

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Dark Star Investment Company
Appeal No. 07-7

DECISION OF THE REVIEW BOARD

I. PROCEDURAL BACKGROUND

The State Building Code Technical Review Board (the "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 appeal concerns residential property located at 840 North First Street, in Hampton, (the "property") owned by Dark Star Investment Company ("Dark Star").

In or around February of 2007, the City of Hampton USBC department (the "code official") for the enforcement of Part III of the USBC, known as the Virginia Maintenance Code or the "VMC," cited Dark Star for violations of the VMC at the property.

Dark Star appealed the code official's citations to the City of Hampton Board of Building Code Appeals, which held several hearings and ruled to uphold the citations and to authorize the code official to move forward with demolition of the property if the violations were not corrected.

Dark Star further appealed to the Review Board.

Prior to the hearing of Dark Star's appeal by the Review Board, Dark Star and the code official, through their respective legal counsel, submitted a signed agreement to dispose of the appeal by mutual consent.

The agreement was considered at the August 20, 2010 Review Board meeting and while the Review Board members declined to endorse the agreement as a final order, the Review Board members found that taken as an agreement between the

VIRGINIA: Before the State Building Code Technical Review Board**IN RE: Appeal of Dark Star Investment Company
Appeal No. 07-7**Agreed DispositionCase History and Pertinent Facts

1. In February of 2007, the City of Hampton Department of Codes Compliance (the "code official") issued a notice of violation (the "USBC notice") pursuant to the Virginia Uniform Statewide Building Code (the "USBC") to Samuel B. Jacobs, President of Dark Star Investments Co. [sic] ("Dark Star") concerning its residential property located at 840 North First Street (the "structure").
2. The USBC notice advised that the structure was unsafe due to violations involving provisions of the USBC requiring the maintenance of exterior walls, stairways, decks, porches, balconies, windows, skylights and door frames. Dark Star was directed to abate the violations, or to raze or remove the house within 30 days. The USBC notice further stated that if the notice was not complied with, the code official would cause the house to be removed.
3. Dark Star, through its legal counsel, appealed the USBC notice to the City of Hampton Board of Building Code Appeals ("City USBC board"). The City USBC board conducted two hearings, the first in May of 2007 and the second in July of 2007. Dark Star was given an opportunity to complete repairs to correct the items identified in the USBC notices. At the second hearing of the City USBC board on July 18, 2007, it was noted that some repairs had been made and the City USBC board ruled giving Dark Star

belief that "the City's Building officials were looking for new violations". The City officials did not inspect these areas.

As a result of the April 9, 2010 physical inspection the code official submitted a revised list of items which were still outstanding. Review Board staff informed the parties that the revised list would be used to draft the staff document and the appeal hearing would be scheduled without the need for an informal fact-finding conference. Dark Star also submitted additional documents claiming the painting had been completed but did not provide a date certain or inspection date.

WHEREFORE, upon agreement the parties request that the Board make the following findings and disposition:

Findings and Disposition of the Review Board

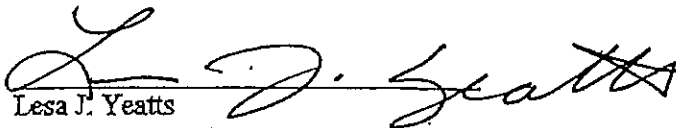
1. That the Board uphold the code official's determination that the violations detailed in the USCB notice existed at the time the notice was issued but they were corrected on or before May, 2008, except the painting of trim and door frames which was documented in writing as still being uncorrected as of September, 2008.
2. That the Board is unable to conclusively determine whether the painting of the trim and door frames ordered by the city USBC board was or was not completed during the period between September, 2008 and April, 2010.
3. That despite the fact that some violations were uncorrected as of August 18, 2007 and that the Board cannot determine if or when the painting of the trim and doors was done the Board overturns the decision of the Local Board to demolish the house if all violations were not corrected by August 18, 2007.

4. That the record in the matter consisting of the Review Board Staff Document, Combined Documents and Additional Documents submitted by Dark Star are incorporated and made a part of the Board's Final Order.

We ask for this:



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