COURT: Is there any objection to the qualification?

MR. CALLAHAN: No, Judge, I'm going to let it go.
THE COURT: Very well. He'll be qualified as an expert in the field of historic redevelopment and he can offer opinions in that field.

BY MR. SHERMAN:
Q. Are you familiar with the property subject to this litigation, 355 West Freemason Street?
A. Yes.
Q. And how did you become familiar with that property?
A. We originally came to look at the property across the street. I think it's 358 West Freemason. And while we were there, we didn't even know, we hadn't even heard -- even though we lived in Norfolk for a long time, we didn't really know anything about this property.
So we came and looked at the other property, and then we saw the gentleman who's the broker for it, I've known for a long time, Lin Miller. So when we went to look at 358, I called up and -- picked up the phone and called Lin.

Q. So as soon as you noticed the property, you became interested and called Lin for what purpose?

A. To do a project, to do an historic redevelopment.

Q. Okay. And did you get in touch with Lin?

A. After a little bit of phone tag, yes, we talked and he sent me some information.

Q. And let me be clear. This is before or after the fire?

A. Well, this is way after. This is -- I think this was early April this year.

Q. Okay.

A. I don't know the exact date of the fire, but --

Q. Right.

Okay. And so did Lin get you inside?

A. Yes.

Q. And tell the Court about the tour of the interior of the property.

A. We came in the front door. A gentleman
was there. It was secure, so a gentleman had to open it up for us.

We came in the front door. And as soon as you come in the front door, you could tell everything had -- not happened -- is charred. From what I recollect, all of the walls were open, gutted down to the studs. The framing studs, and you could even see -- it was explained, we learned that an elevator shaft had been built by the stairwell that was new to what the construction was. There was on the right side, which is typical of some things we do, too, there were some new headers that had been installed to change the volume of the space.

Then we walked the entire first floor. When we got to the back of the first floor, Lin said he thought -- you could tell from the outside that the back of the house to me looked like it was where it was burned the worst.

So the -- in the far back of the house as far as you could walk, that floor did seem a little soft to me. I think the back porch, you couldn't see a whole lot from the outside, the back porch looked like it had to be rebuilt.

But the rest of the first floor appeared and felt stable to me.
Q. Okay. Was anybody with you?
A. Yes, my wife was with me and Lin and the gentleman, I can't remember his name, who let us in.
Q. And what does your wife do for a living?
A. She's an architect.
Q. Does she work with you?
A. She does.
Q. Did you go to the second floor?
A. We went up. Lin cautioned us that -- because we asked some questions about the roof. We were curious about the condition of the roof, because you couldn't see -- you could up a lot, but you couldn't see everything.

So we said could we go to the second floor, and Lin told us, "Well, it's not advisable you go up to the second floor. We think it may be unsafe." So we walked to the top of the stairs and looked around.
Q. Okay. And did you see any collapsed floors?
A. No, where we were, I did not see any collapsed floors other than the back, that soft area, but I didn't see any soft -- or collapsed floors, no.
Q. Did you see any collapsed walls?
A. No.
Q. Did you knock on any of the framing?
A. We did. We did. I mean, just -- it didn't look like anything had buckled or was buckling, so we did it more just from a -- that wood is different than wood nowadays. Your wood nowadays, your wood nowadays, two-by-fours are really a one-and-a-half-by-three-and-a-half. That wood looks like at least a true two-by-four. So we did.

Q. And did the wood pass, the framing pass the knock test to your satisfaction?

A. It seemed like it was usable. It didn't seem that it was unusable, that you would have to -- that you would have to remove it. You would have to clean it for sure and -- I guess depending on how you would lay the house out, because it was broken up into rooms, that if you put your own headers in, you would have to put some new structure in to create new open spaces or we have -- in old buildings, a lot of times you see in roof joists, that you have to sister up the joist, you have to attach them to each other. That you could also do in a wall.

But the walls seemed because of the thickness of the wood, they seemed to have structural integrity.

Q. Did you have any concerns moving forward with, with pursuit for development?
A. No.

And I rely heavily on my wife when it comes to a lot of that, too. I learned from her that she said the house across the street scared her more than this house.

Q. So did you pursue the structure for purchase and development?

A. We did. So we started talking with Lin about it and, and conversing with Lin and just sort of starting a dialogue, even inquiring -- we didn't know Dr. Sinesi. Lin had lots of good things to say about Dr. Sinesi. So we inquired whether Dr. Sinesi, what was his objective, what was his goal. Would he want to be a partner in development? Is it just an outright sale? Does he plan on redeveloping it?

So we sort of started that dialogue. We told Lin right out of the gate it was a project because of where it is in the City, that we wouldn't even dream of going under contract until we met with the association and had their, if not hundred percent blessing, 95 percent blessing of what we were proposing.

So we went to work on a site plan of what could fit, what -- we thought preserving the historic structure and the historic garden was where the value was if you redeveloped this project -- and what else we
could fit to make it economically viable on that.

And we went through, you know -- the Building Code and the City Code is in black and white. You always do miss a few things. That's why you make sure you get City approvals before you go through it.

But we believed that per City Code, we came up with a site plan, conceptual site plan that would work, and that's when we met with about ten or so folks from the Freemason association.

Q. Okay, great. I'm going to hand you a copy of the conceptual site plan.

Is that a true and accurate copy of the conceptual site plan that you gave to the neighborhood subcommittee on August 2nd at that meeting you described?

A. Yes. This is my wife's handwriting, yes.

Q. Okay. And for those who aren't looking at it, can you just describe what the idea was and what the development was you were pursuing to the point that you wanted to get neighborhood approval?

A. Okay. Our idea was we were going to -- the historic building and piece of property, we had learned that historically there had not been another property, another structure, building on the piece of property, so we thought it was important valuewise to
preserve the garden.

So we took the -- this is basically a square and we made a large L encompassing the long side of the L, the historic house, and on the short side of the L, the historic garden, and that would be one property, and then we took the remaining part of the property and subdivided it into two parcels to build two wide -- 24-foot wide townhomes.

Q. And at this point had you made a formal offer to Dr. Sinesi for the house?

A. No. I just talked numbers with Lin.

Q. So why would you waste your time with the neighborhood without having made a formal offer?

A. Well, we -- I didn't think that the house could -- would ever be demolished. In my experience and I know other houses have been demolished and buildings have been demolished, but -- so we thought this was the plan to go.

And we thought, again, this had some complexities to it that we could handle and that we were -- we think were good projects this size and this complexity.

So, but I think the most -- once we knew the math worked for the lot sizes and setbacks and all of those kind of things, we believed then, you know,
that we could -- we wouldn't want to sit down and negotiate -- we typically don't like to get things under contract and then play games with changing negotiations. We like to know where we stand.

And meeting with the association, we know the association of Freemason, some folks that we had known in the past are very involved with the community, as evidenced, I guess, that we needed to have at least a partial blessing there before we got into formal details.

MR. SHERMAN: Your Honor, at this time I would like to move the conceptual site plan into evidence.

MR. CALLAHAN: No objection.


(Plaintiff Exhibit Number 6 was received.)

MR. SHERMAN: Thank you.

THE COURT: Did you formulate a cost plan with this renovation plan?

THE WITNESS: Yes, sir.

BY MR. SHERMAN:

Q. And what were the ballpark of numbers that you were talking to for the right range where you could acquire this property?
A. With the historic structure there?
Q. Yes.
A. Around $500,000.
Q. Okay.
A. And that had some contingencies on
whether or not we could resell a townhouse or whether we
could -- all those things mattered. And we knew that in
this price range if we could make our offer 50 or 75,000
better, that maybe would make a difference. So we knew
there were some market conditions that if we could meet,
we could offer a little bit more.
Q. It's fair to say, though, Dr. Sinesi
through his realtor was aware that you were a serious
candidate to pursue development of the property with the
structure.
A. I've known Lin for about 20 years and so,
yeah, I think no question, Lin as I spoke a lot about
it.
Q. Okay. And then you're aware now that you
did get a demo permit.
A. Yes. I mean, I haven't seen the permit,
but I've been told that or I've seen an email, I guess.
Q. And do you maintain an interest in
purchasing the property even if it was vacant?
A. If it doesn't get demoed?
Q. If it does.
A. Oh.
Q. If it did get demoed, would you still be interested?
A. We would be. At that point, we probably are competing against more people and we may not be able to offer -- and we made an offer to Dr. Sinesi that if it was demoed.
Q. What did you offer for the property if vacant?
A. Including demolition cost, 7 -- I believe $700,000. I don't have that with me, but I think 700,000 is the number.
Q. Okay. So the land is worth more than the land with the structure, from your perspective.
A. In my opinion, most definitely.
Q. Okay. In the neighborhood of $200,000 more, the land alone.
A. To me.
Q. Right.
A. But to me, it would be.
Q. Okay. If there was no emergency exemption demolition permit and the doctor had to market the property for fair market value, would you remain interested in purchasing the property for redevelopment
of the structure?

A.     Sure.

Q.     And with the structure, there's still an opportunity for tax credits, right? As opposed to without a structure, there's no opportunity for any marketplace participant to pursue rehabilitation tax credits.

A.     That's correct. I mean, until you file your part two and get it approved, you never know what you'll have to do. But I believe that to be correct.

Q.     Okay. And then have you seen the engineering report, by any chance?

A.     I haven't read it, no.

Q.     Okay. It shows a lot of burned wood and -- and is that consistent with your experience in the house?

A.     Yeah, I would say everything was charred.

Q.     Okay. The report also says that the framing must be demolished and replaced.

Is that how you would approach it?

MR. CALLAHAN: Judge, if -- I'm going to let him testify to that. His approach to it is far -- I mean, that's his approach. I don't think it's his opinion as to -- take it out if you want to.

THE COURT: I know you withdrew your
objection. He may answer the question.

        THE WITNESS: We would have our own -- as part of our design process, we would have an architect and structural engineer go through, you know, maybe not a fine-toothed comb, but go through foot by foot in the structure to see what we can do.

        But from what I saw and what I've learned from Monica's analysis, that it did not appear to me that you would have to take things out and replace it if -- if you had to do that, it wouldn't have the value to me just because I'm not sure how you would even do that in a structure like that.

        BY MR. SHERMAN:

        Q. Um-hum.

        So the repairs that you contemplated making to the interior framing, would you consider those common in your line of work or extraordinary?

        A. Common. There was nothing that, that I thought out of the ordinary. Even the back porch. When you get to a point where something is not salvageable, you're able to recreate it, which we've done before, too. And the metal stairs on the side were modern additions, as far as we know. Those would be taken off permanently anyways. They were on the left side of the house.
Q. Okay. One note I missed in my outline here.

Is the reason that the land's worth more vacant, does that have to do with density that the developers can utilize?

A. Yes.

Q. Okay. And do you have any experience with emergency demolitions in the City of Norfolk?

A. Yes, we have had a building that was proposed to be emergency demolished. We currently still own the property, but the building's been demolished.

Q. And was that subject to a temporary injunction in Norfolk?

A. It was.

Q. And you as the building owner were trying to prevent demolition, right?

A. Correct.

Q. Okay. And that building, did it have a roof?

A. No.

Q. Did it have all four walls?

A. No. It had about three and a quarter walls.

Q. Okay. And the Court did initially grant the temporary injunction; is that right?
A. Yes.
Q. And when the demolition was done eventually, it was not due to structural instability; is that fair?
A. Correct.
Q. Okay. And who -- what engineering firm helped create a shoring report that allowed that building to remain standing with no roof and three and a quarter walls?
Q. Okay.

MR. SHERMAN: Your Honor, I have no further questions.

THE COURT: All right. Mr. Callahan?

CROSS-EXAMINATION

BY MR. CALLAHAN:

Q. So it's my understanding then that when you looked at this building and you met with the people with the Freemason association, it was your intent to preserve the building and rehab the building as it existed.
A. Yes, sir.
Q. And then to add on two more townhouses on the lots next to it.
A. And a garage on for the house, too.

Q. And do you know Paige Pollard?

A. I do very well.

Q. And you know that she does historical structures, do you not?

A. She has done all of our work since '05.

Q. Okay. Did you talk with her about this structure?

A. We did not.

Q. Okay.

A. I guess we -- maybe we briefly did. I don't remember, but not in any detail that we normally would have.

Q. And she had an opinion earlier that a proposed garage would not be phase two of the historical preservation to get the tax credits.

Your proposal has a garage.

A. We would not do this project with tax credits.

Q. You would not.

A. We -- this is again our understanding because we didn't -- again, we don't like to waste Paige's time either.

We wouldn't have gone to Paige until we were doing this.
But we understood through Lin that Dr. Sinesi couldn't build a garage and some things next to him because of what I stated before, that there historically had not been another structure there.

When you look at this economically, you have to do the two other homes.

We tried actually to squeeze three in, but they were kind of small.

You have to do them economically to make this work.

Well, we knew once you did that, once you triggered any other structure, that you would not be able to do State or Federal credits on the house.

So once you did that, we said, "Well, how do we make the house more marketable?" We thought we would set back a garage for it and we would do the two townhouses.

So our plan would not be to apply for any historic credits on this project.

Q. So your position as far as preserving the house has always been the same. It's always been your intent to preserve the house and rehabilitate it up through today's date.

A. Yes.

Q. Okay. And that's always been your
A. I guess I'm -- I don't understand.

Q. Well, that's what you always intended to do.

If you acquired the property, you were going to rehab the structure, 355 West Freemason Street, so you could use it again as a house.

A. To sell.

Q. Yes.

A. And then we were told that a demo permit had been issued, so Lin said, "If you want to make an offer, now's the time. I've got other people interested in the land. Make us an offer as land." So then we also made an offer as just raw land, too.

Q. So you run Rockville Development, LLC, do you not?

A. Yes, sir.

Q. And on August 17th, you sent a letter to Dr. Sinesi advising him that you would buy the property for $600,000 cash, isn't that correct?

A. I think I added some demo costs in there. I'm sorry if I misspoke before. I thought I remember that being 625 plus 75. I thought it was 700. I didn't look at it today.

Q. But as part of that contract, you wanted,
you wanted Dr. Sinesi to demolish the house.

A. I was told that's what -- how it had to happen. Lin told me I had to frame my offer that way.

Q. And you've done developments all over, you said.

A. Virginia.

Q. Right.

And you don't take Lin Miller with you all over Virginia, do you?

A. No.

Q. Okay. And so this is your signature, is it not, that appears on the last page of this document?

A. Yes.

Q. And the paragraph under Demolition of Existing Structure, read me what that says.

A. "Seller shall engage and incur the cost of a demolition contractor to demolish the existing house and all interior walls and other hard materials. Only brick fence on West Freemason to remain. This shall include filling any basements or holes with proper structural fill material. Purchaser to reimburse seller up to $75,000 for these expenses at closing."

Q. So it's been your intent to demolish the building.

A. No, that was the new. Once we were told
it was being demolished, that was, that was our new offer.

MR. CALLAHAN: Your Honor, I'd like to offer this, please, as Defendant's Exhibit 1.

THE COURT: Any objection?

MR. SHERMAN: No, Your Honor.

THE COURT: Defense Exhibit 1.

(Defendant Exhibit Number 1 was received.)

BY MR. CALLAHAN:

Q. So this plan you showed the people at Freemason was just a fairytale.

A. No, at that time, like I testified earlier, there was no way I thought that this house would be demolished. I never thought that --

Q. And you said --

A. -- it would be allowed to be demolished. That was our plan.

Q. You've come into this courthouse before and made the same type of promises on the American Cigar building, have you not?

A. I think that's -- those are apples and oranges.

Q. Did you not come into this courthouse and seek to have the American Cigar building -- you got a temporary injunction on the American Cigar building,
isn't that correct?
A. Yes.
Q. And Judge Doyle gave you additional time to put all your financing together, isn't that correct?
A. Yes.
Q. And nothing ever came to fruition.
A. Well, we disagree with that statement. I don't believe that to be true.
Q. Okay. But Judge Doyle authorized the City to tear down that structure.
THE COURT: The Court is familiar with the case. The Court will take judicial notice that was ordered.
THE WITNESS: I can't speak for what Judge Doyle said or didn't say.
MR. CALLAHAN: No further questions.

REDIRECT EXAMINATION
BY MR. SHERMAN:
Q. I just want to make sure the evidence is clear. The American cigar property, you opposed the demolition, right?
A. Of course.
Q. Okay. And in this case, your initial interest was based on preserving the structure, right?
A. Yes. We're not as interested as a piece of raw land. We're interested because this is what we like, we think we know and we think we do well. So, yes, we still made an offer for the raw land, but that was after we were told it was a foregone conclusion the house was being torn down.

THE COURT: You're saying you're not as interested, but your offer was actually higher without the building, isn't it, or did I miss something?

THE WITNESS: It was higher because of the density. You could do up to five structures. And at that point I didn't think -- we were told then that our offer was rejected; it was not high enough for the raw land.

BY MR. SHERMAN:

Q. Is this a true and accurate copy of the density schematic site plan that you could achieve on the site if the house was -- the existing structure was not there?

A. Yes.

Q. All right.

MR. SHERMAN: Your Honor, I'd offer the 355 West Freemason schematic site plan into evidence.

THE COURT: Any objection?

MR. CALLAHAN: I have no objection,
THE COURT: Plaintiff's 7.

(Plaintiff Exhibit Number 7 was received.)

BY MR. SHERMAN:

Q. So the owner of the property perceives the value higher without the house.

MR. CALLAHAN: Judge, objection as to what the owner perceives unless he's reading minds.


BY MR. SHERMAN:

Q. Okay. Do you think there's more bidders in the market with or without the house?

MR. CALLAHAN: Objection, Your Honor.

He's not qualified to make these assertions.

THE COURT: Response.

MR. SHERMAN: He's in the marketplace.

THE COURT: He's not been qualified --

MR. SHERMAN: He's a builder. He competes for these projects.

THE COURT: He's qualified in historic redevelopment, not on market pricing. The objection is sustained. Next question.

MR. SHERMAN: Do I need to requalify him as a builder?

THE COURT: He's been qualified as an
MR. SHERMAN: Will you stipulate he's an expert in --

MR. CALLAHAN: I will not stipulate to anything based upon what I've come to understand about the projects that he's worked on. So I cannot stipulate to that.

THE COURT: You can make the argument.

MR. SHERMAN: I understand.

THE COURT: If this guy is willing to offer more vacant than with the house, I think that's kind of a proxy to the fact the market's interest is higher without the building there. I got it.

BY MR. SHERMAN:

Q. In your professional opinion and based on your experience as -- in historic redevelopment, do you have any concern pursuing the existing structure for the project?

A. No.

MR. SHERMAN: No further questions.

THE WITNESS: Not today.

THE COURT: Anything else?

MR. CALLAHAN: No, sir.

THE COURT: All right. Any reason to hold the witness?
MR. SHERMAN: No, Your Honor.

THE COURT: You're excused, sir. You're free to stay in the courtroom or leave the courthouse. It's your choice.

MR. SHERMAN: Lin Miller is the last witness.

THE COURT: All right.

THE BAILIFF: Step up here, sir.

(The witness was duly sworn.)

THE COURT: Please have a seat.

The court reporter is writing everything that's being said, so if you'll make sure your responses to the questions are audible so she can understand them and write them down as opposed to shaking your head, okay?

LIN MILLER, called as a witness by and on behalf of the Plaintiff, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SHERMAN:

Q. Good afternoon. Would you please state your name for the record.

A. Lin Miller.
Q. Thank you.

And, Mr. Miller, what type of work do you do?

A. I'm a realtor with Berkshire Hathaway Towne Realty.

Q. How long have you been doing that?

A. I've been in real estate for 29 years.

Q. Do you consider yourself an expert in real estate?

A. I do.

Q. And --

MR. CALLAHAN: Judge, so do I.

THE COURT: Let's get a little more specific. Talking about commercial real estate?

MR. CALLAHAN: Judge, as far as residential real estate is concerned, if you want to buy or sell a house, get Lin Miller to do it.

THE COURT: All right. Residential real estate, is that where we're going?

MR. SHERMAN: I wasn't going to qualify him. I wanted to make sure he was confident in his own opinions.

THE COURT: Mr. Callahan is confident. I think that's probably good enough for your purposes.

MR. SHERMAN: It will do.
BY MR. SHERMAN:

Q. Do you consider yourself in the business of selling good advice?

A. Yes.

Q. How did you become familiar with the subject property 355 West Freemason Street?

A. When it was listed for sale when the Shrivers were selling it, my clients became interested in it and we started investigating.

Q. I want to show you a picture. Do you recognize that picture?

A. I do.

MR. CALLAHAN: Thank you.

BY MR. SHERMAN:

Q. Can you describe for the court reporter what you see there?

A. I see the parking lot that's adjacent to the property.

Q. And that parking lot, that's part of the property owned as part of this subject property, right?

A. Correct.

Q. Okay. And do you see your for sale sign?

A. Yes, I do.

Q. Okay. And do you see the cars in the parking lot?
A. I do.

Q. Do you recognize those cars?

A. I do not.

Q. Okay.

MR. SHERMAN: Your Honor, I move the picture into evidence as Plaintiff's Exhibit 8.

THE COURT: Any objection?

MR. CALLAHAN: No objection.

THE COURT: Plaintiff's Exhibit 8.

(Plaintiff Exhibit Number 8 was received.)

BY MR. SHERMAN:

Q. So you're marketing the property now?

A. Yes.

Q. You've got a listing.

A. Yes.

Q. And you're marketing the property for its land value?

A. Marketing it for 899,000.

THE COURT: That's not the question.

The question was whether you're marketing with the improvements or without the improvements.

THE WITNESS: The total package. The land value.

BY MR. SHERMAN:

Q. With or without?
A. Well, the house exists, so it becomes part of the equation.

Q. Okay. But do you think that the 899 list value is based on the structure as a contributing --

A. No.

Q. Okay.

THE COURT: When you're holding it out for sale, is it with the structure or without the structure? Buy it today, is the understanding you're going to -- it will be demolished by the time we close or it will still be there or you don't know?

THE WITNESS: I don't know. It's not my decision.

BY MR. SHERMAN:

Q. Okay. And do you think that the list price is validated by the land value? It's got to be.

A. Yes.

Q. Have you shown the property to anybody?

A. Yes.

Q. And how many people have you shown the property to?

A. Seriously, about three.

Q. Okay. Have you shown the inside of the property to anybody?

A. Yes, once.
Q. Okay. So I think you said today to some degree you are marketing the structure itself, too, that is on the land.

A. Well, I can't disclose what can happen with it, but I clearly think the value's in the parcel without the structure.

Q. Okay. Would you agree that the list price would be less if the structure had to remain?

A. Probably.

Q. Okay. I'm going to hand you a copy of a listing that I've printed last week.

A. Um-hum.

Q. That's off of Linmiller.com, do you see on the bottom left?

A. Correct.

Q. The first backslash land, I guess this has been tagged as a land sale, is that accurate?

And then you already stipulated the purchase -- the listing price, $899,000.

A. (Nodding).

Q. I need you to say yes or no for the --

A. Yes, yes.

Q. And then on the second page, you've got an overview.

Is this a true and accurate copy of the
listing?

A. Yes.

Q. Does it accurately reflect the listing that you posted on line?

A. Yes.

Q. Okay.

MR. SHERMAN: Your Honor, I'd move the listing into evidence.

THE COURT: Objection?

MR. CALLAHAN: No objection.


(Plaintiff Exhibit Number 9 was received.)

BY MR. SHERMAN:

Q. And I'm going to read from the overview. It says, "Very large parcel with an uninhabitable existing structure with historical significance. Many development possibilities along with potential for tax abatement depending on final approved plans. Property survey attached."

So why notate the historical significance if the value's in the land?

A. Because of where it's located. I think Freemason is a very -- I think everybody would agree it's an historical neighborhood.

Q. So it's your position that the phrase "an
inhabitable existing structure with historical
significance --"

A. Uninhabitable.

Q. Oh, I'm sorry. "Existing structure with
historic significance"?

A. It's relative. I don't personally think
it has historic significance, but...

Q. Well, I guess you don't really care, do
you, if you sell it with or without a house or someone
is buying it for not the house, you don't really care,
do you?

A. No.

Q. So you're marketing it both ways really,
right?

A. I have never been certain that the house
could be torn down, so based on that, I put it out there
the way it is.

But when asked, I do believe the value is
in the land, not in the house.

Q. Sure.

And if someone showed up and said, "Hey,
I'll pay 901 for the house," you would take it and run.
You wouldn't --

A. Well, I would present it to my client.

Q. Would you run to your client?
A. I would call my client and find out his availability. I'm only the conduit.

Q. Again, in here you mentioned tax abatement depending on final approved plans.

A. Possibility is what I --

Q. That goes to the structure, though.

There's not -- there's not tax abatement in the land?

A. I don't know for sure either way.

Q. So is it your custom and practice to market information you're not sure of?

A. The possibility of it because I've talked to people with opinions. I didn't -- I couldn't prove or disprove those opinions, so I put the possibility in there.

Q. Right. You're just the conduit.

Do you know what Dr. Sinesi paid for the property?

A. I do.

Q. And how much is that?

A. 675,000.

Q. Okay, great.

MR. SHERMAN: I've got a certified copy of the deed from the land records. I'm going to move that into evidence, Your Honor, as Plaintiff's Exhibit 9.
THE COURT: 10.
Any objection?
MR. CALLAHAN: No, thank you, Judge.
This is the deed that was returned to my office after I closed it.
THE COURT: Plaintiff's Exhibit 10 without objection.
MR. SHERMAN: Let me give you the certified copy. That was his copy. Thank you.
(Plaintiff Exhibit Number 10 was received.)
BY MR. SHERMAN:
Q. So you testified that Dr. Sinesi paid $675,000 when he was obligated to preserve the structure, right?
    A. Well, I don't know the obligated, but he bought it as a structure he was planning to preserve.
    Q. Okay. For 675.
    A. Correct.
    Q. And now he's selling it for land value for almost $900,000.
    A. Well, that's what we feel it's worth.
    Q. I understand. I'm just trying to be clear.
    So the value of the property went from


THE COURT: I got it. I got it.

MR. SHERMAN: You got it?

THE COURT: I got it.

MR. SHERMAN: I want him to say it, though, Judge.

BY MR. SHERMAN:

Q. If he's allowed to demolish it, you get full listing price, he stands to gain $225,000?

MR. CALLAHAN: Judge, this is America.

THE COURT: It's not even relevant to a temporary injunction. So I've got -- we need to move along.

MR. SHERMAN: That's the last question. I'm done. But I would -- I know it's been a long process, but the equities are a part of the injunction. And if the -- everybody loses except for the owner, I would posit that there is a balance of equities in the issue.

THE COURT: I agree. I think you demonstrated by -- I've got your point. I don't think you should say it again. You can raise it again in closing.

MR. SHERMAN: No further questions.

THE COURT: Okay. Thank you.
Proceedings Before the Court - September 19, 2018

1 Cross?
2
3 MR. CALLAHAN: Yes.

4 CROSS-EXAMINATION
5
6 BY MR. CALLAHAN:
7 Q. Mr. Miller you've been -- you sold
8 Dr. Sinesi the house.
9 A. Yes.
10 Q. And was it his plan to live in the
11 neighborhood?
12 A. Yes.
13 Q. Would you say he was excited about living
14 in the neighborhood?
15 A. Yes.
16 Q. And did he have plans prepared and
17 undergo expense in order to make improvements to the
18 home?
19 A. Significantly.
20 Q. And what type -- how much expense are you
21 aware of that he had --
22 A. I don't honestly know how much, but I
23 know --
24 MR. SHERMAN: Objection. He doesn't
25 know.
26 THE COURT: Hold on.
THE WITNESS: I don't know.

BY MR. CALLAHAN:

Q. But it was his plan to renovate the structure?

A. And live there.

MR. CALLAHAN: Thank you very much.

THE COURT: Redirect?

MR. SHERMAN: No.

THE COURT: Any reason to hold the witness?

MR. SHERMAN: No, Your Honor.

THE COURT: You're excused, sir. You're welcome to stay in the courtroom or leave the courthouse. Your choice.

MR. SHERMAN: No other witnesses.


MR. SHERMAN: Your Honor, we just want to put on the record that Mike Spencer and Jack Kavanaugh would both testify that the property has inherent value with the structure that contributes to the historic neighborhood and the designation as an historic district and that the neighborhood and the City and individuals living in the neighborhood would be irreparably harmed as a result of the loss of the structure, including with
an unknown loss in value to their own real estate.

THE COURT: Any objection to the proffer that that's what the testimony would be?

MR. CALLAHAN: No, Judge, I don't have any objection to that.

THE COURT: Very well.

All right. Does the plaintiff rest?

MR. SHERMAN: Yes, Your Honor.

THE COURT: Mr. Callahan?

MR. CALLAHAN: I'd like to move to strike at this stage.

Your Honor, they are here asking for a temporary injunction.

And as I mentioned when we started this case, that obviously there are no cases in the State of Virginia that deal with this.

The leading case in the Fourth District is The Real Truth About Obama, Inc. versus Federal Election Commission where the Fourth Circuit went back and had to change its opinion based on the Winter case.

And as a result of that, there are four tests that the plaintiff has to meet in order to have a temporary injunction put in place.

As you're aware, Judge, under the old case law, the burden under the old case law, and that
was Blackwell Furniture Company of Statesville versus
Selig Manufacturing, 550 F.2d 189, it was a Fourth
Circuit opinion from 1977, was the old testing was a
balancing test. I know Your Honor's aware of that.
The new test, there are four phases that
he's got to show, Judge, and at this stage, I don't
think they've met that burden.
Number one, that he's likely to succeed
on the merits.
You received evidence, you heard
proffered statement from the City that the building
official has acted in accordance with what he's required
to do by law; number two, that they had so many days, 14
days as an aggrieved person to make a claim to come in
here administratively to appeal it and then to bring it
here if they lost that appeal --

THE COURT: Just to be clear, I'm viewing
that as a jurisdictional question separate and apart
from likelihood of success on the merits.

I'm going to assume if we're going to
argue likelihood of success, then there is jurisdiction.
The Court's going to have to look at that separately,
and I'll mention that when we're done today. I'm going
to need some additional information, because if this
Court doesn't have jurisdiction, the Court doesn't have
jurisdiction. That's a separate issue, though.

MR. CALLAHAN: That is a separate issue.

We would suggest that Your Honor does not have subject jurisdiction.

I think the request by the Freemason association just to come in and ask for a temporary injunction when there's no case to ride on is not appropriate.

And, Judge, the last test and --

THE COURT: Do you have a case that says that, by chance? That's my inherent understanding as well, but -- I don't know if there's a case that says that because Virginia law on temporary injunctions is sparse at best.

MR. CALLAHAN: And that's the problem. So you got to rely on the Fourth Circuit. And those cases are lined up, the Winter's case because of the Navy doing their testing off the coast of California.

I hear that they are going to suffer irreparable harm and do the balance of the equities tip in their favor.

I would suggest to you they do not as it pertains to Dr. Sinesi.

THE COURT: What's the inherent -- what's the harm to Dr. Sinesi should the Court grant the
MR. CALLAHAN: Well, other than going to jail and being fined by the Court down on the first floor, other than that, eight years in Norfolk City Jail, I guess there really is no inherent problem.

It's like getting 29 days in the electric chair and getting one of those days suspended. You know, it's just one day in the electric chair's going to cause you problem.

You know, he can't do anything.

Now the City's going to turn around and he's getting harmed because now the City's going to go out and they are going to tear it down, and he'll have to pay the expense of it even though he's gone to the stage to get somebody to do that, which is not in evidence before you at this stage.

But last but not least, Your Honor, the City has found that the fourth prong of this test is that injunction is in the public interest.

Judge, the public interest is all the public, not just what's going on in Freemason, even though it may be an historic district.

And Dr. Sinesi is very sad that this has happened.

But the building official says this
building could harm somebody. A couple children get in that building and get killed, then no one's going to really care about the historic significance. They are going to care that a couple children have died.

And so the irreparable harm is there to the general public, to the public interest, and the public interest says that it needs to be torn down.

And that's a test I don't think that they can overcome in looking at a temporary injunction.

THE COURT: All right. I'm going to foreclose argument by opposing counsel.

The Court is going to find that in the light most favorable to the plaintiff at this point in the proceedings, the motion to strike is going to be denied.

However, the Court is going to take the motion to strike regarding jurisdiction under advisement, and I'm going to need some additional information on that matter separately.

MR. CALLAHAN: Note my exception.

THE COURT: Very good.

The defense certainly has the opportunity to present evidence today, if it would like.

MR. CALLAHAN: Please. I would like to call Dr. -- Judge, let me get some of the City officials
that are here.

If I could call, please, Rick Fortner, please.

Judge, may I please receive from you I think it was Plaintiff's 1 and 2?

May I approach?

THE COURT: You may.

(The witness was duly sworn.)

THE COURT: Have a seat, please.

We do have a court reporter writing everything down, so please make sure your responses are audible.

Mr. Callahan.

RICK FORTNER, called as a witness by and on behalf of the Defendant, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CALLAHAN:

Q. State your name for the record, please.
A. Rick Fortner.

Q. And how are you employed?
A. I'm employed by the City of Norfolk. I am the Building Commissioner.

Q. And what is your job as Building
Commissioner? What does that position entail?

A. My job is to, I supervise all of the plan review and new construction, permitting, inspections, building inspections, trade inspections for the City.

Q. Okay. And in that regard, did the structure 355 West Freemason Street, a structural engineering report come to your attention?

A. Yes, sir, it did.

Q. I'm going to show you this report, it's already been identified collectively as Plaintiff's Exhibit 3, and ask you if this is the report you reviewed?

THE COURT: I think the report starts four, five pages back.

THE WITNESS: Yes, sir, this is the report I reviewed.

BY MR. CALLAHAN:

Q. Okay. And based on that report, is it your duty under the Code to issue a memorandum to the zoning administrator?

A. Yes, sir, under the Virginia Uniform Statewide Building Code, Section 118, it is my duty to evaluate a report such as this and make a decision as to whether the structure's safe or unsafe.

Q. And after evaluating that report, what
was your decision?

A. My decision was, based on this report, it was unsafe.

Q. Okay. And as a result of that, did you issue this memorandum on August 9th of 2018?

THE COURT: Is that different than the memorandum that's attached to Exhibit 3?

MR. CALLAHAN: That is attached to Exhibit 3.

THE COURT: It is.

THE WITNESS: Yes, sir, I did issue this memorandum.

BY MR. CALLAHAN:

Q. All right. And as a result of that, that memorandum is issued -- Mr. Tajan then has to notify individuals; is that correct?

A. Yes, sir. I believe the way the zoning ordinance reads is that I am to notify the zoning administrator and then he takes it from there.

Q. And this is the rest of Exhibit 3 which appears to be the memorandum that Mr. Tajan issued. Was it issued to the appropriate people under the ordinances of the City of Norfolk?

A. To the best of my knowledge, yes, it is.

Q. Okay. And based on your experience -- if
I could just take those back from you.

A. Sure.

Q. So it is your opinion then and your duty then to make the call to have the building torn down; is that correct?

A. That is correct, yes, sir.

Q. All right. And was a notice issued to the homeowner to tear down that structure?

A. Yes, it was.

Q. All right. And has the time to contest that appeal run out?

A. The notice was issued by the property maintenance official and Mr. Tajan, and because of the -- my determination of the building being unsafe and the recommendations in that report by the engineer, it was meant to be immediate.

Q. Okay.

THE COURT: When you say it was meant to be immediate, he had to do it that day?

THE WITNESS: Well, as soon as possible. But because of an unsafe condition, it's recommended that it happens as soon as possible. Protocol is to give a reasonable amount of time, Your Honor, for them to be able to do that, and I did not issue that. I believe Mr. Tajan gave him a time frame in there. I may
be wrong about that.

MR. CALLAHAN: I don't have any further questions for this witness.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. SHERMAN:

Q. Mr. Fortner, how are you doing?
A. Very good. How are you, sir?
Q. Good.

You mentioned you're the building inspector.
A. Building official or Building Commissioner is my official title.
Q. Building Commissioner, I'm sorry.
And you do -- you're in charge of new construction?
A. Primarily, yes, sir.
Q. Will you rattle off the things you're in charge of again?
A. Plan review --
Q. Um-hum.
A. -- permitting, inspections, I work very closely with the property maintenance official who primarily is in charge of existing structures.
Q. And explain that role. The property maintenance official does what?
A. So the way the Virginia Uniform Statewide Building Code is structured, there's different volumes that deal with different things.

So, for instance, Volume 1 deals with the new construction codes and buildings that are being renovated, additions being built such as that nature.
The property maintenance is Volume 3, and that deals with existing structures.

Q. Okay. Did this subject property have any Volume 3 existing structure Building Code violations?
A. Yeah, to my knowledge, yes, it did. And I think the property maintenance official would verify that they had it under action.

Q. Right.

Was there ever an adjudication?
A. I don't want to answer for her. I'm not sure exactly what process the property maintenance official went through.

I can tell you that there were permits taken out because there was renovation work going on as well, which is also how I was involved with the structure.

Q. Right.
You never -- sounds like you never followed up with her and asked her what the status of those actions were before you issued your --

A. Actually, I talked to her almost daily about it. They questioned me, the inspector Kristina Jackson questioned me about, "Have you heard anything about this? You know, what's going on?"

There was an original report that came out in February from the same engineer. It was nowhere near as detailed. And I did a memo to that effect as well back earlier when I was made aware of that report.

Q. So you do -- you do have knowledge as to whether or not there was an adjudication on Volume 3 existing structure Uniform Building Code violations.

A. I do. To my -- the best of my knowledge, it was. I don't know the exact --

Q. It was adjudicated?

A. Please explain to me what you mean by adjudication. I'm not sure I understand exactly what you're asking.

Q. Well, you tell me what happens when you have a Building Code violation. How does that work?

A. There's a protocol and there's a procedure that you follow under the Code to deliver notice to the owner and, you know, there's a contractor
involved or whatever, everybody gets notified in writing.

To my knowledge, that was done, yes.

Q. But is that the end of it or do you follow up and --

A. I know they had a court case on it and they went to court I believe on that.

Q. And there was a resolution.

A. I do not know what the resolution was.

The resolution, to my knowledge, was that it needed to be repaired.

Q. Had it been repaired?

A. No, not to my knowledge.

Q. So there were existing code violations in this property at the time that you issued a demolition exemption.

A. There were existing violations under the property maintenance code, yes.

Q. And do you have any idea how long those had been pending?

A. From -- my understanding, from the time of the fire.

Q. Right.

So today's -- or the date of your memo was August 13th; is that right?
A. August 9th.

Q. August 9th.

From the date of the fire to August 9th, would you agree with me that's about 21 months?

A. I would agree.

Q. So the code violations on this property had been pending for 21 months with no resolution when you issued an emergency exemption.

A. Code violations, yes. But until I got that report from the engineer and reviewed that report on August 9th, there was no indication to me that there was an unsafe or immediate condition. I had not been in the building, I had not been privy to be in the building. I had inspected the outside of it and looked at it but could not determine from that that it was unsafe.

It was until I received that report on August 9th from Speight Marshall Francis that it was my determining that it would be considered unsafe.

Q. So you've never been in the building to verify those conditions.

A. Property Maintenance has.

Q. So you issued your building -- your memorandum for emergency demolition without going in the building.
A. Based on what that engineer's report said.

Q. Right.

A. Yes, that is correct.

Q. Okay. And you -- you think that the report stands for the proposition that there's an immediate threat to public safety?

A. In this case, I do. And when a report is done by a licensed professional structural engineer in that detail, identifying the specifics that were identified, I, under Virginia State law, don't have a choice but to issue that.

Q. Which specifics did you rely on?

A. I went through the report in depth and the, the type of construction, the double width construction of the masonry walls, the fact that without the structure inside that was, that was damaged by the fire, the first floor, the second floors especially, my biggest concern here is the lateral loading on the building. This (indicating). This load's okay (indicating) because it's sitting on what we think is a concrete foundation, but those structural elements inside that building that were damaged by fire are completely missing. For instance, the roof is what keeps those walls from doing this (indicating), and I
also believe that the engineer mentioned that, you know, wind, possible extreme wind condition, maybe somebody bumping into the building with a car, that gave me serious concern, yes, sir.

Q. Well, I just -- you've got to accept my righteous indignation because there are cars parked right next to the building right now, right?

A. I don't know any of them have backed into the building.

Q. Right.

But if the -- if the City and owner were serious about protecting the health, the safety and welfare of the citizens, wouldn't you prevent access to that property in some way, shape or form?

A. You would have to ask the property maintenance official how they go about doing that. But I believe that's what was the intention.

Q. Let me show you what's in evidence.

THE COURT: I think he's just saying he's not the one that would be responsible. I'm not sure that answers the question.

MR. SHERMAN: I'll move on.

BY MR. SHERMAN:

Q. That's Plaintiff's Exhibit 8 which is a photograph.
THE COURT: You agree there's nothing preventing cars from parking next to the building right now, correct?

THE WITNESS: Agreed, yes, sir.

THE COURT: All right.

BY MR. SHERMAN:

Q. And you agree as the building inspector, you didn't inspect this property --

THE COURT: Building Commissioner.

MR. SHERMAN: I'm sorry.

BY MR. SHERMAN:

Q. You're in charge of inspections.

You're in charge of inspections, right?

A. I'm in charge of new construction inspections.

Q. Right. And this is not --

A. And I work very closely with the property maintenance official who is in charge of the inspectors that were inside this building. Miss Jackson is -- she was the inspector. So, yes, I communicated with her as well.

Q. And you personally never went in the building.

A. No, I did not.

Q. And you're aware that the City had
problem enforcing the code violations against this property owner, right?

A. I am aware that Property Maintenance had it under action. I don't know their particular problems and what the details of those problems were. I just know the Property Maintenance official has had it under action.

Q. You're aware they had it under action for 21 months, right?

A. Yes.

Q. Okay. And so if the City has an ongoing 21-month problem, that's something you're going to be aware of in your office, right?

A. So with -- this is a really tough line here.

So I don't get involved with property maintenance conditions with existing buildings that Property Maintenance has under action. I'm primarily dealing every day with new construction.

Q. That's good.

A. When the Code or the ordinance requires me to do so, when a situation is referred to me, then I -- then I'm going to review it and, and get involved as I'm required to do so.

Q. But --
A. That's what happened when I got the structural engineer's report.

Q. Okay. But you agree that the inspector who had been in the building worked under you and you communicated with her.

A. She did not work under me. She works under Sherry Johnson, the property maintenance official.

Q. Does she work under you?

A. She does not. We work together.

Q. Tell me this. You were aware, though, that there was a 21-month problem enforcing code violations at that property, yes or no?

A. To be honest with you, no.

Q. Okay.

A. Like I said, I deal with new construction every day. So when it was referred to me, "Hey, we have an engineer's report. This engineer's report states that there's some structural issues. We need you to review this," that's what the ordinance says I have to do. So that's what I did. That didn't happen till August 9th.

Q. Okay.

THE COURT: So with respect to evaluating whether something's unsafe, you would be handling new construction and existing structures; is that correct?
THE WITNESS: Primarily new construction.

THE COURT: I understand primarily.

Sounds like the reason you became involved in this one was because by Code, I guess you are the person who has to make that declaration even for existing structures.

THE WITNESS: Yes, sir, that's how it's stated in the City ordinance.

BY MR. SHERMAN:

Q. So you're in charge of unsafe violations and you're unaware of the ongoing violations of this property?

A. To my knowledge, at that point I didn't -- there was nothing that told me that it was unsafe.

Q. So you testified just now that you had no idea that there was 21 months of problems at this property and that's within your job as the Building Commissioner to be aware of code violations.

A. Not existing structures, no, sir.

Q. But didn't --

THE COURT: Only when it gets to the point where he has to declare it's unsafe and must come down. That's why the two overlapped and he had to get involved; is that correct?

THE WITNESS: Yes, Your Honor, that's
correct.

BY MR. SHERMAN:

Q. You told me you'd been through plan review, permitting, inspections and maintenance.

A. Not maintenance. I didn't say maintenance, sir. I said I'm in charge of plan review, permitting and inspections as they relate to new construction, alterations and repair under Volume 1 of the Virginia Uniform Statewide Building Code. Property maintenance and existing structures that do not have permitted work going on are under the Volume 3 and the Property Maintenance official.

MR. SHERMAN: May I ask the court reporter to read back the original --

THE COURT: You can clarify it now. The Court will accept maybe he said it differently beforehand.

MR. SHERMAN: That's okay.

BY MR. SHERMAN:

Q. The point here is that you issued this memorandum without going in that building, right?

A. That is correct.

Q. And you --

A. Based on that professional engineer's report.
Q. And you testified that you had no idea what was going on in the building in the 21 months prior, right?

A. I testified that I knew that it was under action and I generally, being the Building Commissioner, try to keep up with almost everything with respect to unsafe buildings, buildings under construction, new buildings or buildings being renovated. I try to keep up with all that.

So that's why I regularly talk to the Property Maintenance official and we work very closely on this.

So as far as having specific detailed knowledge and knowing that the time period was 21 months, I can't testify that I did know that. I just knew that Property Maintenance had it under action. They have a lot of properties under action and I try to keep up with ones that might become an issue and become unsafe, et cetera.

Q. You're trying to have it both ways, though. You either did or didn't know that there was ongoing issues at this property for 21 months, and you just testified --

A. I knew there were ongoing issues. You're asking me to state that I knew it was 21 months, and I
can't say that I knew that, sir.

Q. No. You said that you knew since the fire, right?

A. I knew there was a fire. I didn't know it was 21 months ago. I just knew there was a fire.

Q. Okay.

Well, if I prove to you through Exhibit 1 that the fire was 21 months ago, would you accept that as a number for the rest of our dialogue?

A. Yes.

Q. Do you want me to do that?

A. It's up -- if you say it's 21 months, I accept that.

Q. All right.

A. I'm just saying you're asking me to testify that I knew it was 21 months it was under action, and I can't do that. I knew it was under action.

Q. Mr. Fortner, what I'm asking you to testify to is that you never went in the property before you issued this memorandum.

MR. CALLAHAN: I object.

THE COURT: He's answered that four times. I think I've got the situation. He's generally aware there was a fire, that there was some issues with
the property, he wasn't sure exactly what they were, and when it got to a point where the property inspector thought there was an issue and had a report, they knew by Code they had to go to him, and he's the one that declared it unsafe.

BY MR. SHERMAN:

Q. So you knew that there was problems with this property and you attempted to solve everybody's problems by issuing the demolition permit.

A. The demolition permit has not been issued yet. I wrote a memo that made notification to the zoning administrator, like I'm required to do in the City zoning ordinance, that specifically says the Building Commissioner will notify these people, and that's the zoning -- so my duty at that point in time, having read that report and the evaluation from the structural engineer, was to notify the zoning administrator immediately, and that's what I did the same day.

Q. Which provides a solution to everyone else in your office who was having problems enforcing the code violations against that property.

A. I don't know it provided a solution. It simply was to serve notice to the zoning administrator that we have an unsafe structure
and that all of the other property -- personnel that are required to respond and deal with this situation, it was to notify them that we have this situation.

Q. Well, if you are generally aware that there's 21 months of problems ongoing at this property and that you with a stroke of a pen can solve them for everybody, then you knew that you were being the hero to the office --

THE COURT: Just cut to the chase.

MR. CALLAHAN: Judge, we --

THE COURT: Did the fact that there were ongoing violations play into your determination that it was unsafe, sir?

THE WITNESS: Based on -- it did, Your Honor, yes.

THE COURT: All right. Then how --

THE WITNESS: To some degree.

THE COURT: How?

THE WITNESS: When you have older, older structures that are sitting there and nobody's living in them and I know there's been a fire there, over time, time in and of itself and lack of maintenance can cause a structure to, you know, degrade, mortar and brick joints, things of that nature.

So we've had situations where an existing
building might be looked at by Property Maintenance or
an engineer on such and such date and the engineer
doesn't make determinations that it's unsafe, but a year
later something happened, maybe a weather event or
driving piles for a new building next door to it has
caused it to shake some of the mortar joints loose, it
can become unsafe at that point.

So it's not an unusual situation for me
to see a situation where a building gets damaged such as
this and it's not unsafe right away but then it could
become unsafe. I rely very heavily on professionals'
opinions and such as this professional engineer's, and
that's what I evaluated this under on -- in this
situation.

THE COURT: All right. Let me ask you
one other line of questions.

The engineer's report says that the
exterior multi-width wall appears to be in sound
condition.

THE WITNESS: Yes, sir.

THE COURT: And their ultimate conclusion
is that it is their opinion that the best and most
reasonable course of action for this structure is
complete demolition, right?

THE WITNESS: Yes.
THE COURT: Okay. And you acknowledge
that I think in your memo. You can look at it, if you'd
like.

But my question, how do you go from those
recommendations and those conclusions to the assessment
that emergency demolition, immediate demolition is
required? Because it kind of sounds like if they didn't
try to renovate the inside of the house, it was okay.
Obviously --

THE WITNESS: This is a very tough call
to make, Your Honor, yes, sir.

THE COURT: She can't write both of us
down.

It sounds to me like the report could be
read that as long as we leave these charred studs in
place, don't play with the horizontal members either,
the exterior walls are sound, it's in a stable
condition. I think you -- one could read it that way.

My question is, how did you come to the
conclusion that immediate demolition was required unless
you considered that they weren't going to make immediate
renovations or something?

THE WITNESS: Your Honor, I relied very
heavily on the engineer's report. They made a
recommendation that they thought the best course of
action -- they don't say immediate demolition. I don't
believe -- but they talk about taking the structure
down, to stabilize the exterior walls, which was -- is
my major concern, the loss of the structural, the
lateral support inside the building that helps support
the exterior walls laterally. Because of the things
that they identified, like 80 percent of those
structural support members on the first and second
floors are either gone or severely damaged, it's a tough
call, Your Honor.

THE COURT: Okay.

THE WITNESS: But potential was there
and -- for, you know, immediate danger to life safety.

It's -- I mean, it could stand that way,
sure, for a given period of time. Something could
happen tomorrow.

So it's just a tough call that you have
to make in this position, you know, the potential.

And in my professional opinion, it's -- I
mean, I've been code enforcement for 31 years. I've
been the building official for about four now. It's one
of those things that, you know, you have to do
everything you can to preserve life safety.

THE COURT: Okay.
BY MR. SHERMAN:

Q. And so you want to be conservative in that decision, right?

A. Yes, sir.

MR. SHERMAN: No further questions.

THE COURT: Mr. Callahan?

MR. CALLAHAN: Your Honor, you had asked before about putting in Part 3 of the Uniform Statewide Building Code which I can have him identify.

THE COURT: I still haven’t seen the order to the homeowner to demolish the house.

MR. CALLAHAN: Judge, can I give you that?

THE COURT: Does it come in without objection?

MR. SHERMAN: Well, I mean, I need to note that this is the first time I've seen it.

THE COURT: Okay.

Well, I think he's -- they can lay the foundation. You can stipulate it now or bring it in with another witness, that's fine.

MR. SHERMAN: I don't think this is the proper witness.

MR. CALLAHAN: No, I've got him outside.

THE COURT: Okay.
MR. CALLAHAN: They can bring it in.
THE COURT: I'll read the Building Code.
MR. CALLAHAN: Your Honor, I've got --
THE COURT: It doesn't have to be an exhibit since I can take judicial notice of it, but if there's no objection, I'll take it as an exhibit.
MR. CALLAHAN: Take judicial notice of the ordinances that deal --
THE COURT: Any objection?
MR. SHERMAN: No, Your Honor.
THE COURT: I'll just mark them and keep them in the file.
I think Plaintiff's 10 was my last one, so that will be --
MR. CALLAHAN: Defendant's 2 collectively.
THE COURT: The Building Code excerpts will be Defendant's Exhibit 2 and the zoning ordinance excerpts will be Defendant's Exhibit 3.
(Defendant Exhibit Numbers 2 & 3 were received.)
THE COURT: All right. Any other questions for this witness?
MR. CALLAHAN: Not of this witness.
THE COURT: All right. Thank you, sir.
You're excused. You're free to stay in the courtroom or leave the courthouse.

Next witness?

MR. CALLAHAN: Robert Tajan.

(The witness was duly sworn.)

THE COURT: Please have a seat.

We do have a court reporter, so please make sure your responses are audible.

ROBERT TAJAN, called as a witness by and on behalf of the Defendant, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CALLAHAN:

Q. State your name, please.

A. Robert Tajan.

Q. How are you employed?

A. I'm employed with the City of Norfolk, zoning administrator.

Q. And how long have you been the zoning administrator?

A. For approximately four years.

Q. Okay. And are you familiar with the memorandum from Robert -- from Rick Fortner to you of
August 9, 2018, a copy of which has already been admitted into evidence? I'll just show you for your reference.

A. Yes, I'm familiar with this.

Q. All right. And as a result of that document being written to you, did you then cause another part of Exhibit 3, did you issue that memorandum to the people required to receive it under the Code?

A. Yes, sir.

Q. And who are the other people that had to receive that?

A. By the zoning ordinance, the chairman of the Architectural Review Board is required to be notified if an emergency demolition is required.

Q. Okay. And those people on that report were notified of it; is that correct?

A. That's correct.

Q. Okay. And the -- thank you. And are you familiar -- I'll put it in through her.

MR. CALLAHAN: That's all the questions I have for this witness.

THE COURT: All right.

MR. SHERMAN: Your Honor, I don't have any questions.
THE COURT: All right. You're excused, sir. Thank you.

MR. CALLAHAN: Sherry Johnson, please.

(The witness was duly sworn.)

THE COURT: Please have a seat.

We do have a court reporter, so please make sure your responses are audible.

SHERRY JOHNSON, called as a witness by and on behalf of the Defendant, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CALLAHAN:

Q. State your name for the record.

A. Sherry Johnson.

Q. How are you employed?

A. I am employed with the City of Norfolk as the property maintenance official.

Q. All right. And in that regard, are you the same Sherry Johnson property maintenance official that received this memorandum dated August the 13th, 2018 that's already been received into evidence as Plaintiff's Exhibit 3?

A. Yes, sir.
Q. Okay. And as a result of that determination, did you issue this notice of violation to my client, Dr. Sinesi?

A. Yes, sir.

Q. Please read it into the record.

A. It is addressed to Mark Sinesi, Inspection Number 102998-18, property address 355 West Freemason Street. "Dear Mark Sinesi: This is to inform you that an inspection has been made at the building or structure located at 355 West Freemason Street. Our findings are that the structure located at this site is unsafe and uninhabitable. The attached violations of the Virginia Uniform Statewide Building Code, USBC Part 3, render the structure unsafe and uninhabitable. "Pursuant to 105.1 of the Virginia Uniform Statewide Building Code as adopted by the City of Norfolk, it is hereby ordered that this structure must be repaired or demolished and removed within ten days of the date of this notice." The notice is dated August 14th.

"All permits must be obtained prior to starting any repair work or demolition. Under Part 3, Section 105.4, Section 105.9 of the USBC, should you fail to repair or demolish and remove the structure, the City of Norfolk per the Code official will cause the
structure to be demolished and removed by contract or
arrangement with a private demolition contractor. The
cost of the demolition and removal shall be charged
against the real estate upon which the structure is
located and a lien shall be placed upon the real estate.

"In accordance with the provision of the
USBC Part 3, Section 106.5, you have the right to appeal
this notice and order by filing a written application to
the local Board of Building Code Appeals of the City of
Norfolk. This application for appeal must be filed
within 14 days after this notice is served upon you.
The appeal shall be based on the claim that the true
intent of the Code or the rules legally adopted
thereunder have been incorrectly interpreted, the
provisions of the Code do not fully apply or the
requirements of the Code are adequately satisfied by
some other means.

"Failure to submit an application for
appeal within the time specified shall constitute
acceptance of the Code official's decision.

"Should you have any questions or if we
may be of help in your decision, please contact your
Code specialist, Kristina Jackson at (757) 664-6612 or
Kristinajackson@norfolk.gov.

"Sincerely Sherry Johnson, division head,
Division of Neighborhood Quality, Department of Neighborhood Development."

Q. All right. And you included with that an attachment, did you not?

A. I did.

Q. And that included what is contained in the Statewide Building Code under Section 105.1 which is Part 3 of the Building Code.

A. Correct.

MR. CALLAHAN: Your Honor, we would move the introduction of this letter into evidence, please.

THE COURT: Any objection?

MR. SHERMAN: No, Your Honor.

THE COURT: Defendant's Exhibit 4.

(Defendant Exhibit Number 4 was received.)

BY MR. CALLAHAN:

Q. Other than Dr. Sinesi, who did that letter go to?

A. The letter was posted on the property, sent to Dr. Sinesi in registered mail.

Q. Okay. And did anybody else -- and where is this -- the letter is contained at City Hall over in your office on Monticello?

A. Correct.

Q. And does anybody else receive a copy of
that letter?

A. No, sir.

THE COURT: So you were notified to do this because the Architectural Review Board was notified, correct?

THE WITNESS: No, sir.

THE COURT: What tells you to generate this?

THE WITNESS: Under the Property Maintenance Code, it is our responsibility to deem the building unfit or unsafe at any time.

The Building Commissioner, Rick Fortner, had reviewed the engineer's report, determined that it was a public health and safety issue, which then prompted us on the Property Maintenance side under Part 3 to send the notice to repair, demolish the structure because it was unsafe.

THE COURT: So how do you find that out from Mr. Fortner?

THE WITNESS: Mr. Fortner -- I was included in an email that had his determination in it.

THE COURT: So do you then -- you don't give him a copy of the order, for instance? How does the order work its way down to all the people who were involved on the way up, is my question?
THE WITNESS: Well, the order would only be required to be served upon the property owner. We're in the same office. Everybody has -- knew the order. But we would not -- in our standard operating procedure, our dealings are only with the property owner.

THE COURT: Okay.

BY MR. CALLAHAN:

Q. And Miss Jackson works for you?
A. Yes.
Q. And it was Miss Jackson that went out. And were you familiar -- did you ever go to court with Miss Jackson?
A. Yes, I was in court with her just as an observer on several occasions.
Q. And the case has been continued for many times for insurance purposes.
A. Correct.
Q. Because a determination of the insurance wasn't made until May of 2018.
A. I couldn't say for sure, but, yes, I know it has been continued.
Q. All right. And did you ever go inside this building?
A. No, sir.
Q. But Miss Jackson did.

A. Yes.

Q. Very good. Thank you.

THE COURT: Cross?

MR. SHERMAN: Yes, Your Honor.

CROSS-EXAMINATION

BY MR. SHERMAN:

Q. How are you doing? My name is Joe Sherman.

You testified that you never sent that letter to my client or anyone else, right?

A. To -- to your client as far as?

Q. In court today, I'm representing the neighborhood.

You never sent the letter to anybody in the neighborhood other than the property owner, right?

A. We have not -- we would not have mailed it.

I have had several FOIA requests for that notice since then, so I couldn't tell you who's received copies of it.

THE COURT: At the time you mailed it out to Dr. Sinesi, you didn't mail it to anybody else.

THE WITNESS: No, sir.
BY MR. SHERMAN:

Q. And in that letter, it doesn't say who can appeal other than "you." It says "You can appeal," addressed to the landowner, right?

A. Correct.

Q. And it also said in that letter that a valid appeal ground would be other means to fix the problem.

A. Correct.

Q. Okay. And you're aware that there were ongoing enforcement actions against the property owner, right?

A. Certainly, yes.

Q. Oh, gosh. Are you aware how long that had been going on?

A. For more than a year. Miss Jackson would be able to testify to exact dates for you.

Q. Okay. So the demolition of that building solved a big problem for the whole office, right?

A. I'm not sure your -- what I understand you to be asking.

Q. Well, those code violations, the structural issues, they never have gotten resolved, right?

A. Correct, which is how the building became
1 deteriorated and has become unsafe.
2 Q. Right.
3 So the property owner neglected it to the
4 point that demolition was necessary, in your opinion, right?
5 MR. CALLAHAN: Judge --
6 THE WITNESS: No.
7 MR. CALLAHAN: -- objection as -- he's leading the witness saying what his opinion would be.
8 THE COURT: It's cross-examination.
9 MR. CALLAHAN: All right.
10 THE WITNESS: At this point, I would say until this last engineering report that gave us what we needed to -- because it had become so unsafe, at that point because of the continuing deterioration, yes.
11 BY MR. SHERMAN:
12 Q. Right.
13 A. It became a public health, safety issue.
14 Q. Right.
15 You were looking for the justification to demolish the building and solve the problem, right?
16 A. My job is to have it repaired or demolished, one way or the other.
17 Q. Right.
18 A. I need to remedy --
Q. Right.
A. -- the safety issue.
Q. Right. You don't care which one.
A. No.
Q. Right. As long as it's solved.
A. Correct.
Q. Okay. So problem solved, right?
A. It would be, yes.
Q. All right. And the --

MR. SHERMAN: No further questions.
THE COURT: All right. Redirect?
MR. CALLAHAN: Nothing further.
THE COURT: All right. You're excused, ma'am. Thank you. You're free to stay or free to go.
Next witness?
MR. CALLAHAN: Judge, if I could just have Lennie Newcomb, please.
THE BAILIFF: Turn toward the Judge and raise your right hand.
(The witness was duly sworn.)
THE COURT: Please have a seat.
We do have a court reporter, so please make sure that your responses are audible so she can hear them and write them down.
LEONARD NEWCOMB, III, called as a witness by and on behalf of the Defendant, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CALLAHAN:

Q. State your name, please.
A. My name is Leonard Newcomb, III.

Q. And, Mr. Newcomb, how are you employed?
A. I work for the City of Norfolk. I'm the acting director of planning.

Q. And in that -- and how long have you been with the City of Norfolk?
A. Over 40 years.

Q. Okay. And you've been interim City planning director for how long?
A. I think since May.

Q. You've been in the Planning Department for how long?
A. 40 years.

Q. And you were -- your name is listed on this August 13th, 2018 memorandum. Did you receive that document which has been admitted as Plaintiff's Exhibit 3?
A. Yes.
Q. And why do you get that document?
A. The code official, zoning, all of that is in the Planning Department. So essentially I am ultimately responsible for the people who do these jobs, and I was copied to let me know what was going on.
Q. Okay.
Now, Susan McBride was also listed as one of the people who received this notice; is that correct?
A. Yes.
Q. Did Miss McBride have to leave as a result of having to pick up someone from the airport? She was here previously; is that correct?
A. That is correct.
MR. CALLAHAN: Judge, that's the only other question I have of him.
THE COURT: Any questions?

CROSS-EXAMINATION

BY MR. SHERMAN:
Q. The dialogue that you just had here, you guys were talking about a ministerial act, right?
A. Yes.
Q. Just paperwork, right?
A. You mean as far as receiving that? Yes.
Q. Right.
You never went in that building that we're talking about today.

A. I've not been in that building.

MR. SHERMAN: No further questions.

THE COURT: Redirect?

MR. CALLAHAN: No. He can be excused.

THE COURT: You're excused, sir. You are free to stay or free to go.

MR. CALLAHAN: Miss Jackson, please.

THE COURT: How many more witnesses do you have?

MR. CALLAHAN: After this one, Judge.

One more after this one.

THE COURT: Okay.

THE BAILIFF: Raise your right hand and be sworn.

(The witness was duly sworn.)

THE COURT: Please have a seat.

And we do have a court reporter writing everything down, so please make sure your responses are audible.

THE WITNESS: Okay.
KRISTINA JACKSON, called as a witness by
and on behalf of the Defendant, being first duly sworn,
was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CALLAHAN:

Q. State your name for the record.
A. My name is Kristina Jackson.
Q. How are you employed?
A. I am the codes team leader for the Division of Neighborhood Quality for the Department of Neighborhood Development.
Q. And in that regard, was 355 West Freemason Street a part of your responsibilities or duties here in the City of Norfolk?
A. Correct. It's in my assigned census track.
Q. And how did it come to your attention and did you issue any violations against the owner for conditions that existed at the house?
A. Yes. The property caught on fire in December 2016. Being that it's in my assigned census track, the Fire Department sent us notification of the fire. I went out and did an inspection, noted the fire damage. Then we -- standard procedures are then we
issue notices of violations and a placard notice to make the necessary repairs.

Q. And when did you do that?
A. December 19, 2016.

Q. Okay. And how many days after the fire was that?

A. Maybe a couple days, yes.

Q. And did you go inside of the building?
A. Yes, we did.

Q. Who is "we"?
A. Oh. I had another inspector with me.

Q. How many times have you been inside that building?
A. Twice.

Q. Okay. And after the first time you went in, did you go in December 19th?

Q. All right. And when was the next time you went into that building?
A. Prior to the City boarding the property. It was open to the public. So I can't -- looks like my photos are from November 1st, 2017.

Q. Okay. And at that stage -- now, and then you issued summonses to Dr. Sinesi, did you not?
A. Correct.

Q. And how many of those did you issue?

A. I issued four.

Q. Okay. And they are still pending here in the City of Norfolk?

A. Yes, they are.

Q. All right. And they are still pending in the General District Court; is that correct?

A. Yes, they are.

Q. And the cases against Dr. Sinesi have been continued until right now till November; is that correct?

A. Correct, because of the violations that he's written up for is in regards to the structure not being repaired.

Q. Okay. And when Dr. Sinesi took -- the repairs that needed to be made, what were the repairs that you cited him for?

A. Sorry. So all together, when the original notices of violation, 12 violations were issued.

Q. Okay. And only four of them are pending.

A. Correct.

Q. Okay. And so at the present time, then there are only those four cases that still remain.
A. Correct.

Q. All right. And then you received notice through your chain of command that the building had been declared an unsafe structure; is that correct?

A. Correct.

Q. All right. And did you become aware that the -- Mr. Fortner had made a determination that it should be destroyed?

A. Correct. He notified our office.

Q. And so since November then, you have not been back in the structure at all, of 2017.

A. Correct.

MR. CALLAHAN: All right. I don't have any further questions.

THE COURT: Cross?

MR. SHERMAN: Yes, Your Honor.

CROSS-EXAMINATION

BY MR. SHERMAN:

Q. I printed the violations from the Norfolk General District Court site.

I'd like you to just confirm that these are accurate.

A. (Reviewing the document).

Yes, they are.
Q. Okay.

MR. SHERMAN: I'd like to move those into evidence as Plaintiff's --

THE COURT: Is this the one that was Plaintiff's --

MR. SHERMAN: This is the printout from the Court's website showing what's pending and how many times it's been continued.

THE COURT: All right.

MR. CALLAHAN: Judge, the other ones were the violations that she testified to that there were twelve of them. Eight of them have been resolved.

THE COURT: Got it.

MR. CALLAHAN: These are the four that are remaining.

THE COURT: We're up to Plaintiff's 11.

(Plaintiff Exhibit Number 11 was received.)

BY MR. SHERMAN:

Q. And on the hearing information, it indicates that it was continued October -- excuse me, November 3rd of '17, January 5th of '18, February 9th of '18, May 18th of '18, June 1st of '18 and then again on September 7th of '18. A total of six times.

A. Correct.
Q. Okay. And so you testified that you had not been in the building contemporaneous to when Mr. Fortner issued the demolition memorandum, right?
A. Correct.

MR. SHERMAN: No further questions.
THE COURT: Redirect?
MR. CALLAHAN: Nothing from me.
THE COURT: Thank you, ma'am. You're excused. You're free to stay or free to leave.

Next witness?
MR. CALLAHAN: Dr. Sinesi, please.
(The witness was duly sworn.)
THE COURT: As you've heard me tell others, we have a court reporter, so please make sure your responses are audible.

DR. MARK SINESI, called as a witness by and on behalf of the Defendant, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CALLAHAN:

Q. State your name for the record.
A. Mark Sinesi.
Q. And what do you do for a living?
A. I'm a cancer specialist at Eastern Virginia Medical School.

Q. And so you're a licensed physician here in the Commonwealth of Virginia?

A. That's correct.

Q. Okay. And you bought 355 Freemason Street, did you not?

A. Yes.

Q. Okay. Paid $675,000 for it.

A. Yes, sir.

Q. Okay. And what were your plans?

A. I was going to turn it from an office building, which it had been used as an architectural office, into my home.

Q. And in order to do that, did you engage people to draw plans?

A. Yes.

Q. And tell me about that.

A. I used the Dills Architects who had experience with renovating other historic structures in the Freemason area. They had done Kenmure and other historic homes that had been turned into office space and then converted back into residential.

Q. Okay. And did you incur expense in doing those things?
A. Yes.

Q. Can you give me an idea of how much expense you incurred?

THE COURT: Again, this is the expense after you bought the place --

THE WITNESS: And I --

THE COURT: -- in support of potential renovations.

THE WITNESS: At least $300,000.

BY MR. CALLAHAN:

Q. So it's fair to say at this stage you have at least a million dollars in this project.

A. Yes.

Q. And the plans you had to renovate it, did you get a cost estimate on how much it was going to cost to do the renovations you wanted?

A. Yes.

Q. And what was the amount?

A. And that was probably, probably going to be a little over a million.

Q. So at that stage, you'd have almost $2 million into this project; is that correct?

A. That's correct.

Q. All right. And are you a billionaire?

A. No.
Q. And do you have unlimited funds to --
A. No.

Q. -- support a project if it cost between $5 and $10 million to do, could you afford to do that?
A. No, not at all.

Q. Okay.

Now, did you have any problems with the insurance company in dealing with this place?
A. Well, yes. Because of the historic nature of the property, it was difficult for them to determine the appropriate value of the structure. I'll give you an example. The windows which were a hundred, in the range of a hundred years of age, they initially said -- give a very low allowance saying, well, they are depreciated. They are old. And so we worked carefully with them to help them appreciate that this was an historic structure and that the compensation that they -- even though they declared it a total loss, they, they paid way less than the face value of my policy.

It took more than a year to finally resolve that with the necessity of multiple inspections from the insurance company, and then they, they hired a specialist adjustor that was knowledgeable about historic homes.

So it was not a simple process. It, it
took a long, long time.

Q. And did they give you a hard -- insurance company give you a hard time because the house was a hundred years old and had been fully depreciated?

A. Right. So that was it. They, they said that because of the age -- initially their impression was because of the age, that they were reimbursing so very little.

Q. Okay. So it took you awhile to make a settlement with the insurance company.

When did the settlement take place?

A. It was earlier this year.

Q. Okay. And at that stage -- and so when did you decide that you needed to go back to -- or engage a structural engineer?

A. It was earlier this year. I asked the Speight Marshall group to analyze the viability of making repairs to the property.

Q. Did they issue a letter?

A. They did.

Q. And what did they tell you in that letter?

A. They said that they did not believe it was practical to repair it.

Q. Did they eventually -- did you send that
letter to the City?

A. Yes, um-hum.

Q. All right. And at some point in time did you engage them to give you a complete evaluation of the building?

A. I did.

Q. And they eventually issued their report that's been received into evidence?

A. Yes.

Q. And you've seen that report, have you not?

A. Yes, I have.

Q. Okay. And you reviewed that report.

A. Oh, yes.

Q. Okay. It was your desire to live in the neighborhood and be neighbors with everyone here that's against you today.

A. I, I wanted to live in the neighborhood, yes.

Q. Okay.

MR. CALLAHAN: I don't have any further questions of this witness.

THE COURT: Cross?

MR. SHERMAN: Yes, Your Honor.
CROSS-EXAMINATION

BY MR. SHERMAN:

Q. Dr. Sinesi, sorry to meet you under these circumstances.

A. It's better than your meeting me the other way around.

THE COURT: Go ahead.

BY MR. SHERMAN:

Q. This is about money, right?

A. Beg your pardon?

Q. Your testimony with Mr. Callahan about being a billionaire or not and how much money you put into the property, this is about money, right?

A. I don't -- this is about what was going to be my dream, my home. I loved this neighborhood. I have deep respect for the historic nature of Norfolk and I love the Freemason area and I -- after buying the property, I spent the better part of a year in architectural and engineering work and ended up with a beautiful plan to renovate the house and to put an historically appropriate garage unit with arches and columns, and all that got approved through the certificate of appropriateness process, and then we just got a few weeks into the internal renovation when it was
all taken from me by an arsonist.

In fact, I had hoped maybe I could get some tax relief by virtue of restoring this structure, but some of the things I had wanted to do, put an elevator in it because it's four floors from the basement to the top and put that historically appropriate garage unit would have nullified any efforts in that regard. And so I was willing to incur the added expense of doing it that way.

So that's really what it's about. It's about the fact that I'm a victim of a crime and now, unfortunately, I'll do exactly what I'm told to do with the property. I was told to demolish it, then I was told to wait, and now I'll do whatever I am instructed to do.

Q. Well, you weren't willing to make the code violation repairs, were you?

A. Well, it really wasn't possible for me to do so for a couple of reasons.

For example, one of the code violations is to restore the electrical and plumbing systems, all of which had been completely destroyed and to remedy the violation of having a structure that's not suitable for human habitation.

I understand that.
And one of the reasons I couldn't move to make further -- make any efforts at improving it was that I spent over a year with my insurance company wanting to keep reinspecting the property to determine if they could do the right thing, and they still haven't.

But I'm all done seeking any further relief as far as that goes.

And so those are the reasons really that the violations have been continued, because it just wasn't possible for me to do.

You know, it would mean going ahead and restoring the whole building, which I suspect would cost well in the millions and is way beyond, you know, my capacity to do, if it's even possible. I mean, I guess you could rebuild the Golden Gate Bridge, but it's a matter of feasibility and reasonability.

Q. And I think that's exactly the issue, about feasibility and reasonability.

In fact, you said in your testimony earlier that the February letter from Speight Marshall about viability was that it's not practical, right?

A. Exactly. And I take that -- the way I understand that is that given unlimited resources and time, that it would be possible to do almost anything.
This is a wonderful country we live in. But within the context of what is reasonable to do in that location, their assessment was that the most appropriate disposition of this building was to remove it.

Q. And that was the conclusion in the report also, was that it was not reasonable to repair it; not that it wasn't in imminent danger of collapse, but that it wasn't reasonable to do so. The best and most reasonable thing would be to knock it down, right?

A. I can read the sentences the same as you can.

THE COURT: Did you have any input into the City regarding the recommendations to demolish it, sir?

THE WITNESS: No.

THE COURT: Okay.

BY MR. SHERMAN:

Q. If you really wanted to prevent a tragedy at your property, you would do something to prevent trespassing on your property, wouldn't you?

A. I would point out that that property was trespassed an uncountable number of times during the period in which I was undergoing the architecture, engineering and approval process, and we would board it up and it would be -- the boards would be taken down.
It would be broken into.

It -- oh, actually, I beg your pardon.

During the architectural, engineering approval process, it was broken into countless times.

What I thought, maybe homeless people were just staying in there. And I didn't really begrudge them, but at the same time, we did notify the police on every occasion.

I put up a chain across the entrance to the parking lot. That was ripped down. And so it was -- it was violated regularly.

Then after the fire, people would break in and vandalize and steal. All the copper piping was taken out of it. The copper downspouts were removed.

There were four air-conditioning condensers out back. Those were stolen.

So the property has been exceedingly difficult to fully reinforce and prevent trespassing.

But we have done everything we can.

In fact, after the fire, we put up boards that were then ripped out, and my contractor would go back and put them back up.

And then in dialogue with Miss Jackson, I had said maybe the City has an expertise in boarding these things up that my contractor can't do, and so I agreed to -- you know, I appreciated the City doing what
they could to board it up. Evidently they've got ways
of putting two big plywood sheets over a window or a
door and through-bolting them so they don't have to
attach it to any of the perimeter structures. It's a
specialized expertise that fortunately the City had, so
I was agreeable to that process.

Q. Well, when you made those repeated claims
to the police, you mentioned the address of the
incident, right?

A. Correct.

Q. And so they should get the memo that
there's an ongoing problem over there, right?

A. I would certainly think so, yes.

And many of my, my what I had hoped would
be my neighbors who are here now helped me with that
process. They would notify the police themselves or
notify me that they've seen trespassing.

Previously this was --

THE COURT: The neighbors would or would
not? I just didn't hear you.

THE WITNESS: I beg your pardon?

THE COURT: The neighbors would or would
not?

THE WITNESS: Would, yes. They helped,
yeah. They notified the police.
THE COURT: I just needed -- I just

didn't hear you.

THE WITNESS: I recognize almost every
face in this room. I still like these people. I like
the house, too. I don't want to see it go away, but, I
mean, nothing I can do about it.

BY MR. SHERMAN:

Q. Well, you could put it through an ARB
process, right?

A. All these things are possible. If I am
ordered to do that, I'll do exactly what the judge tells
me to do.

Q. You and me both.

The police should have a record of all
those trespassers then, right?

A. You know, I hope so.

I myself never got a response that a
policeman responded to that property and found someone
there. By the time they were notified and then, you
know, made their rounds, the person was gone, but the
evidence of them having been there was present.

Q. Right.

But to this day, you still haven't put up
no trespassing signs, right?

A. I've put them up many times. Ripped
They don't rip down Lin Baker's sign -- or Lin Miller's sign, right?

I have no explanation for that.

All right.

Okay. So lucky for us, the police do keep stats.

Um-hum.

And so I've requested them here, and I'd like to show you --

Is there a proffer where we're going with all this?

I'm going to implicate Dr. Sinesi's credibility with a comprehensive list of calls to that property, and we're going to see that there's dead possums and cats on the roof and no reports of vandalism or trespassing on the property.

All right. Show him the list.

Thank you.

I can --

The question is why they have all those other reports but they don't have the trespassing reports, if you know.

I do not know the answer.
I'm sorry, I don't know the answer to that.

BY MR. SHERMAN:

Q. Why would they keep a parking violation but not a trespass?

A. I have no explanation for that. But I personally made calls.

THE COURT: How many calls did you personally make, roughly?

THE WITNESS: Probably five.

BY MR. SHERMAN:

Q. The nosey neighbors called for a cat on the building, but there's no records --

THE COURT: I've got it.

MR. SHERMAN: I'll move to admit these.

THE COURT: Any objection?

MR. CALLAHAN: No objection, Your Honor.

THE COURT: Plaintiff's 12.

(Plaintiff Exhibit Number 12 was received.)

THE COURT: You can make that argument in closing.

MR. SHERMAN: I understand.

I'd also like to add this email from Allendriscoll@norfolk.gov with regard to police reports.

I'll show it to whoever wants to see it.
THE COURT: Any objection, Mr. Callahan?

MR. CALLAHAN: Judge, I'm going to object to any of this coming in unless he can lay a proper foundation through the Police Department.

MR. SHERMAN: All right. Your Honor, my client can lay the foundation. It's his email. So if we need to go through that, we will. Is that what you want?

THE COURT: You can do it on rebuttal.

MR. CALLAHAN: No, go ahead.


(Plaintiff Exhibit Number 13 was received.)

THE COURT: Tell me, sir, what's your understanding regarding why this engineer's report was prepared? Who initiated it?

THE WITNESS: I did.

THE COURT: And what was the purpose of you initiating it?

THE WITNESS: To determine the status of the property relative to whether I could be expected to fix it or not.

THE COURT: And so why did you do it when you did it? In other words, the property had been sitting there for quite some time and -- what was the
straw that broke the camel's back, if you will?

    THE WITNESS: Right.

    Well, if you know, I've been cited for violations relative to repairing the property, and I wanted to determine if it was something within my capability to do, and the structural engineer's report told me that really it's going to be well beyond my capabilities to do so. And I submitted that to the City and then was told to demolish it.

    THE COURT: Okay.

BY MR. SHERMAN:

    Q. As soon as the fire happened, you started calculating your losses, right?

    A. Well, I was really kind of in shock, to tell you the truth. It was -- the first thing I did was to recognize the heroism of the people who went into that building to fight the fire. You know, it was at night. It was around Christmastime. And I knew that people had broken into that house, and I was concerned that they might find someone whose life they needed --

    THE COURT: Go ahead and repeat the question because I'm not sure he's answering the question you asked.

    THE WITNESS: I'm sorry. You asked about calculating losses. The answer is no.
1 My first concern was of a humanitarian nature.
2
3 BY MR. SHERMAN:
4
5 Q. You did calculate your losses after the fire, right?
6 A. Yes.
7
8 Q. Okay. And did you bring any evidence of your money spent on the structure for soft cost today?
9 A. No.
10
11 Q. You didn't bring any evidence of the insurance you collected either, did you?
12 A. No, I didn't bring any of that with me today, but I have it.
13
14 Q. So when you were calculating your costs, you realized that the land was more valuable vacant, right?
15 A. You know, this is something that's very far from my day-to-day life. I don't really understand these things.
16
17 THE COURT: Just yes or no and then you can explain.
18
19 THE WITNESS: No, I didn't understand that.
20
21 BY MR. SHERMAN:
22
23 Q. Have you figured that out yet?
A. I still don't really have a good handle on that, whether the land is more valuable with the property or with -- with the house or without, the tax assessed value is $730,000 as it stands now. Most of that is in the land, so I do understand that.

Q. You know what you paid for it, right?
A. Um-hum.

Q. And you know what you're listing it for, right?
A. Correct.

Q. And you know which amount's higher, right?
A. Well, my total cost of ownership is greatly in excess of my asking price on that property.

Q. Right, which is my point, that you are looking for the additional costs on the sale. You want the additional value on the land sale to make up the difference for whatever costs come out of pocket.
A. I want to sell it for a fair price.

Q. Right.

And in your case when you're a victim and you've been taken advantage of and you lost a bunch of money in this, fair to you means getting the land value vacant --
A. Fair market value. I'm just looking for
fair market value. And, and if the house has to stand
and I keep it for sale for an extended period of time,
I'm prepared to --

Q. And you conveniently waited and addressed
none of those -- the imminent issues inside the house
until the demo permit. You waited until the fair market
value was in the land because of the demo permit rather
than with the house in order to list the property,
right?

A. I don't understand your question.

Q. You -- I think that the question is that
you say you want fair market value, right?

A. Yes.

Q. All right.

A. Um-hum.

Q. And you understand from the testimony
today that fair market value as improved or fair market
value vacant are two different things, right?

A. I gather there's been some statement to
that effect.

But I --

Q. Yes or no?

A. Okay. I don't really understand real
estate values.

Q. You understand that if the structure's
standing, somebody buying in the neighborhood has the responsibility to preserve it, right?

A. I do.

And maybe -- the essence of your question -- but maybe with the tax rebate that's possible with the structure standing, maybe I could sell it for more.

I don't know. I'm not a professional real estate person.

Q. We had professionals here today. And would you agree that they testified it's worth more raw land vacant than it is with the structure with responsibility to maintain it, right?

A. I don't exactly remember those statements. And I don't --

THE COURT: You made your point.

MR. SHERMAN: Thank you.

No further questions.

THE COURT: Redirect?

MR. CALLAHAN: Nothing further for the Doctor.

THE COURT: All right.

MR. CALLAHAN: I do --

THE COURT: You may sit next to your attorney, sir.
MR. CALLAHAN: Steve Cowan who is the engineer.

THE COURT: Deputy Perkins.

THE BAILIFF: Raise your right hand.

(The witness was duly sworn.)

THE COURT: All right. Please have a seat.

JAMES STEVEN COWAN, called as a witness by and on behalf of the Defendant, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CALLAHAN:

Q. State your name for the record, please.
A. James Steven Cowan.

Q. And how are you employed, sir?
A. I'm a principal structural engineer at Speight Marshall & Francis.

Q. Are you licensed here in the Commonwealth of Virginia?
A. Yeah.

Q. All right. As an engineer?
A. Structural engineer, yep.

Q. Structural engineer.

Where did you receive your undergraduate
degree?

A. Old Dominion --

Q. Okay.

A. -- University.

Q. And have you had -- and do you hold a license in Virginia as an engineer?

A. Correct.

MR. SHERMAN: Your Honor, I'll stipulate he's qualified as an engineer.

THE COURT: Do you want to offer him up?

MR. CALLAHAN: Yeah, I would offer him as an expert, Judge, as a structural engineer.

THE COURT: All right. Any objection?

MR. SHERMAN: No.

THE COURT: Qualified as an expert in the field of structural engineering and can render opinions in that field.

BY MR. CALLAHAN:

Q. And I'm going to let you look at your report. It has already been introduced into evidence as Exhibit 3 by the plaintiffs.

Do you recognize that report?

A. Yes.

Q. Did you author that report?

A. Yes.
Q. Okay. The opinion that you end up coming to is that the building needs to be taken down.

A. Yes.

Q. What leads you to that --

THE COURT: Ask him that question.

That's not how I read the report.

Is it your conclusion that it must be taken down?

THE WITNESS: I'm just -- it's our opinion that the most reasonable fix for the building is demolition.

BY MR. CALLAHAN:

Q. All right.

A. Further, that there are portions of the building that must absolutely be demolished.

Q. All right. And what are those portions?

A. The porch, I guess it's described as the porch, anything on the rear of the building is in extreme disrepair. It's going to collapse eventually.

Pretty much the way it's framed and the extent of the damage, especially primarily at the second floor, is that none of the wood framing is salvageable.

Q. Okay. And so if the wood faming is not salvageable, what does that mean?

A. What that means, basically if you read --
the report basically states there's nothing salvageable in it except the exterior walls.

Unfortunately, as you remove the wood framing, it's going to destabilize those walls, which means those are what keep the walls from blowing over, tipping over.

As those come out, in order to actually salvage the walls, you have to put in a very extensive system of bracing to even temporarily keep it stable before the wood framing could be replaced.

Q.  Okay.

THE COURT: The way you put it, "If you were to salvage these exterior walls, a complex and expensive system of temporary shoring and lateral bracing utilizing structural steel struts, walers and bracing would be required to temporarily stabilize the walls during demolition of the wood framing."

THE WITNESS: Correct.

BY MR. CALLAHAN:

Q.  And do you have an idea of what those type of costs would be to do that?

A.  I would estimate that the actual design and installation of the steel system to keep it stable would cost more than it would cost to --

MR. SHERMAN: I object. It's just not
reasonable. It's a feasibility issue. It's not relevant.

THE COURT: I'll overrule it. He can answer.

BY MR. CALLAHAN:

Q. Please.

A. So, basically, the system of steel to keep the walls braced and stable and the design of that system would likely cost more than it would to reframe, to demolish and reframe the wood framing.

Q. Okay.

THE COURT: What do you mean demolish?

THE WITNESS: Because basically before they can come in and actually remove all this wood framing which has to come out, they are going to have to, one, hire an engineer and install structural steel because the walls are pretty tall, so you're going to have a pretty complex system of structural steel braces, struts, beams that has to go in prior to actually removing those -- the wood. Then you come in, start removing the wood and a se-- -- a complicated sequence. It would be incredibly difficult and expensive.

Then you also have some site constraints on the side. I'm not sure which street it is. The one that's really tight on the sidewalk, you wouldn't even
be able to do it along the perimeter feasibly.

BY MR. CALLAHAN:

Q. You'd have to block the street off.
A. Either have to block the street or get very creative with the actual design to brace it.

Q. And do you have an estimate of what that expense would be in and of itself?
A. I don't know if I can actually speak to that.

Q. Okay. How long a period of time would it take to do that?
A. Several weeks, I would imagine, construction and design.

Q. All right. And how long doing the project then?
A. What are we talking, full removal of the wood framing, bracing and rebuilding it back to its in-state condition?

Q. Yes.
A. Several months.

Q. And you don't have any opinion as to what the value of that would cost, do you?
A. I don't. I -- the only thing I would surmise is that the -- because working within an existing structure in and of itself, you pay a premium
for the labor. You could say that.

Q. Okay. And would it be your opinion that most any structure could be salvaged?

A. Yeah, anything that hasn't already collapsed is theoretically salvageable.

Q. Is it your opinion then that this building if you had enough money and had enough time and enough -- the right people, it could get done.

A. Correct.

Q. Okay. But do you think that's feasible based upon your review of this building?

A. No. We looked at it several ways.

THE COURT: What's that assumption? If your assumption's unlimited money, I guess the answer is sure, you can do it.

So would you say it's not feasible because it cost too much? Because what?

THE WITNESS: I would say that if you, if you removed any emotional attachment to the building or historical sensitivity to it, there would be no dispute that demolition would be the course of action for the structure.

THE COURT: Agreed.

But if you did put some value in the historic aspect of it and wanted to keep the exterior
walls and money was no limit, you could do it, theoretically.

THE WITNESS: Of course. If money was not an issue, it would be feasible to do it.

MR. CALLAHAN: I don't have any further questions.

CROSS-EXAMINATION

BY MR. SHERMAN:

Q. Good afternoon, I'm Joe Sherman.

A. Hi.

Q. You just testified everything is savable. It's just a matter of cost, right?

A. The wood framing is not salvageable, but it's replaceable. But you could recreate that house. You know, from a structural engineering standpoint, it's feasible.

Q. So it's the demolition of the framing that would cause the instability, right?

A. Well, there's -- I mean, there's no engineer that would ever go in that structure and say it's absolutely not -- a storm could come in and blow it over. There's no one that would say definitively in its current state that it's safe, if that makes sense.

So in the sense that -- that wood framing
is there basically so, you know, so you can walk on it and also braces those walls.

In its current state, I would never sign off saying that it's doing its job to stabilize those walls.

Q. You crawled over all of it, though, didn't you, right?
A. I walked through the house.

Q. And so the conclusion in your report requires a domino effect starting with removing the framing, right?
A. Correct.

Q. Okay. And so when that occurs, dominoes go down, right?
A. Yeah. That has to occur, though.

Q. And that hadn't occurred yet, right?

THE COURT: The question we're getting at is, as it was when you inspected it, would you have considered it stable?
THE WITNESS: No.

THE COURT: Why? You didn't say it needs to be immediately demolished in your report.

THE WITNESS: I guess there's a precedent that it hasn't collapsed yet.

I do say in the report that that porch is
absolutely a threat to collapse.

That said, there's nothing in the report saying that it -- you know, if a storm came through, you know, that it's safe.

THE COURT: Well, was it your expectation that the City, based on your report, would require immediate demolition?

THE WITNESS: Just the porch. I hold the opinion that we pretty clearly state that the porch has to be demolished.

THE COURT: So were you surprised -- or did you know that the City ordered it be demolished?

THE WITNESS: I'm not sure when I found out. Probably -- that was probably a couple weeks ago I was contacted.

THE COURT: Okay. So it was not your understanding that this report was needed to justify demolition of the entire improvements?

THE WITNESS: No. This report was purely an objective structural evaluation report that we would do for any structure that someone was going to renovate or was damaged.

BY MR. SHERMAN:

Q. Right.

And you did it based on a free market
standard of what's reasonable, right?

A. Again, you see something damaged, you report it and make your evaluation of how you repair it.

Q. Right.

And you just testified that it wasn't your opinion that the whole house needs to come down, right?

A. I'm of the opinion that it is physically possible to restore it to its original condition.

I'm of the opinion from a cost standpoint and the complexity of the construction compared to new construction when you're not inhibited with those things, that that's what you would -- that would be our recommendation to demolish it.

Q. I understand. And believe me, I get it.

If you contrast the two conclusions on 48 and 49, it speaks for itself.

On 48, you say, "We recommend the porch structure be demolished as soon as possible to prevent a potential hazard to the public," right? And then on 49: "It is our opinion that the best and most reasonable course of action for the structure is complete demolition."

A different, a different standard, right?

A. Yeah, I guess so, yeah.
Q. That's the reasonable versus as soon as possible to prevent a potential hazard, right?
A. Yeah.
Q. All right.
MR. SHERMAN: I've got a bunch of stuff, but I think I can rest on that, Your Honor.
THE COURT: All right. Any redirect?
MR. CALLAHAN: Nothing, Judge.
THE COURT: All right. Thank you, sir.
You're excused. You're free to stay or free to leave.
MR. CALLAHAN: Judge, we would rest.
THE COURT: All right. Any rebuttal evidence today?
MR. SHERMAN: No, Your Honor.
THE COURT: All right. I'll hear very brief closing. I'm going -- I'll allow the parties an opportunity to provide me a post-hearing brief.
In that post-hearing brief I want you to address specifically the issue of whether the Court has jurisdiction in light of the Statewide Building Code, including whether the appeal period in the Statewide Building Code would apply to individuals other than the homeowner, such as the association.
I'll give you each five minutes if you'd like on a quick closing, but I'll allow you an
opportunity to provide me a brief within a week as well. Then I'll discuss the preliminary relief.

MR. SHERMAN: Your Honor, I'm not going to belabor the points. You heard it. You get it, I can tell. We've made our points.

As far as the elements and the likeliness to succeed, we put on evidence.

THE COURT: Likely to succeed doing what? Are you going to be filing some kind of complaint? I don't know what the ultimate relief you're seeking is.

MR. SHERMAN: Yes, we are going to file a declaratory action asking this Court to declare that the emergency status is arbitrary and capricious.

THE COURT: Then we're going to need to get the City involved in the lawsuit as well.

MR. SHERMAN: I think that would be an appropriate party.

THE COURT: I think it's a necessary party.

All right. Go ahead.

MR. SHERMAN: The likelihood of succeeding on those merits I think has been demonstrated because the builder who's in the market to restore this type of project is interested in buying the structure.

The engineer just said that it's not an
imminent threat.

And the Building Commissioner said that he relied very heavily on there. He didn't go in there himself.

Every City employee said they didn't go in there.

THE COURT: The question of whether it's arbitrary and capricious for the City to make a determination otherwise, it's a pretty high burden.

MR. SHERMAN: I agree.

I think that when they enforce something that's drastic and especially with the compelling State interest at issue here and codified as a State interest and empowering the municipality to have this process that they've set up and then they don't enforce the Building Codes through adjudication and then elect to enforce the Building Code to demolish, appears arbitrary and capricious, and it's based on their personal convenience.

There's testimony today that it was a problem-solver.

So I think we are going to succeed on the merits and I also think that the irreparable harm has been stipulated to and, if not, there's compelling evidence that you're not going to get another
contributing structure in its place. You can't. It's just not possible.

So with the balance of the equities, I think that the compelling State interest, the local level process and the interest of everybody involved is going to have to outweigh Dr. Sinesi who claims he doesn't even understand the basic accounting principles --

THE COURT: Well, it's also the public. Not even the public interest part of it; the potential injury to the public of the structure.

Mr. Callahan raised a valid point. I mean, one of the conditions of a bond could be that you provide insurance in case something does happen.

I'm not sure whether the insurance is covering that building right now when the City has declared that an emergency exists.

MR. SHERMAN: I think that the emergency prong and the public safety issue are intertwined to the extent that the engineer just said it's not a problem and that, you know, we put on evidence that the builder wants to buy it and another engineer said that this isn't a structural issue. It needs to be rebuilt in the right way, but there's substantial evidence that it's not an emergency and there's no threat to the public
safety and health.

If we wanted to do a relief where that porch comes down because that thing is not part of the brick structure and doesn't have another day in its life, then we can live with that.

But knocking the whole structure down is, you know, to spare the need to enforce the Code is arbitrary and the wrong result in this case.

THE COURT: Where do we ultimately end up? Say you do prove that the City's decision was arbitrary and capricious. Do you want the Court to order that he has to rehab the house to your standards?

MR. SHERMAN: No, no, no. He can demolish the house. There's a process for it. He gets a certificate of appropriateness. He knows that process well. He got it for the building.

THE COURT: Which just allows you to appeal and we're back to the same issue.

MR. SHERMAN: No, no, no. He has -- as part of that process, he has to market the property for fair market value for 12 months, and if it's not bought by then, he can knock it down.

But he hasn't done that.

What he's done is abused the time, and he's had enough time to do it twice. He hasn't done it.
He's marketing it for the raw land value so that the people who are interested in buying it for the structure won't bid on it, and the -- I mean, the only thing that needs to happen --

THE COURT: I wasn't aware. You said there's a condition where he would have to market it for a year?

MR. SHERMAN: Yes, Your Honor.

THE COURT: And the Court gets it wrong, you're going to have to post a bond for the potential damages for him not being able to sell it in that year, I guess.

MR. SHERMAN: He can demolish it then. Yeah, he'll have carrying costs for a year.

And based on that transcript and his testimony as to not being good with money, it doesn't sound like it would be a whole lot.

And the fact he's gone this two years without doing it, then, I will submit, that we can deal with that, yes, Your Honor.

THE COURT: All right. Mr. Callahan?

MR. CALLAHAN: Judge, basically what you ever here is that the Freemason folks should have brought the City in right from the start, but obviously they didn't want to upset the City of Norfolk. The City
of Norfolk should be here arguing this case because my client is under an order to tear down from the City.

The City can go out there tomorrow and tear it down because they have the authority to do that under the Statewide Building Code.

And so that's the -- you know, that has been the biggest problem. So that goes to the jurisdictional issue that you talked about that you want briefed.

THE COURT: But jurisdictional is whether they missed their time limit and it's barred to begin with.

MR. CALLAHAN: I think they are barred.

But I think when you look at the holding in the Winter's case, the public has a right to be safe. And this building is not safe and it needs to come down.

Dr. -- you know, they want to --

THE COURT: Your engineer just said the only thing really unsafe is the porch.

MR. CALLAHAN: Right.

But at the same time, I mean, where are we going to be -- let's go a year from now. Where are we going to be a year from now?

So we'll be a year from now and, you know, they are going to appeal it and they are going to
appeal it, so then we're two years from now, okay?
We're three years from now. After we take it up from
this Court's ruling to the Supreme Court of Virginia,
we're three years from now. The house is going to sit
there.

Now, is it going to be repaired in that
period of time? Is it going to be -- somebody going to
buy it and fix it up?

If somebody was going to buy it and fix
it up, if it had been 21 months, there's been a sign up
to sell it. They haven't materialized.

This gentleman they brought in here that
said that he would repair it, he has no intention of
repairing it. He has the intention of knocking it down
and building on it.

Dr. Sinesi has put -- he bought it, he's
put engineers, architects to develop plans to fix this
up, jump through all the hoops that were required.

They are giving -- they are acting like
Dr. Sinesi has gone in and done his research and figured
out the difference under the ordinance that you need a
certificate of appropriateness or you can get it done in
an emergency.

And I don't think that's his mindset at
all.
I think what he looks at to get the report done is a question of can I do this, is it feasible to do.

You know, you can do anything. They had a fire over here --

THE COURT: There's a counter-argument the way he chose to do it or the way that it has progressed has kind of robbed everyone else the opportunity to weigh in.

MR. CALLAHAN: Well, Judge, you know, on that is that he's dealing with the insurance companies. And so he doesn't finish dealing with the insurance companies till spring of this year. And so they are in and out and looking at it and making the determination. They are saying it's a hundred-year-old structure, therefore it's fully depreciated, it's not worth what you say it's worth because --

THE COURT: I got it, I got it.

MR. CALLAHAN: Okay. So if this house was in Ghent, if this house was in Larchmont, they would have torn that house down by now. The Larchmont Civic League could have come in here and jumped up and down, the West Ghent Civic League could have come in here and jumped up and down. The City would have torn it down.

So the only reason we're having this
discussion is because it's, quote unquote, an historic house.

But it's not. It's in an historic district, okay? That's all it is.

The house -- there are many other houses in the City of Norfolk that are a lot older than that house in the Ghent area, in the Freemason area.

But in this particular case, Judge, the biggest issue here is that Dr. Sinesi does not know which way to go. You know, he is caught between a rock and a hard place here, because the City says to knock it down, Your Honor said don't knock it down, judge downstairs says make these repairs.

And so we just want -- you know, the Code says, the Building Code says that once this -- the -- Mr. Fortner makes his decision, that that decision is final and therefore it needs to come down.

Dr. Sinesi doesn't want that. It makes him sad. But unfortunately those things happen.

And he's a victim of a crime, and we would ask that the injunction not be granted.

THE COURT: All right. Last word from you, Mr. Sherman?

MR. SHERMAN: Your Honor, I think the Court has had the opportunity to gauge the credibility
of the witnesses.

And the mischaracterizations of the testimony aside, I think the process is worth protecting here inasmuch as the home, and he had every opportunity to do it in a way that the zoning code allows.

And so we would ask Your Honor to enjoin the demolition, and we appreciate your time.

THE COURT: All right. The Court does have some serious concerns regarding jurisdiction.

What I'm going to do, I'm going to extend the current temporary injunction for a period of 30 days or until the Court rules, whatever is sooner.

In the meantime, I'm going to give the parties seven days -- the only reason I'm keeping the time frame short is because I'm dealing with a temporary injunction -- to provide me any additional materials you like either by way of brief or cases, however you want to handle that. I'll leave that up to you.

If you could forward a courtesy copy to my law clerk. Her email is amuncy@circuitcourtva.us. File it with the court but also provide her a courtesy copy, and then the Court will rule as soon as possible after that.

I certainly plan to rule within the 30 days, so we'll know where to go from there.
MR. CALLAHAN: Judge, what are we doing about -- we've got no insurance on this piece of property.

Is anyone going to provide for the safety of the public in between now and then on a structure that's not insurable, if it falls down and it kills somebody in the next 30 days?

THE COURT: So what's your proposal?

MR. CALLAHAN: Judge, they are the ones that have come in and asked for an injunction. I think --

THE COURT: You just said it's not insurable.

MR. CALLAHAN: Well, I think they need to at least post a bond of some sort to do it. I don't know if they can get somebody to do it. I don't know.

But I think in the least there's got to be something that protects the public from this building.

THE COURT: Mr. Sherman, any response?

MR. SHERMAN: Your Honor, they've allowed it to get to this condition. I mean, the entire situation we're in is as a result of criminal neglect. And so he's made his bed and he should sleep in it.

And the structural engineer has said that
no one's going to get hurt over there today.

And he doesn't even have the property
secured or no trespassing signs up.

And the neighbors are calling for dead
possums.

And so for him to act like it's a war
zone down there is a mischaracterization.

And so there's also testimony that the
builder who walks his dog by doesn't fear for his life.

So I would posit, Your Honor, for him to
shift the burden at this point is not equitable.

THE COURT: The Court is not going to
require a bond at this time.

The Court is going to reserve the right
to require a bond should it grant the temporary
injunction beyond this short term of 30 days or until
the Court rules sooner.

Any other questions?

MR. CALLAHAN: No, Your Honor.

THE COURT: All right. I do appreciate
the preparation of counsel, and I will be with you
shortly. So just make sure you submit anything within
the seven days. If I don't hear anything from you
within the seven days, I'll assume you're not going to
submit anything. But I would encourage you to at least
brief the jurisdictional issue.

MR. CALLAHAN: Thank you.

THE COURT: Very well. The Court will be in recess.

(Whereupon, court was adjourned at 6:07 p.m.)
CERTIFICATE OF COURT REPORTER

I, Marianne Martini Holmes, RPR, do hereby certify that I reported verbatim the proceedings in the Circuit Court of the City of Norfolk, in the matter of Freemason Street Area Association vs. Dr. Mark S. Sinesi, heard by The Honorable David W. Lannetti, Judge of said court.

I further certify that the foregoing is a true, accurate and complete transcript of said proceedings.

Given under my hand this 18th day of October 2018 at Norfolk, Virginia.

______________________________
Marianne Martini Holmes, RPR
Notary Registration No. 7021737
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Documents and Written Arguments Submitted By the City of Norfolk
VIA EMAIL DELIVERY

W. Travis Luter, Sr., C.B.C.O.
Secretary to the State Building Code Technical Review Board
Code and Regulation Specialist
Department of Housing & Community Development
Division of Building & Fire Regulation
State Building Codes Office
600 East Main Street – Suite 300
Richmond, Virginia 23219

Re: Appeal of Freemason Street Area Association - Appeal No. 18-22

Dear Mr. Luter:

The City of Norfolk (City) has no objections or additions to your draft staff summary.

With respect to written argument, I submit the following on behalf of the City:

1. Freemason Street Area Association (Freemason) sought to enjoin the demolition by the owner, Mark Sinesi (Sinesi) of the structure located at 355 W. Freemason St. Norfolk, Va. The injunction was denied in Norfolk Circuit Court and was upheld by the Virginia Supreme Court. (Copy of Virginia Supreme Court Order attached). The structure has been demolished and renders this appeal moot. See Cynthia Owens and Richard Owens v. City of Virginia Beach, Memorandum Opinion, Virginia Court of Appeals (unpublished), August 7, 2018.

2. The Norfolk Board of Building Code Appeals correctly found that the appeal of Freemason was untimely. On October 23, 2018 Freemason appealed the property maintenance code official’s August 14, 2018 Notice of Violation of Unsafe or Uninhabitable Property issued to the property owner, Sinesi. This was well outside the applicable time period.
for submitting the appeal under Virginia Maintenance Code (VMC) section 106.


4. Freemason admitted at the informal fact-finding conference that the only thing it hopes to gain from the present appeal is a mandate that “historical associations” be specifically notified of demolitions by building code officials in the future. An appeal hearing before the Review Board is not the proper forum for attempting to achieve the desired goal as this would require a statutory or regulatory change which is not within the purview of the Review Board. Additionally, Freemason lacks standing to seek prospective relief regarding any hypothetical future claim on behalf of “historical associations”.

5. If the Review Board gets to the merits of the case, the Norfolk Board of Building Code Appeals properly denied Freemason’s arguments that the property maintenance code official did not comply with the provisions of VMC section 105.1. There was ample evidence that the structure was unsafe and unfit for habitation and that demolition was proper.

Very truly yours,

Cynthia B. Hall
Deputy City Attorney

CBH:sb
Attachment
cc: Joseph Sherman, Esq. – via email delivery
    F. Sully Callahan, Esq. – via email delivery
    Sherry Johnson, Division Head, Neighborhood Development
    Rick Fortner, Building Commissioner, Department of Planning
VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 19th day of October, 2018.

Freemason Street Area Association, Inc.,

against

Record No. 181317
Circuit Court No. CL18-7735

Mark S. Sinesi,

Petitioner,

Respondent.

Upon a Petition Under Code § 8.01-626
Justices Mims and Powell and Senior Justice Millette

Upon consideration of the petition and amended petition filed pursuant to Code § 8.01-626, the motion to dismiss and brief in response filed by the respondent, and the brief in response filed by the City of Norfolk, the temporary injunction issued October 16, 2018 is hereby lifted and the petition for review is denied.

This order shall be certified to the Circuit Court of the City of Norfolk.

A Copy,

Teste:

Clerk
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VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Jack D. Singleton
Appeal No. 19-01

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IN RE: Appeal of Jack D. Singleton
Appeal No. 19-01

Suggested Summary of the Appeal

1. Jack D. Singleton (Singleton), owner of the property located at 190 West Jefferson Street in the Town of Wytheville, appeals enforcement action by the Town of Wytheville, Office of the Building Official (Town of Wytheville) under Part III of the Uniform Statewide Building Code (Virginia Maintenance Code).

2. On March 26, 2018, the Town of Wytheville, in enforcement of the Virginia Maintenance Code, issued a notice of violation to Mr. Singleton for his property located at 190 West Jefferson Street. The notice outlined fifty seven (57) violations of the Virginia Maintenance Code and contained a statement of right of appeal.

3. The Town of Wytheville affixed a placard on the property, near the building, on January 26, 2016. The placard identified the building as unsafe or unfit for human habitation. On March 27, 2018, the Town of Wytheville drafted and affixed a copy of the Notice of Violation (NOV) on the building.

4. Mr. Singleton filed an appeal to the Town of Wytheville Local Board of Appeals (local board) on April 11, 2018.

5. The local board conducted a hearing in May of 2018. On June 13, 2018, Mr. Singleton was served a copy of the local board resolution and subsequently filed an application for
(Page left blank intentionally)
appeal to the Review Board with a certification of service date of June 22, 2018. The appeal was considered by the Review Board at the October 12, 2018 meeting.

6. In the decision of the Review Board dated November 16, 2018, the Review Board upheld six cited violations. The first upheld cited violation was for VMC Section 105 (Unsafe structures or structures unfit for human occupancy); the Review Board found the structure to be in violation and that the placarding of the structure to be proper. The Review Board then found that the placard was improper and ordered a proper placard be issued by remanding the placard to the Town to be re-issued with the proper date and in full compliance with Section 105 of the VMC. The Review Board also upheld cited violations #2-#5 and #10 of the NOV dated March 26, 2018.

7. The November 16, 2018 decision of the Review Board was further appealed to the Wythe County Circuit court on December 17, 2018. The record of the appeal was sent to the circuit court and all parties on December 20, 2018.

8. On January 22, 2019, the Town of Wytheville performed an inspection of the property and re-issued a NOV citing the same six violations as previously cited #2-#5 and #10 in the NOV dated March 26, 2018 which was upheld by the Review Board in the November 16, 2018 decision.

9. Mr. Singleton filed an appeal to the local board February 19, 2019.

10. In a letter dated March 11, 2019, the Town of Wytheville explained that the NOV dated January 22, 2019 was a continuation of the decision issued by the Review Board on November 16, 2018.

11. The local board hearing was held on March 20, 2019. The local board denied the appeal. Mr. Singleton filed an application for appeal to the Review Board with a certification of service date of April 15, 2019.
12. This staff document along with a copy of all documents submitted will be sent to the parties and opportunity given for the submittal of additions, corrections or objections to the staff document, and the submittal of additional documents or written arguments to be included in the information distributed to the Review Board members for the appeal hearing before the Review Board.

Suggested Issue for Resolution by the Review Board

1. Whether the appeal is properly before the Board.
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Basic Documents
(Page left blank intentionally)
January 22, 2019

Jack Dennis Singleton  
260 West Jefferson Street  
Wytheville VA 24382

Re: Report of the unsafe structure located on 190 West Jefferson Street in Wytheville VA

Dear Mr. Singleton,

This is a report, pursuant to VMC 105.2, informing you that your property at 190 West Jefferson Street in Wytheville, Virginia has been determined to be an unsafe structure pursuant to the Virginia Maintenance Code. Please see the enclosed notices with specific code references.

You have ninety (90) days to obtain secure the structure from public entry. You have (14) fourteen calendar days from receipt of this notice to appeal with the Building Code Appeals Board. If the unsafe structure has not been secured within the designated time frame, the Town will proceed to secure the unsafe structure and a lien of cost will be placed on the property. In accordance to the *VMC 105.8., the structure must be secured against public entry. A building permit is required to provide an acceptable barrier. Securing the structure must occur within (90) ninety days.
Jack Dennis Singleton  
260 West Jefferson Street  
January 22, 2019  
Page Two

In accordance with VMC 105.2, an inspection was done on January 22, 2019 by this office and below is results of the inspection.

Use of the structure: Abandoned Structure

Description of the nature: The structure is rectangle one story approximately 30'x40' consisting of four block walls with metal wiring (chicken wire) covering the three window openings and one door opening. This structure does not have a roof and is open to the natural elements such as trees, weather and rodents. The window opening has rotted wood trim. The structure interior is open to the natural elements and has natural vegetation and trees growing. The structure has no records of any sewer, water or electrical services, or any record of person(s) living in the structure, or any activity since the year 1997.

Extent of any conditions found:

1. There are trees growing inside the foundation walls and possibly roots have grown beneath the foundation walls.
2. The east corner of the structure appears to have experience settlement resulting in cracks in the wall.
3. The wood framing on the wall appears to be rotting with moss growing.
4. The site area appears to be poorly graded, no protection from runoff near the foundation
5. An opening by the foundation that appears to be leading under the foundation cavity.
6. Top cavity of the block and cracks in the block are subject to the weather.
7. Dirt floor surface with growth of vegetation and natural elements.

*Virginia Maintenance Code

If you have any inquiries, please do not hesitate to call me.

Sincerely,

Charles Vannatter,  
Building Official
NOTICE OF VIOLATION

TOWN OF WYTHEVILLE
P.O. DRAWER 533 - WYTHEVILLE, VA 24382

OFFICE OF THE BUILDING OFFICIAL

OWNER/OCCUPANT: Jack Dennis Singleton
BUILDING: 1&2 Dwelling
ADDRESS: 190 West Jefferson Street Wytheville VA
PERMIT NO.: n/a
OCCU/USE GROUP: n/a

DATE: January 22, 2019
TIME: certified mail

The following violation(s) of the Virginia Uniform Statewide Building Code were observed during an inspection of the above referenced property. You are responsible for taking action to correct violation(s) immediately.

<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>CODE SECTION</th>
<th>VIOLATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2012 VMC 105</td>
<td>Structure unsafe or unfit for human occupancy. (January 22, 2019)</td>
</tr>
<tr>
<td>2</td>
<td>2012 VMC 105</td>
<td>Structure must be secured against public entry. Must obtain a building permit detailing the type of barrier around the structure.</td>
</tr>
<tr>
<td>3</td>
<td>2012 VMC 301.2</td>
<td>The owners shall maintain the structure and exterior property in compliance with these requirements.</td>
</tr>
<tr>
<td>4</td>
<td>2012 VMC 301.2</td>
<td>All vacant structures and premises or vacant land shall be maintained in a clean, safe, secure, and sanitary condition as not to cause a blight problem or public health or safety.</td>
</tr>
<tr>
<td>5</td>
<td>2012 VMC 302.2</td>
<td>All premises shall be graded and maintained to protect the foundation wall or slab of the structure from accumulation and drainage surface or stagnant water.</td>
</tr>
<tr>
<td>6</td>
<td>2012 VMC 304.5</td>
<td>All foundation walls shall be maintained plumb and free from open cracks and breaks and shall be kept such conditions so as to prevent the entry of rodents and other pests.</td>
</tr>
<tr>
<td>7</td>
<td></td>
<td>Notice of Violation is located on premise</td>
</tr>
<tr>
<td>8</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Failure to correct violation(s) within 90 days from receipt of this notice may result in penalties as noted in Section 36-106, Code of Virginia. You may appeal this order to the Town Building Code Appeals Board by written request within 14 days.

This Notice given to certified mail & Located on the premise

Reinspected ______________________________ 20____ Results ______________________________

charlesv@wytheville.org  (276) 223-3339  150 East Monroe Street, Wytheville VA 24382

Issued by: Charles Vannatter Date: January 22, 2019
Application for Appeal

Town of Wytheville Building/Fire Official
150 East Monroe Street
Wytheville VA 24382
(276) 223-3339 office (276) 223-3315 fax

Building/Fire Code Appeals Board
Type or Print All Information

1. Date of appeal submission: 2/19/19  Date of Code Application:

2. Type of Appeal Hearing Requested: (applicant must indicate only those that apply)

   Building Code
   Electrical Code
   Mechanical Code
   Plumbing Code
   IRC-Residential Code

   Elevator Code
   Fire Code
   Property Maintenance Code
   Virginia Rehab Code
   Other (specify)

   TOWN OF WYTHEVILLE

3. Applicant’s name: Jack Singleton  Address: 260 W. Jefferson St Wytheville Va. 24382

4. Applicant’s contact phone/fax information: 276 613 4926  Email:

5. Owner of Property: Not Different  Address of Property: 190 W. Jefferson St

6. Permit Number (if applicable): NA


8. Applicable Code Section(s): 105.1, 301, 302, 304

9. Applicant’s understanding of the applicable code requirements (please attach additional sheets as needed):

   Understand requirements pretty good, but not perfect.

10. Grounds for Appeal: Check all that apply (USBC Section 119.5 for new construction and the rehabilitation of existing structures; Section 106.5 for property maintenance; Section 112.5 for the fire prevention code).

   I claim that:

   a) The Building Official/Code Official/Fire Official has refused to grant a modification which complies with the intent of the provisions of the code;

   b) The true intent of the code has been incorrectly interpreted;

   c) The provisions of the code do not fully apply;

   d) The use of a form of construction/compliance that is equal to or better than that specified in the code has been denied.

   Please attach with reason(s) for each of the items checked in section 10. Please print or type reasons. Manufacturer information, cut sheets, data sheets from approved testing agencies may also be attached.
THE SPACES IN THE BOX ARE TO BE COMPLETED BY THE BOARD SECRETARY

BOARD ACTION

Date of Board Appeals Hearing: ________________________________

Number of Board Members Present: ____________________________

The decision of the board was to UPHOLD DENY the decision of the Building /Fire Official.

Number in Agreement: ____________________________ Number Opposed: ____________________________

Appeal is: 1 DENIED 1 GRANTED

Conditions/Comments:

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________
RESOLUTION

WHEREAS, the Wytheville Local Board of Building Code Appeals is duly appointed to resolve disputes arising out of enforcement of the Virginia Maintenance Code; and

WHEREAS, an appeal has been filed and brought to the attention of the Board of Building Code Appeals; and

WHEREAS, a hearing was held on March 20, 2019 to consider the aforementioned appeal; and

WHEREAS, the Board has fully deliberated this matter; now, therefore, be it

RESOLVED, that in the matter of Jack Dennis Singleton, a motion was made, seconded, and unanimously approved by the Board of Building Code Appeals to uphold the decision made by the Town of Wytheville Building Official ruling the structure located at 190 West Jefferson Street as unsafe, the property needs to be secured against public entry, and debris and trash needs to be cleaned up.

IN RE: Town of Wytheville v. Jack Dennis Singleton

The appeal is hereby denied regarding the vacant structure and property located at 190 West Jefferson Street for the reasons below along with the required actions to be taken:

1. The structure is in violation of 2012 VMC 105 and is in an unsafe condition and unfit for human occupancy.
2. The structure is in violation of 2012 VMC 105 and is not securely enclosed against public entry. The Board is requiring the installation of a fence compliant with OSHA standards within 30 days, the design to be reviewed and approved by the Building Official along with a permit issued prior to the installation, to secure the property.
3. The structure and the exterior property are in violation of 2012 VMC 301.2 and shall be maintained in compliance with the general requirements of 2012 VMC 301.3, 302.2, and 304.5.
4. The vacant structure and premises are in violation of 2012 VMC 301.3 and have not been maintained in a clean, safe, secure, or sanitary condition so as not to cause a blight problem to public health or safety. The Board is requiring the property to be cleaned up and all trash removed within 30 days of the installation of the fence in No. 2.
5. The premises are in violation of 2012 VMC 302.2 and shall be graded and maintained to protect the foundation walls or slab of the structure from accumulation and drainage surface or stagnant water.
6. The foundation walls are in violation of 2012 VMC 304.5 and shall be maintained plumb and free from open cracks and breaks and shall be kept in such condition as to prevent the entry of rodents and other pests.

Date: March 20, 2019

Signature: [Signature]
Chairman of Wytheville Board of Appeals

Signature: [Signature]
Vice-Chairman of Wytheville Board of Appeals

Note: Any person who was a party to the appeal may appeal to the State Building Code Technical Review Board by submitting an application to such Board within 21 calendar days upon receipt by certified mail of this resolution. Application forms are available from the Office of the State Review Board, 600 East Main Street, Richmond, VA 23219, 804-371-7150
COMMONWEALTH OF VIRGINIA
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
State Building Codes Office and Office of the State Technical Review Board
Main Street Centre, 600 E. Main Street, Suite 300, Richmond, Virginia 23219
Tel: (804) 371-7150, Fax: (804) 371-7092, Email: sbco@dhcd.virginia.gov

APPLICATION FOR ADMINISTRATIVE APPEAL

Regulation Serving as Basis of Appeal (check one):

☑ Uniform Statewide Building Code
☐ Statewide Fire Prevention Code
☐ Industrialized Building Safety Regulations
☐ Amusement Device Regulations

Appealing Party Information (name, address, telephone number and email address):
jack singleton 260 w. jefferson st. 24382
diamondjacksing@gmail.com
276 613 4476

Opposing Party Information (name, address, telephone number and email address of all other parties):
charles vannatter code official, fire marshal, zoning enforcement official Town of Wytheville VA. 150 east monroe st.
24382 276 223 3339 email charlesv@wytheville.org

Additional Information (to be submitted with this application)
  o Copy of enforcement decision being appealed
  o Copy of record and decision of local government appeals board (if applicable and available)
  o Statement of specific relief sought

CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of __________ , 2019 a completed copy of this application, including the additional information required above, was either mailed, hand delivered, emailed or sent by facsimile to the Office of the State Technical Review Board and to all opposing parties listed.

Note: This application must be received by the Office of the State Technical Review Board within five (5) working days of the date on the above certificate of service for that date to be considered as the filing date of the appeal. If not received within five (5) working days, the date this application is actually received by the Office of the Review Board will be considered to be the filing date.

Signature of Applicant: ______________

Name of Applicant: jack singleton
(please print or type)
The appellant seeks the following relief:

Specifically:

1. That my structure at 1901 W. Jefferson 24382 is secure and is not unsafe and that the code official's determination is unfounded.

2. That item 3 of the NOV is unfounded in code and should be overturned.

3. That insufficient time considering my age, health, and weather conditions was given to correct items 3-6 on the NOV.

3. That refusal of the Code official to allow appellant to enter the structure has made the violation insupportable by the appellant and violate the ultimate intent of NOV.
4. Item 5 is in dispute with my engineering report and should be overturned on evidence.

5.
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Documents Submitted
By the Town of Wytheville
April 30, 2019

W. Travis Luter Sr., C.B.C.O.
State Building Code Technical Review Board
600 East Main Street, Suite 300
Richmond, Virginia 23219

Re: Appeal to the Review Board for Jack Singleton (Appeal No. 19-01)

Dear Mr. Luter,

Please find the following enclosed supporting documents relating to Mr. Singleton’s appeal:

1. A copy of Mr. Singleton’s 2019 application to the Wytheville Building Code Appeals Board, which you have requested.

2. Photos taken on January 22, 2019 and April 30, 2019 showing that the structure is not properly secured, in reference to item #1 in Mr. Singleton’s appeal letter to your office.

3. A copy of Mr. Singleton’s engineer report, as referenced by Mr. Singleton in item #4 of his appeal letter to your office. As you will note, the engineer’s report lists several issues with the foundation cracks, openings, and grading.
In reference to item #3 (second #3) of his appeal letter, Mr. Singleton requested and was given permission by this office to enter the structure to remove rubbish from inside.

If you have any inquiries, please do not hesitate to call me.

Sincerely,

Charles Vannatter,
Building Official
VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Jack D. Singleton
       Appeal No. 18-09

DECISION OF THE REVIEW BOARD

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).

Case History

Jack D. Singleton (Singleton), owner of the property located at 190 West Jefferson Street in the Town of Wytheville, appealed the enforcement action by the Town of Wytheville, Office of the Building Official (Town Building Official) under Part III of the Uniform Statewide Building Code (Virginia Maintenance Code).

In March of 2018, the Town Building Official, in enforcement of the Virginia Maintenance Code (VMC), issued a notice of violation (NOV) to Mr. Singleton for his property located at 190 West Jefferson Street. The notice outlined fifty seven (57) violations of the VMC. The Town Building Official affixed a copy of the NOV on the home of Singleton located at 260 West Jefferson Street; however, the notice was never posted on the structure located at 190 West Jefferson Street. The Town Building Official re-placarded the structure at 190 West Jefferson Street.
Street with a replacement placard. The structure was originally placarded on January 26, 2016. The placard identified the structure as unsafe for habitation.

The local appeals board heard Singleton’s appeal on April 11, 2018 and ruled to uphold the decision of the Town Building Official. Singleton then further appealed to the Review Board.

Findings of the Review Board

A. **Whether or not the appeal was timely to the local board.**

   In the Town’s written submittal to the Review Board, the Town argued that the appeal was not timely to the local appeals board. The local appeals board heard the appeal and rendered its decision. The Review Board did not agree with the Town that the appeal to the local board was untimely.

B. **Whether or not to overturn the decision of the Property Maintenance Official and the local appeals board that violations of the Virginia Maintenance Code Section 105 (Unsafe structures or structures unfit for human occupancy) exist and that the placarding of the structure was proper.**

   Singleton argued that the violations existed prior to his ownership of the property. He further argued that the Town placarded the property on January 26, 2016 when he was not the owner of the property and that no report was drafted related to the original placarding of the property. Singleton also argued that the placard was misleading and unclear.

   The Town argued that the property did fit the description of unsafe structure according to the definitions in section 202 of the VMC. The Town further argued that violations of the VMC section 105 did exist and that the placarding of the structure was proper. The Review Board agreed with the Town that violations exist and the placarding of the structure was proper; however, the Review Board did not agree with the language on the placard.
C. Whether or not to overturn the decision of the Property Maintenance Official and the local appeals board that violations of the Virginia Maintenance Code Section 105 (Unsafe structures or structures unfit for human occupancy) exist and that the securing of the structure was required.

Singleton argued the violations no longer existed due to the installation of fencing on the structure subsequently restricting access to the structure rendering the structure secure. The Town argued that the violations were not satisfied by the installation of the fencing; furthermore, that access to the structure was not secured which was substantiated by Singleton’s testimony of people tossing garbage into the structure and removing garbage from the structure. The Review Board agreed with the Town that violations exist and the securing of the property is required.

D. Whether or not to overturn the decision of the Property Maintenance Official and the local appeals board that the remaining violations of the Virginia Maintenance Code listed on the March 26, 2018 Notice of Violation (NOV) exist.

Singleton argued that the remaining violations did not exist as the structure was a block wall and plumbing, electrical, and mechanical violations could not exist. The Town argued that the violations did exist. The Town clarified that they issued the all inclusive NOV at the request of Singleton in an attempt to provide Singleton with a comprehensive list of violations that needed to be addressed to make the structure habitable. The Review Board did not agree with the Town that the remaining violations existed for the structure.

E. Whether or not to overturn the decision of the Property Maintenance Official and the local appeals board that violations of the Virginia Maintenance Code Section 105 (Unsafe structures or structures unfit for human occupancy) exist and that the demolition of the structure was required.
Singleton argued that the structure was secured and as such the demolition of the structure was not required. The Town argued that the structure was not secure and that the Demolition Order was proper; therefore, the structure must be demolished. The Review Board agreed with the Town that the structure was required to be secured; however the Review Board does not agree that the Demolition Order was proper or that demolition of the structure was required.

Final Order

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

A. The decision of the local appeals board that the appeal is timely to be, and hereby is, upheld.

B. The decision of the Town Building Official and the local appeals board that violations of Section 105 exist and the placarding of the structure to be, and hereby is, upheld with a determination that the placard is improper and that a proper placard be issued. In addition, the Review Board orders the placard to be, and hereby is, remanded to the Town to be re-issued with the proper date and in full conformance with Section 105 of the VMC.

C. The decision of the Town Building Official and the local appeals board that violations of Section 105 exist and that the structure is required to be secured to be, and hereby is, upheld.

D. The decision of the Town Building Official and the local appeals board that all of the remaining violations of the VMC listed on the March 26, 2018 NOV exist to be, and hereby is, upheld related to items numbered one through five (1-5) and ten (10) with the determinations that item number one (1) only state unsafe structure, not unfit for human habitation, and reference the date of the new placard to be issued pursuant to Item B of this Final Order and that the notice of violation be re-issued for these items and with the specified corrections herein. The decision of the Town Building Official and the local appeals board that all of the remaining violations of the
VMC listed on the March 26, 2018 NOV exist to be, and hereby is, overturned related to items numbered six through nine (6-9) and 11-57.

E. The decision of the Town Building Official and the local appeals board that violations of Section 105 exist and that the demolition of the structure is required to be, and hereby is, overturned.

[Signature]
Chairman, State Building Code Technical Review Board

Date entered: _____November 16, 2018_______

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.
March 11, 2019

Jack Dennis Singleton
260 West Jefferson Street
Wytheville VA 24382

Re: Clarification of the Notice of Violation and Report of Unsafe Structure for Property on 190 West Jefferson Street, Wytheville VA 24382

Dear Mr. Singleton,

This is a letter to inform you and to clarify that the “Notice of Violation” and “Report of Unsafe Structure” dated January 22, 2019, is a continuation of the decision made by the Virginia Technical Review Board on November 16, 2018. No new violations were issued but items 1-6 are a reflection of violations previously ruled in favor by the Virginia Technical Review Board.

If you have any inquiries, please do not hesitate to call me.

Sincerely,

Charles Vannatter
Building Official
DANGER – KEEP OUT

THIS STRUCTURE IS UNSAFE AND ITS OCCUPANCY (OR USE) IS PROHIBITED BY THE CODE OFFICIAL.
IT IS UNLAWFUL FOR ANY PERSON TO USE OR OCCUPY THIS STRUCTURE AFTER January 22, 2019

ANY UNAUTHORIZED PERSON REMOVING OR ALTERING THIS SIGN WILL BE PROSECUTED

190 West Jefferson Street January 22, 2019 C. Vannatter
Address of Building Date of Posting Code Official

USBC ______________ VMC __ Section 105.4.1 LOCAL ______________

AUTHORITY: §36-106, IT SHALL BE UNLAWFUL FOR ANY OWNER OR ANY OTHER PERSON, FIRM OR CORPORATION, ON OR AFTER THE EFFECTIVE DATE OF ANY CODE PROVISION, TO VIOLATE ANY SUCH PROVISIONS. ANY SUCH VIOLATION SHALL BE DEEMED A CLASS I MISDEMEANOR AND IF CONVICTED OF SUCH A VIOLATION SHALL BE PUNISHED BY A FINE OF NOT MORE THAN $2,500.

NOTE: AFTER A BUILDING IS PLACARDED, ENTERING THE BUILDING SHALL BE PROHIBITED EXCEPT AS AUTHORIZED BY THE CODE OFFICIAL TO MAKE INSPECTIONS, TO PERFORM REQUIRED REPAIRS, OR TO DEMOLISH THE BUILDING.
Jack Singleton
190 W. Jefferson Street
Photos taken January 22, 2019:
WYTHEVILLE PUBLIC SAFETY
COUNCIL MANAGER FOR CITY GOVERNMENT DATE 03-11-20

March 11, 2019

Jack Dennis Singleton
300 West Jefferson Street
Wytheville VA 24382

Dear Mr. Singleton,

We are writing to inform you and to clarify that the “Notice of Violation” and “Demand for Payment” dated January 22, 2019, in connection with the Review Board, did not result in a violation of any code. We have reviewed the information provided and determined that there was no violation of any code.

If you have any questions, please do not hesitate to call me.

Charles W. Odom
City Manager

Building Official
Photos taken April 30, 2019:
A119.5-18

: 119.5, 119.7, 119.8, 1 (New), 107.5, 107.6, 107.7, 107.8, 107.9 (New), 112.5, 112.6, 112.7, 112.7.1, 112.8, 112.8.1, 112.9, 112.9.1, 112.9.2, 112.10 (New)

Proponent: Kenney Payne, representing AIA Virginia (kpayne@moseleyarchitects.com)

2015 Virginia Construction Code

119.5 Right of appeal; filing of appeal application. Any person aggrieved by the local building department's application of the USBC or the refusal to grant a modification to the provisions of the USBC may appeal to the LBCCA. The applicant shall submit a written request for appeal to the LBCCA within 30 calendar days of the receipt of the decision being appealed. The application shall contain the name and address of the owner of the building or structure and in addition, the name and address of the person appealing, when the applicant is not the owner. A copy of the building official's decision shall be submitted along with the application for appeal and maintained as part of the record. The application shall be marked by the LBCCA to indicate the date received. Failure to submit an application for appeal within the time limit established by this section shall constitute acceptance of a building official's decision.

Note: To the extent that a decision of a building official pertains to amusement devices there may be a right of appeal under the VADR.

119.7 Hearings and decision. All hearings before the LBCCA shall be open meetings and the appellant, the appellant's representative, the locality's representative and any person whose interests are affected by the building official's decision in question shall be given an opportunity to be heard. The chairman shall have the power and duty to direct the hearing, rule upon the acceptance of evidence and oversee the record of all proceedings. The LBCCA shall have the power to uphold, reverse or modify the decision of the official by a concurring vote of a majority of those present. Decisions of the LBCCA shall be final if no further appeal is made. The decision of the LBCCA shall be explained in writing, signed by the chairman and retained as part of the record of the appeal. Copies of the written decision shall be sent to all parties by certified mail. In addition, the written decision shall contain the following wording:

"Any person who was a party to the appeal may appeal to the State Review Board by submitting an application to such Board within 21 calendar days upon receipt by certified mail of this decision. Application forms are available from the Office of the State Review Board, 600 East Main Street, Richmond, Virginia 23219, (804) 371-7150."

119.8 Appeals to the State Review Board. After final determination by the LBCCA in an appeal, any person who was a party to the appeal may further appeal to the State Review Board. In accordance with Section 36-114 of the Code of Virginia, the State Review Board shall have the power and duty to hear all appeals from decisions arising under the application of the USBC and to render its decision on any such appeal, which decision shall be final if no appeal is made therefrom. In accordance with Section 36-98.2 of the Code of Virginia for state-owned buildings and structures, appeals by an involved state agency from the decision of the building official for state-owned buildings or structures shall be made directly to the State Review Board. The application for appeal shall be made to the State Review Board within 21 calendar days of the receipt of the decision to be appealed. Failure to submit an application within that time limit shall constitute an acceptance of the building official's decision. For appeals from a LBCCA, a copy of the building official's decision and the written decision of the LBCCA shall be submitted with the application for appeal to the State Review Board. Upon request by the office of the State Review Board, the LBCCA shall submit a copy of all pertinent information from the record of the appeal. In the case of appeals involving state-owned buildings or structures, the involved state agency shall submit a copy of the building official's decision and other relevant information with the application for appeal to the State Review Board. Procedures of the State Review Board are in accordance with Article 2 (Section 36-108 et seq.) of Chapter 6 of Title 36 of the Code of Virginia. Decisions of the State Review Board shall be final if no further appeal is made.

Add new text as follows:

119.9 Hearings and decision. All hearings before the State Review Board shall be open meetings and the appellant, the appellant's representative, the locality's representative and any person whose interests are affected by the building official's decision in question shall be given an opportunity to be heard. The chairman shall have the power and duty to direct the hearing, rule upon the acceptance of evidence and oversee the record of all proceedings. The State Review Board shall have the power to uphold, reverse or modify the decision of the LBCCA by a concurring vote of a majority of those present. Proceedings of the Review Board shall be governed by the provisions of the Administrative Process Act (2.2-4000 et seq.), except that an informal conference pursuant to 2.2-4019 shall not be required. Decisions of the State Review Board shall be final if no further appeal is made. The decision of the State Review Board shall be explained in writing, signed by the chairman and retained as part of the record of the appeal. Copies of the written decision shall be sent to all parties by certified mail. In addition, the written decision shall contain the following wording:

"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 the Secretary of the Review Board. In the event that this decision is served on
2015 Virginia Maintenance Code

107.5 Right of appeal; filing of appeal application. Any person aggrieved by the local enforcing agency's application of this code or the refusal to grant a modification to the provisions of this code may appeal to the LBBCA. The applicant shall submit a written request for appeal to the LBBCA within 30 calendar days of the receipt of the decision being appealed. The application shall contain the name and address of the owner of the building or structure and, in addition, the name and address of the person appealing, when the applicant is not the owner. A copy of the code official's decision shall be submitted along with the application for appeal and maintained as part of the record. The application shall be marked by the LBBCA to indicate the date received. Failure to submit an application for appeal within the time limit established by this section shall constitute acceptance of a code official's decision.

107.6 Meetings and postponements. The LBBCA shall meet within 30 calendar days after the date of receipt of the application for appeal, except that a period of up to 45 calendar days shall be permitted where the LBBCA has regularly scheduled monthly meetings. A longer time period shall be permitted if agreed to by all the parties involved in the appeal. A notice indicating the time and place of the hearing shall be sent to the parties in writing to the addresses listed on the application at least 14 calendar days prior to the date of the hearing, except that a lesser time period shall be permitted if agreed to by all the parties involved in the appeal. When a quorum of the LBBCA is not present at a hearing to hear an appeal, any party involved in the appeal shall have the right to request a postponement of the hearing. The LBBCA shall reschedule the appeal within 30 calendar days of the postponement, except that a longer time period shall be permitted if agreed to by all the parties involved in the appeal.

107.7 Hearings and decision. All hearings before the LBBCA shall be open meetings and the appellant, the appellant's representative, the locality's representative and any person whose interests are affected by the code official's decision in question shall be given an opportunity to be heard. The chairman shall have the power and duty to direct the hearing, rule upon the acceptance of evidence and oversee the record of all proceedings. The LBBCA shall have the power to uphold, reverse or modify the decision of the official by a concurring vote of a majority of those present. Decisions of the LBBCA shall be final if no further appeal is made. The decision of the LBBCA shall be explained in writing, signed by the chairman and retained as part of the record of the appeal. Copies of the written decision shall be sent to all parties by certified mail. In addition, the written decision shall contain the following wording:

"Any person who was a party to the appeal may appeal to the State Review Board by submitting an application to such Board within 21 calendar days upon receipt by certified mail of this decision. Application forms are available from the Office of the State Review Board, 600 East Main Street, Richmond, Virginia 23219, (804) 371-7150."

107.8 Appeals to the State Review Board. After final determination by the LBBCA in an appeal, any person who was a party to the appeal may further appeal to the State Review Board. In accordance with Section 36-114 of the Code of Virginia, the State Review Board shall have the power and duty to hear all appeals from decisions arising under the application of the USBC and to render its decision on any such appeal, which decision shall be final if no appeal is made therefrom. In accordance with 36-98.2 of the Code of Virginia for state-owned buildings and structures, appeals by an involved state agency from the decision of the code official for state-owned buildings or structures shall be made directly to the State Review Board. The application for appeal shall be made to the State Review Board within 21 calendar days of the receipt of the decision to be appealed. Failure to submit an application within that time limit shall constitute an acceptance of the code official's decision. For appeals from a LBBCA, a copy of the code official's decision and the written decision of the LBBCA shall be submitted with the application for appeal to the State Review Board. Upon request by the Office of the State Review Board, the LBBCA shall submit a copy of all pertinent information from the record of the appeal. In the case of appeals involving state-owned buildings or structures, the involved state agency shall submit a copy of the code official's decision and other relevant information with the application for appeal to the State Review Board. Procedures of the State Review Board are in accordance with Article 2 (36-108 et seq.) of Chapter 6 of Title 36 of the Code of Virginia. Decisions of the State Review Board shall be final if no further appeal is made.

Revise as follows:

107.9 Hearings and decision. All hearings before the State Review Board shall be open meetings and the appellant, the appellant's representative, the locality's representative and any person whose interests are affected by the building official's decision in question shall be given an opportunity to be heard. The chairman shall have the power and duty to direct the hearing, rule upon the acceptance of evidence and oversee the record of all proceedings. The State Review
Board shall have the power to uphold, reverse or modify the decision of the LBCCA by a concurring vote of a majority of those present. Proceedings of the Review Board shall be governed by the provisions of the Administrative Process Act (2.2-4000 et seq.), except that an informal conference pursuant to 2.2-4019 shall not be required. Decisions of the State Review Board shall be final if no further appeal is made. The decision of the State Review Board shall be explained in writing, signed by the chairman and retained as part of the record of the appeal. Copies of the written decision shall be sent to all parties by certified mail. In addition, the written decision shall contain the following wording: “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 the 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.”

2015 Virginia Statewide Prevention Fire Code

112.5 Application for appeal. The owner of a structure, the owner’s agent or any other person involved in the maintenance of the structure, or activity, may appeal a decision of the fire official concerning the application of the SFPC or the fire official’s refusal to grant modification under Section 106.5 to the provisions of the SFPC. The appeal shall first lie to the LBFPCA and then to the State Review Board except that appeals concerning the application of the SFPC or refusal to grant modifications by the State Fire Marshal shall be made directly to the State Review Board. The appeal shall be submitted to the LBFPCA within 14 calendar days of the application of the SFPC decision being appealed. The application shall contain the name and address of the owner of the structure and the person appealing if not the owner. A copy of the written decision of the fire official shall be submitted along with the application for appeal and maintained as part of the record. The application shall be stamped or otherwise marked by the LBFPCA to indicate the date received. Failure to submit an application for appeal within the time limit established by this section shall constitute acceptance of the fire official’s decision. 
Note: In accordance with 27-98 of the Code of Virginia, any local fire code may provide for an appeal to a local board of appeals. If no local board of appeals exists, the State Review Board shall hear appeals of any local fire code violation.

112.6 Notice of meeting. The LBFPCA shall meet within 30 calendar days after the date of receipt of the application for appeal. Notice indicating the time and place of the hearing shall be sent to the parties in writing to the addresses listed on the application at least 14 calendar days prior to the date of the hearing. Less notice may be given if agreed upon by the applicant.

112.7 Hearing procedures. All hearings before the LBFPCA shall be open to the public. The appellant, the appellant’s representative, the local governing body’s representative and any person whose interests are affected shall be given an opportunity to be heard. The chairman shall have the power and duty to direct the hearing, rule upon the acceptance of evidence and oversee the record of all proceedings.

112.7.1 Postponement. When a quorum of the LBFPCA is not present to hear an appeal, either the appellant or the appellant’s representative shall have the right to request a postponement of the hearing. The LBFPCA shall reschedule the appeal within 30 calendar days of the postponement.

112.8 Decision. The LBFPCA shall have the power to uphold, reverse or modify the decision of the fire official by a concurring vote of a majority of those present. Decisions of the LBFPCA shall be final if no appeal is made therefrom and the appellant and the fire official shall act accordingly.

112.8.1 Resolution. The LBFPCA’s decision shall be explained in writing, signed by the chairman, and retained as part of the record by the LBFPCA. Copies of the written decision shall be furnished to all parties. The following wording shall be part of the written decision: “Any person who was a party to the appeal may appeal to the State Building Code Technical Review Board (State Review Board) by submitting an application to the State Review Board within 21 calendar days upon receipt by certified mail of the written decision. Application forms are available from the Office of the State Review Board, 600 East Main Street, Richmond, Virginia 23219, (804) 371-7150.” Copies of the written decision shall be furnished to all parties.

112.9 Appeal to the State Review Board. After final determination by the LBFPCA, any person who was a party to the local appeal may appeal to the State Review Board. In accordance with Section 36-114 of the Code of Virginia, the State Review Board shall have the power and duty to hear all appeals from decisions arising under the application of the USBC and to render its decision on any such appeal, which decision shall be final if no appeal is made therefrom. Application shall be made to the State Review Board within 21 calendar days of receipt of the decision to be appealed. Application for appeal to the State Review Board arising from the SFMO’s enforcement of the code or from any local fire code violation if no local board of appeals exists shall be made to the State Review Board within 14 calendar days of receipt of the decision to be appealed and shall be accompanied by copies of the inspection reports and other relevant information. Fire official’s decision and the written decision of the LBFPCA shall be submitted with the application for appeal. Upon request by the office of the State Review Board, the LBFPCA shall submit a copy of all inspection reports and all pertinent information from the record of the LBFPCA. Failure to submit an application...
for appeal within the time limit established by this section shall constitute an acceptance of the LBFPCA’s resolution or fire official’s decision. Procedures of the State Review Board are in accordance with Article 2 (36-108 et seq.) of Chapter 6 of Title 36 of the Code of Virginia.

Delete without substitution:

112.9.1 Information to be submitted. Copies of the fire official’s decision and the written decision of the LBFPCA shall be submitted with the application for appeal. Upon request by the office of the State Review Board, the LBFPCA shall submit a copy of all inspection reports and all pertinent information from the record of the LBFPCA.

112.9.2 Decision of State Review Board. Procedures of the State Review Board are in accordance with Article 2 (36-108 et seq.) of Chapter 6 of Title 36 of the Code of Virginia. Decisions of the State Review Board shall be final if no appeal is made therefrom and the appellant and the code official shall act accordingly.

Revise as follows:

112.10 Hearing and decision. All hearings before the State Review Board shall be open meetings and the appellant, the appellant's representative, the locality’s representative and any person whose interests are affected by the building official's decision in question shall be given an opportunity to be heard. The chairman shall have the power and duty to direct the hearing, rule upon the acceptance of evidence and oversee the record of all proceedings. The State Review Board shall have the power to uphold, reverse or modify the decision of the LBFPCA by a concurring vote of a majority of those present. Proceedings of the Review Board shall be governed by the provisions of the Administrative Process Act (2.2-4000 et seq.), except that an informal conference pursuant to 2.2-4019 shall not be required. Decisions of the State Review Board shall be final if no further appeal is made. The decision of the State Review Board shall be explained in writing, signed by the chairman and retained as part of the record of the appeal. Copies of the written decision shall be sent to all parties by certified mail. In addition, the written decision shall contain the following wording: “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 the 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.”

Reason Statement:

VCC 119.8 / VMC 107.8 / SFPC 112.9: There are numerous references to Code of Virginia sections in Chapter 1, and this added language is the exact wording from Section 36-114 of the COV. This added language will also help guide the TRB in its efforts to determine whether to hear certain cases or not. If this change is approved, then the last sentence of 119.8 / 107.8 is not required.

VCC 119.9 / VMC 107.9 / SFPC 112.10: There currently is no information on the hearings involving the TRB like there is for the LBBCA/LBFPCA. The language is nearly identical to the LBBCA/LBFPCA language, since the TRB hearings and decisions are almost identical as well. The “proceedings” language is from COV 36-114. The referenced COV sections (36-108 et seq) actually do not address the hearing itself. These new sections will provide some guidance for those who may or want to appeal as to how such hearings will be conducted; as well as, help guide the TRB in its efforts to conduct such hearings and make such decisions.

The last paragraph is the exact language (absent the secretary's name) from the “Decision of the Review Board” “Certification” statement.

VCC 107.5 / SFPC 112.5: Revised 14 days to 30 days to match that which is allowed under the VCC, and to provide those aggrieved or affected by such application of the code adequate time to properly file an appeal.

VCC 107.7: Somehow, the “Any person” paragraph was inserted into the preceding paragraph. This just moves it to the end where it belongs. This change is editorial and not technical.

SFPC 112.5: Changed “application of the SFPC” to “decision being appealed” to match the same language used in the VCC and VMC.

SFPC 112.8.1: Relocated the last sentence BEFORE the requirement to copy such wording. One might think, even though the “quotes” are clear, that the “Copies” sentence is a part of the required wording. This is also consistent with the formatting of the VCC and VMC.

SFPC 112.9: Deleted the 14 day limitation for state-owned buildings so that ALL appeals to the TRB are 21 days across the board - whether it is under the VCC, VMC, SFPC, state-owned, or not. Relocated the language from SFPC 112.9.1 and 112.9.2 into 112.9 to make it consistent with the VCC and VMC, thus allowing the deletion of 112.9.1 and 112.9.2.
Resiliency Impact Statement: Will not increase or decrease resiliency.

Cost Impact Statement: Will not increase or decrease cost of construction.