

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

In RE: Appeal of Mr. Tom Sotos
Appeal No. 95-9

Decided JUN 16 1995

STATEMENT OF THE APPEAL

Mr. Tom Sotos, co-owner of two residential buildings (referred to herein as "the buildings") in the City of Emporia, brings this appeal to the State Building Code Technical Review Board (referred to herein as "the Review Board") under the 1993 edition of the Virginia Uniform Statewide Building Code, Volume II - Building Maintenance Code (referred to herein as "the Maintenance Code" or "code"). One building is located at 213 Park Avenue and the other at 303 Park Avenue. Mr. Sotos received notices and other documents dated February 2, 1995 (referred to herein as "the notices") pertaining to the buildings from City officials (referred to herein as "the code official") and subsequently filed an appeal with the Crater Regional Appeals Board (referred to herein as "the local appeals board") which heard his appeal on March 8, 1995. The ruling of the local appeals board was mailed to Mr. Sotos on March 21, 1995. Mr. Sotos then appealed to the Review Board on March 28, 1995.

FACTS

1. Mr. Sotos is a proper appellant under the Maintenance Code and meets the time frame established for appealing to the Review Board.
2. Mr. Sotos appeals the notices from the code official and

seeks the Review Board to overturn the decisions of the code official and ruling of the local appeals board to the extent that they apply to other than maintenance of the exterior surfaces of the buildings, since the buildings are unoccupied. Mr. Sotos asserts that the buildings are neither public nuisances nor unsafe under the Maintenance Code.

3. The notices state that the buildings are in violation of § 5-16 of the Building Code of Emporia. The notices further state that pursuant to § 5-25 of the Code of Emporia, the code official may cause the buildings to be demolished and removed. The unsafe building inspection report attached to the notices for the buildings states, "[t]his house is a public nuisance and will be treated as such." It further states that the buildings cannot be repaired economically or in compliance with the Building Code (of the City of Emporia).

4. The wording in § 5-16 of Chapter 5, Article II of the Code of Ordinances of the City of Emporia is substantively the same as the wording of § 105.1 - General, of the Maintenance Code. The wording in § 5-25 of Chapter 5, Article II of the Code of Ordinances of the City of Emporia most closely relates to the wording of § 105.8 - Abatement or removal, of the Maintenance Code.

5. Section 102.1 of the Maintenance Code states in part:

"Any local government may, after official action, enforce the Building Maintenance Code, or any portion of the code."

The City of Emporia has taken official action to enforce the Maintenance Code relative to unsafe buildings or structures,

which are governed by § 105.0 of the Maintenance Code.

6. Section 105.1 of the Maintenance Code states in part:

"All such buildings or structures declared by the code official to be a public nuisance or unfit for human habitation shall either be: made safe through compliance with this code, or be vacated and secured against public entry, or taken down and removed as determined by the code official."

The code official's determination under § 105.1 of the Maintenance Code relative to the two buildings, as stated in the notices, is to repair or demolish the buildings.

7. The buildings are unoccupied.

8. Section 105.8 of the Maintenance Code states:

"Whenever the owner of a building or structure that has been deemed to be a public nuisance pursuant to § 105.1 fails to comply with the requirements of the notice to abate, the code official may cause the building to be razed or removed.

Note: A local governing body may, after official action pursuant to §§ 15.1-29.21 or 15.1-11.2 of the Code of Virginia, maintain an action to compel a responsible party to abate, raze, or remove a public nuisance. If the public nuisance presents an imminent and immediate threat to life or property, then the governing body of the county, city or town may bring an action against the responsible party to recover the necessary costs incurred for the provision of public emergency services reasonably required to abate any such public nuisance."

The notices for the buildings state the owner has 30 days to demolish the buildings or 60 days to repair the buildings.

9. The local appeals board made the following ruling:

"BE IT RESOLVED the with respect to the notices of February 2, 1995, Mr. Sotos is to consult with contractors and obtain building permits for both dwelling units on or before April 4, 1995, with the understanding that the work is to commence on or before April 25, 1995; and that

With respect to Mr. Sotos obtaining the proper building permits and commencing the work required as indicated on both of the remedial sheets for each respective dwelling unit, if the building permits are not obtained on or before

April 4, 1995, and/or if the work does not commence on or before April 25, 1995, the City shall proceed with demolition; and that

BE IT FURTHER RESOLVED that all items listed as remedial action items for both dwelling units shall be completed by July 1, 1995."

10. The decision of the local appeals board changes the dates required by the code official from 30 days to demolish or 60 days to repair to until July 1, 1995 for remedial action or April 25, 1995 for work to commence to prevent demolition. The local appeals board's ruling gave Mr. Sotos from March 8, 1995, the date of the ruling, to July 1, 1995, or 114 days, for the completion of the remedial action. The local appeals board's ruling gave Mr. Sotos from March 8, 1995, the date of the ruling, to April 25, 1995, or 48 days for remedial action to commence.

11. Section 102.3 of the Maintenance Code states in part:

"All required alterations, repairs, installations or constructions shall be subject to the building permit and certificate of use and occupancy provisions of Volume I of the USBC."

12. No authority exists under the Maintenance Code for the local appeals board to set a date for Mr. Sotos to obtain building permits since that is regulated under Volume I of the USBC. Under § 105.1 of Volume I, a permit is required before repairs may be commenced. Section 105.1.1 of Volume I permits the building official to authorize work pending receipt of the building permit application.

FINDINGS OF THE REVIEW BOARD

1. Section 105.0 of the Maintenance Code, entitled "Unsafe Buildings," is intended to provide appropriate safeguards to

protect the public in the event that a building is not properly maintained. When a building is in violation of this section, the code directs the enforcing official to determine which of three responses is indicated: (i) to be made safe through compliance with the code, (ii) to be vacated and secured against public entry, or (iii) to be demolished. See § 105.1 of the code.

2. The code official's determination for the buildings to be repaired within 60 days or demolished within 30 days is partially in error. As evidenced from the video tape of the buildings and the testimony at the hearing before the Review Board, the buildings are not deteriorated to the point where there is danger of structural collapse, thus, the order for demolition is not warranted.

3. The remaining two options in § 105.1 are to make the buildings safe through compliance with the code or to vacate and secure the buildings against public entry. Contrary to arguments presented by the code official, the video tape presented at the hearing before the Review Board evidenced the buildings are reasonably secure against public entry. It was further stipulated by those persons involved that the buildings are unoccupied. The Review Board finds the correct application of § 105.1 is that the buildings must be made safe through compliance with the code to the extent that the code applies to unoccupied, secured buildings.

5. Only those provisions of the code relating to maintaining the exterior of the buildings to prevent deterioration of building components are applicable. Those provisions are found

in § PM-304.0 of the code. The buildings must also remain secured against public entry to be in continued compliance with the code, however, concerning the issue of window and door openings; which was discussed between those involved in the appeal, unbroken glazing in window or door openings is considered adequate for securing the buildings under § 105.1.

6. As evidenced by both the testimony of the code official and Mr. Sotos and the video tape of the buildings, repair work is needed for the buildings to be in compliance with the code. In accordance with §§ 100.6 and 103.5 of the Maintenance Code, however, the code official may not require alterations to be made to the buildings unless an unsafe or unhealthy conditions exists. The principal purpose of the code is to assure proper maintenance of construction features which were present when the buildings were constructed. Requiring the buildings to meet requirements of Volume I of the USBC, which is the building code governing new construction, is contrary to the intent of the code.

7. The 60 day time frame established by the code official for repairs to be completed is too prohibitive due to the extent of the repairs necessary. The local appeals board confused the time frame issue by directing Mr. Sotos to consult with contractors and implementing a time frame for obtaining building permits. As stated in the facts in this appeal, issues relative to obtaining building permits are governed by Volume I of the USBC, not the Maintenance Code. The Review Board determines that 90 days from the service of this final order is a reasonable time frame for Mr. Sotos to complete, or have completed, any repairs necessary

so that the exterior of the buildings are properly maintained and secured against entry.

8. The actions by the code official to put stop work orders on the properties and refuse to issue building permits for any remedial work which requires a permit are also governed by Volume I of the USBC. However, since a time frame has been determined for the completion of the repair work, Mr. Sotos is directed to obtain any necessary permits and the code official is directed to expediently issue any such permits. Arguments presented by the code official and the city's legal counsel stating that Mr. Sotos is required to be a licensed contractor or to have a contractor obtain the permits are contrary to § 105.2 of Volume I of the USBC since Mr. Sotos is the owner of the buildings.

FINAL ORDER

The appeal having been given due regard and in consideration of the "Findings of the Review Board" set out above, the Review Board hereby orders that the rulings of the City of Emporia code official and the local appeals board be, and hereby are, overturned to the extent set out herein:

1. The determination of the code official for the buildings to be demolished is overturned.
2. The determination of the code official as to what violations are present in the buildings is overturned except with respect to any violations of § PM-304.0 of the code for maintaining the exterior of the buildings in good repair and to be structurally sound and with respect to securing the buildings against public entry.

3. The determination of the code official and local appeals board for a time frame for compliance with the code to be achieved is overturned and replaced with a time frame of 90 days from the receipt of this order to have any necessary repairs completed. Mr. Sotos is to apply for any construction permits necessary and the code official or building official is to issue such permits without delay. The appeal is granted in part.


Chairman, State Technical Review Board

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 Norman R. Crumpton, Secretary of the State Building Code Technical Review Board. In the event that this decision is served on you by mail, three (3) days are added to that period.