

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Dean Brothers, Inc.
Appeal No. 02-9

Decided: March 21, 2003

DECISION OF THE REVIEW BOARD

I. PROCEDURAL BACKGROUND

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

II. CASE HISTORY

The issues on appeal relate to the installation of two equipment shelters for the Verizon Communications Company in Prince William County. The shelters are pre-manufactured units, registered under the Industrialized Building Program of the Virginia Department of Housing and Community Development. The units are approximately 12 feet wide, 28 feet long, have a ceiling height of approximately eight to 10 feet and contain lights, heating and air-conditioning equipment and associated wiring, electrical panel boxes and telecommunications equipment. One shelter was installed on Jacksonville Drive and the other on Sudley Manor Drive.

Electrical permits from the County's USBC department were obtained to install electrical service pedestals adjacent to the shelters as the means of connecting electrical power from the local electrical power company to the units. Back-up electrical power was also provided through free-standing diesel generators connected to the shelters through transfer switches. The installations were contained in fenced-in areas owned by Verizon.

At some point after the electrical service pedestals were installed, the County informed the contractor installing the shelters, Dean Brothers, Inc., that USBC building permits needed to be obtained for the installations. Dean Brothers submitted

permit applications which were reviewed by the County and determined to be incomplete. The County provided a list of additional information necessary to continue the review of the applications.

Dean Brothers then informed the County that they believed the installation of the shelters to be exempt from the USBC under the "public utility" exemption in Section 101.4 and that the last point of regulation under the USBC for the installations was the electrical service pedestals.

The County's position was that the shelters were exempt from the USBC as registered industrialized buildings, but that the generators, transfer switches and associated wiring were subject to the USBC. The County also questioned the sizing of the electrical service pedestals since the electrical panels in the industrialized buildings were rated at 400 amps and the electrical service pedestals were rated at 200 amps.

Dean Brothers filed an appeal to the County of Prince William Board of Building Code Appeals ("County USBC board"), which heard and denied the appeal ruling to uphold the position of the County USBC department. Dean Brothers then appealed to the Review Board.

In processing the appeal to the Review Board, Review Board staff conducted an informal fact-finding conference, attended by representatives of Dean Brothers, the County USBC department and Verizon. Subsequent to the conference, a staff document was

drafted and reviewed by the parties which outlined the appeal and the issues for resolution by the Review Board. The Review Board then conducted an appeal hearing, which was attended by representatives of all of the parties.

III. FINDINGS OF THE REVIEW BOARD

The first issue is whether the generators, transfer switches and associated wiring are subject to the USBC, or whether they are exempt from the USBC under Section 101.4.

Section 101.4 states in pertinent part as follows:

The following are exempt from this code: 1. Equipment installed by the provider of publicly regulated utility service and electrical equipment used for radio, telecommunications and television transmission. The exempt publicly regulated utility service's and such other's equipment shall be under their exclusive control and located on property by established rights; however, the structures, including their service equipment, housing or supporting such exempt equipment shall be subject to the USBC.

Dean Brothers believes that the generators, transfer switches and associated wiring fall under the exemption since they were installed by (or for) Verizon, which is a provider of publicly regulated utility service (telephone service) and further that the installation meets the remaining criteria since the equipment is under Verizon's exclusive control and located on property by established rights (the property is owned by Verizon).

The Review Board finds this reading of the provision to be convoluted. Section 104.1 provides two exemptions, the first is for providers of publicly regulated utility services, which are electrical power companies, natural gas power companies and municipal utility companies providing water and sewer services to buildings. The second exemption is for electrical equipment used for radio, telecommunications and television transmission. Since Verizon is a telecommunications company, it is subject to the second exemption, but not the first. Therefore, since its generator, transfer switch and associated wiring are not electrical equipment used for telecommunications transmission, the exemption does not apply to that equipment.

The second issue for resolution is whether the ratings of the electrical service pedestals are adequate given that the rating of the panels in the shelters are listed at a higher amperage rating. Dean Brothers submitted load calculations at the hearing before the Review Board indicating that at the maximum electrical load of the shelters is less than the rating of the electrical service pedestals. The County USBC officials did not take a position at the hearing as the load calculations submitted by Dean Brothers have not been analyzed.

The Review Board finds that it is premature to rule on the second issue since there is on-going negotiation between the

parties and there has been no ruling by the County USBC board on the issue.

The Review Board therefore remands this issue back to the County USBC board to the extent that the parties are not able to resolve the issue.

IV. FINAL ORDER

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders the decisions of the County USBC department and County USBC board that the generators, transfer switches and associated wiring is subject to the USBC to be, and hereby are, upheld. The Review Board further orders the issue of whether the electrical service pedestals may be used as installed to be, and hereby is, remanded to the County USBC board to the extent that the issue is not resolved between the parties.



Chairman, State Technical Review Board

4-18-03
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.