

VIRGINIA:

BEFORE THE  
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Hampton Roads Hospitality, Inc.  
Appeal No. 09-13

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Hearing Date: January 22, 2010

DECISION OF THE REVIEW BOARD

I. PROCEDURAL BACKGROUND

The State Building Code Technical Review Board ("Review Board") is a Governor-appointed board established to rule on disputes arising from application of the Virginia Uniform Statewide Building Code ("USBC") and other regulations of the Department of Housing and Community Development. See §§ 36-108 and 36-114 of the Code of Virginia. Enforcement of the USBC in other than state-owned buildings is by local city, county or town building departments. See § 36-105 of the Code of Virginia. An appeal under the USBC is first heard by a local board of building code appeals and then may be further appealed to the Review Board. See § 36-105 of the Code of Virginia. The Review Board's proceedings are governed by the Virginia Administrative Process Act. See § 36-114 of the Code of Virginia.

## II. CASE HISTORY

This matter is before the Review Board for determination of whether a right of appeal exists for Hampton Roads Hospitality, Inc. ("HRH"), a company constructing a Comfort Inn at 3355 S. Military Highway, in Chesapeake (the "project").

In May of 2009, the City of Chesapeake's Code Compliance Division (the "building official") issued a citation under the USBC for the use of imported gypsum wallboard used as soundproofing between guestrooms of the project without sufficient documentation that the wallboard complied with the USBC. The wallboard was identified as part of a large quantity imported from China which was determined by other localities to outgas sulphur compounds and cause damage to certain building components.

HRH provided documentation to the building official indicating that the wallboard was encapsulated within a wall assembly and met all industry standards. In June of 2009, after not obtaining approval from the building official, HRH filed an appeal to the City of Chesapeake Local Board of Building Code Appeals ("City USBC board"). The City USBC board heard HRH's appeal and ruled to uphold the decision of the building official. HRH then further appealed to the Review Board in August of 2009.

In processing the appeal to the Review Board, Review Board staff discovered that HRH had removed the wallboard in question in late July or August of 2009. Subsequent to the removal of the wallboard, the building official lifted the citation against HRH.

Review Board staff corresponded with the parties advising of past rulings of the Review Board where appeals had been dismissed as moot when the enforcement action under the USBC had been rescinded. HRH, through its attorney, indicated that they did not believe the appeal was moot.

Review Board staff then scheduled a preliminary hearing before the Review Board to address the issue of whether the appeal was moot. The parties were given opportunity to submit written arguments prior to the preliminary hearing. At the preliminary hearing, both parties were represented by counsel and an opportunity was provided for oral arguments to be presented.

### III. FINDINGS OF THE REVIEW BOARD

HRH's appeal to the City USBC board was of the building official's refusal to approve the imported wallboard which had been installed in the wall assemblies of the hotel and the issuance of the stop work order under the USBC for the project.

The parties agree that HRH voluntarily removed the wallboard in question and the building official lifted the stop work order and released the USBC notice of violation issued against HRH. The prosecution for the USBC violation commenced by the building official was also agreed to be dismissed due to the removal of the wallboard.

Appeals under the USBC are limited to be "[a]ppeals from the local building department concerning application of the [USBC] or refusal to grant a modification to the provisions of the [USBC]. . ." See § 36-105 of the Code of Virginia and § 119.5 of the USBC (13 Va. Admin. Code 5-63-190 E).

As the application of the USBC appealed by HRH to the City appeals board was rescinded by the building official, there is no appealable issue outstanding. Therefore, HRH's appeal is moot.

#### IV. FINAL ORDER

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders the appeal of HRH to be, and hereby is, dismissed as moot.

/s/\*

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Chairman, State Technical Review Board

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

April 16, 2010

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Date Entered

As provided by Rule 2A:2 of the Supreme Court of Virginia, you have thirty (30) days from the date of service (the date you actually received this decision or the date it was mailed to you, whichever occurred first) within which to appeal this decision by filing a Notice of Appeal with Vernon W. Hodge, Secretary of the Review Board. In the event that this decision is served on you by mail, three (3) days are added to that period.

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