

VIRGINIA:

BEFORE THE  
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of A10 Capital LLC  
Appeal No. 24-05

DECISION OF THE REVIEW BOARD

**\*\*This case decision was modified in accordance with §2.2-4023.1 *Reconsideration* due to the Petition for Reconsideration submitted by A10 Capital LLC on October 8, 2024. The Petition for Reconsideration was considered and granted at the October 18, 2024 Review Board meeting. Subsequently, at that same meeting, the conclusions of the Review Board in Items C and D of Section IV. Conclusion of this final order were amended; otherwise, this final order remains undisturbed.\*\***

I. Procedural Background

The State Building Code Technical Review Board (Review Board) is a Governor-appointed board established to rule on disputes arising from application of regulations of the Department of Housing and Community Development. See §§ 36-108 and 36-114 of the Code of Virginia. The Review Board's proceedings are governed by the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

II. Case History

On February 20, 2024, the City of Hampton Community Development Department, Property Maintenance and Zoning Enforcement Division (City), the agency responsible for the enforcement of Part III of the 2018 Virginia Uniform Statewide Building Code (VUSBC or VMC), issued Notices of Violation (NOV) to A10 Capital LLC (A10) as well as Colonial Landing Apartments LLC, 2121 Kecoughtan Holdings LLC, Kyle R. Stephenson, and KRS Holdings LLC, for the residential structures on the property located at 2101, 2103, 2105, 2107, 2109, 2111, 2113, 2115, 2117, 2119, and 2121 Kecoughtan Road, in the City of Hampton, for the unsafe structures,

citing VMC Section 106.1 *Unsafe structures or structures unfit for human occupancy* and providing the following:

*“This section shall all apply to existing structures which are classified as unsafe or unfit for human occupancy. All conditions causing 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 structure in accordance with applicable requirements of this code.*

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

*Demolish the structure within 30 days or bring the entire structure up to code by complying with the violations noted on the attached spreadsheet. Additionally, complete all recommendations outlined in the following reports that are also attached:*

*MISH Engineering Concepts, PLC dated January 31,2024, Complete Care Plumbing LLC dated January 26,2024, S&W Power Solutions, LLC received January 31, 2024, and Partner Engineering and Science, INC. dated January 31, 2024.”*

A10 filed an appeal to the City of Hampton Building Code Board of Appeals (local appeals board). The local appeals board upheld the decision of the code official. A10 further appealed to the Review Board on May 17, 2024.

Appearing at the Review Board meeting for A10 were Kyle L. Stephenson, President of KRS Holdings LLC (Court appointed receiver for the real property); Andrew Levine, Property Manager, KRS Holdings LLC; Jennifer McLemore, Substitute Trustee for the Deed of Trust from Colonial Landing Apartment LLC; Everett Mish, Principle Mish Engineering Concepts P.L.C.; Steve Zorich, Vice-President, Head of Special Services for A10; Peter Ware, General Counsel for A10; and Attorney Scott Miller. Appearing at the Review Board meeting for the City were

Attorneys Anne Ligon and Brandi Law and Kim Mikel, Director of Community Development and Property Maintenance Official.

### III. Findings of the Review Board

A. Whether to uphold the decision of the City and the local appeals board that the structures located at 2101-2121 Kecoughtan Road are unsafe structures or structures unfit for human occupancy in accordance with VMC Section 106.1 *Unsafe Structure or Structures Unfit for Human Occupancy*.

A10 argued that the structures were not unsafe as defined by the VMC; furthermore, were not in danger of partial or complete collapse as they have been standing since 1938. A10 argued that the structures were vacant. A10 further argued that all windows, doors, and any other openings in the structures on entire first floor were boarded preventing entry to the structures by the public and eliminating any potential danger of contact with any equipment remaining within the structures. A10 also argued that the electricity to all individual units had been shut off and only the site lighting remained on to provide light around the property for security purposes. A10 further argued that the building with fire damage was secured behind pad locked fencing. Lastly, A10 argued that all pest issues were resolved at the time the NOV's were issued and remain resolved.

The City argued that 62 of the 80 units, which was over 75% of the units, had severe water damage, which continues to be an issue, and had resulted in partial collapsed ceilings, wall damage, and floor buckling. The City further argued that the exterior had water ponding on the flat roofs which were soft and deteriorated, stair step cracking, general poor conditions on the exterior and interior of the structures, and severe plumbing leaks throughout the structures. The City also argued that without a proper evaluation by an engineer, as requested by the City and conveyed was necessary in the MISH expert report, the structural integrity of the structure could

not be determined and/or verified. The City also argued that on several occasions the boarded openings had been opened and vagrants and criminals had entered the buildings. The City further argued that the electricity to the entire property should be shut off, further arguing that active electricity on the site coupled with numerous water leaks both from the weather and leaking plumbing systems posed a fire hazard and danger to the public. The City argued that the collective of these issues coupled with years of lack of maintenance led to the code official to determine the structures were unsafe and demolition was necessary. The City concurred that the structures are vacant.

The Review Board found that the buildings located at 2101-2121 Kecoughtan Road were unsafe structures or structures unfit for human occupancy based on the overwhelming amount of evidence provided in the record showing the unsafe condition of the structures on the property.

B. Whether to uphold the decision of the City and the local appeals board that the structures located at 2101-2121 Kecoughtan Road must comply with all recommendations of the four A10 expert reports (MISH Engineering Concepts, PLC dated January 31, 2024, Complete Care Plumbing LLC dated January 26, 2024, S&W Power Solutions, LLC received January 31, 2024, and Partner Engineering and Science, INC. dated January 31, 2024).

A10 argued that the expert reports, which went far beyond the scope of the VMC, were not properly included in the NOV as code violations because the recommendations in the expert reports were not tied to a particular code section, as required in VMC Section 105.4; therefore, should not be treated as code violations requiring compliance.

The City argued that the expert reports did not include a thorough investigation by means of wall and ceiling removal requested by the City and conveyed was necessary in the MISH expert report; however, the expert reports substantiated the 350 VMC violations cited by the City. The City further argued that most of the recommendations listed on the expert reports were

related to stopping or addressing immediate concerns of water intrusion. The City also argued that the recommendations of the expert reports needed to be completed to make the structures safe and habitable.

The Review Board found that the recommendations listed in the expert reports should not have been included in the NOV without identifying the applicable VMC section for each recommendation offered in the expert reports.

C. Whether to uphold the decision of the City and local appeals board that the structures located at 2101-2121 Kecoughtan Road must be brought into compliance within 30 days of issuance of the NOV.

A10 argued that 30 days from issuance of the NOV was not a sufficient timeframe to complete the needed repairs. A10 further argued that the 30 day timeframe did not provide them the necessary time to reach settlement, closing, and obtain the necessary building permits to begin renovating the property. A10 further argued that they would need at least six (6) months to reach permit issuance. A10 argued that the same consideration offered in a previous Review Board ruling in the Sotos case<sup>1</sup> in 1995 should be extended to A10. The Sotos ruling in part:

- Required limited repairs to the exterior of the structure to meet code requirements
- Provided a timeframe of 90 days to complete the exterior repairs
- Set no requirements for interior code violations
- Allowed interior rehabilitation efforts to continue with no timeline for completion provided the exterior of the building was and remained secure from the public

The City argued that 30 days was the normal timeline offered by the City. The City also argued that A10 had conveyed to the City that they were not planning to make any repairs, rather securing the structures from the public and moving to auction to sell the property.

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<sup>1</sup> Appeal No. 95-9

The Review Board found that the structures located at 2101-2121 Kecoughtan Road must be brought into compliance; however, amended the timeline to nine (9) month, from the date of this final order, to have the building permits issued for the entire property, because the allotted time provided by the City was not sufficient to reach settlement, closing, and obtain the necessary building permits to renovate the property.

D. Whether to uphold the decision of the City and local appeals board that the structures located at 2101-2121 Kecoughtan Road must be demolished is warranted under VMC Section 106.1 *Unsafe Structure or Structures Unfit for Human Occupancy* and is a proper remedy given the structures are vacant and secure from public entry and must be demolished within 30 days of issuance of NOV.

A10 argued that demolition of the structures was not warranted because the structures were vacant, secured from the public, and not in danger of partial or complete collapse. A10 further argued that their position was affirmed by previous Review Board rulings in the Sotos, Rowson, Pitts, and Jennings cases<sup>2</sup>. A10 also argued that they did not have a history of failure to cooperate. Lastly, A10 argued that, based on the expert reports, the structures were prime candidates for renovation and rehabilitation and that was the right course for the structures.

The City argued that VMC Section 106 was an “or” standard and not all three conditions of the standard had to be met to result in a violation. The City further argued that as long as one of the three conditions were met the code official could make the determination to raze and remove the structure even if the structure was vacant and secure. The City further argued that lacking all three conditions did not preclude the city from ordering demolition, which it is authorized to do under VMC Section 106. The City argued that the condition of VMC Section

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<sup>2</sup> Appeal Nos. 95-9, 15-17, 00-17, and 11-11

106 that applies was the danger to life, safety, and welfare of the occupants of the structure or the public. The City also argued that due to the owner's lack of cooperation with the code official, long history of non-compliance, inability to achieve compliance with the USBC, and the potential buyer's lack of demonstration that the necessary financial mechanisms were in place to facilitate the completion of the project, demolition was appropriate, which was also the ruling of the Review Board in the Pitts case. The City argued that this was the exact situation that currently existed as neither Colonial Landing Apartment, A10 Capital LLC, nor KRS Holdings have complied. Lastly, the City argued that the condition of the structures was beyond the scope of reasonable repair and warranted demolition.

The Review Board found that the structures located at 2101-2121 Kecoughtan Road must be demolished is warranted under VMC Section 106.1 *Unsafe Structure or Structures Unfit for Human Occupancy* and is a proper remedy; therefore, if, within nine (9) months, from the date of this final order, the building permits for the entire property are not issued the structures must be demolished.

#### IV. Conclusion

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders as follows:

A. Whether to uphold the decision of the City and the local appeals board that the structures located at 2101-2121 Kecoughtan Road are unsafe structures or structures unfit for human occupancy in accordance with VMC Section 106.1 *Unsafe Structure or Structures Unfit for Human Occupancy*.

The decision of the City and local appeals board that the structures located at 2101-2121 Kecoughtan Road are unsafe structures or structures unfit for human occupancy in accordance with VMC Section 106.1 *Unsafe Structure or Structures Unfit for Human Occupancy*, is upheld,

because of the overwhelming amount of evidence provided in the record showing the unsafe condition of the structures on the property.

B. Whether to uphold the decision of the City and the local appeals board that the structures located at 2101-2121 Kecoughtan Road must comply with all recommendations of the four A10 expert reports (MISH Engineering Concepts, PLC dated January 31, 2024, Complete Care Plumbing LLC dated January 26, 2024, S&W Power Solutions, LLC received January 31, 2024, and Partner Engineering and Science, INC. dated January 31, 2024).

The decision of the City and local appeals board that the structures located at 2101-2121 Kecoughtan Road must comply with all recommendations of the four A10 expert reports (MISH Engineering Concepts, PLC dated January 31, 2024, Complete Care Plumbing LLC dated January 26, 2024, S&W Power Solutions, LLC received January 31, 2024, and Partner Engineering and Science, INC. dated January 31, 2024), is overturned, because the recommendations listed in the expert reports should not have been included in the NOV without identifying the applicable VMC section for each recommendation offered in the expert reports.

C. Whether to uphold the decision of the City and local appeals board that the structures located at 2101-2121 Kecoughtan Road must be brought into compliance within 30 days of issuance of the NOV.

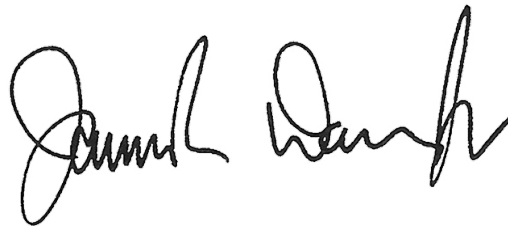
\*\*The decision of the City and local appeals board that the structures located at 2101-2121 Kecoughtan Road must be brought into compliance, is upheld; however, the Review Board amends the timeline to twelve (12) months, from the date of this final order, to have the building permits issued for the entire property, because the allotted time provided by the City was not sufficient to reach settlement, closing, and obtain the necessary building permits to renovate the property.\*\*

D. Whether to uphold the decision of the City and local appeals board that the structures located at 2101-2121 Kecoughtan Road must be demolished is warranted under VMC



Section 106.1 Unsafe Structure or Structures Unfit for Human Occupancy and is a proper remedy given the structures are vacant and secure from public entry and must be demolished within 30 days of issuance of NOV.

\*\*The decision of the City and local appeals board requiring that the structures located at 2101-2121 Kecoughtan Road may be demolished is warranted under VMC Section 106.1 Unsafe Structure or Structures Unfit for Human Occupancy and is a proper remedy if, within twelve (12) months from the date of this final order, the building permits for the entire property are not issued.\*\*



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Chair, State Building Code Technical Review Board

Date entered \_\_\_\_\_ November 1, 2024 \_\_\_\_\_

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.