

**NC Department of Insurance
Office of State Fire Marshal, Engineering Division**

RE: Appeal of the December 14,)
2017 Denial of the issuance of) NCDOI DECISION
the necessary permits by the)
Town of Waynesville.

In accordance with GS 160A-434, Robert E. Dungan of Red Square Properties, LLC has appealed the Town of Waynesville's decision regarding not to issue necessary permits for the properties located at 73 and 75 Hunters Crossing Ridge in Waynesville, North Carolina.

GS 160A-434 allows general appeals from any order, decision, or determination by a member of a local inspection department pertaining to the State Building Code or other State laws to the NC Department of Insurance, Office of State Fire Marshal, Engineering Division.

PARTIES

Appellants: Robert E. Dungan, Manager
Red Square Properties, LLC.

Appellee: Town of Waynesville Inspections Department
1433 S. Main Street
Waynesville, NC 28786

BACKGROUND

In 2006, two houses located at 73 and 75 Hunters Crossing Ridge in Waynesville, North Carolina were condemned by the Town based upon the movement of the soil beneath them. Red Square Properties, LLC acquired ownership through a foreclosure process with the County on April 20, 2016 and then proceeded to repair and perform renovation work without a permit soon thereafter. On September 28, 2017, the Town discovered the homes were occupied and notified Red Properties that all construction work must be verified to follow the building code. In November 2017, Red Square Properties agreed to apply for permits and retain licensed contractors. A permit was filed on November 22, 2017, but was informed on December 14, 2017, that the Town was not inclined to issue a permit "until we have a more exhaustive study and higher level of assurance from your team regarding the stability of the site." Soon after, Red Square Properties offered to monitor the site for a 5-year period. The Town then responded requesting a plan on how the slope will be stabilized or demolition of the structures. In addition, the Town notified Red Square Properties that "until such time as the building inspection department

receives a sealed report from a qualified professional that the slope is stable, it is unable to approve any application for that location.” Red Square Properties then filed a lawsuit in Federal Court and has been dismissed to our knowledge.

ISSUE RAISED IN APPEAL

The following issue is raised in Appellants’ appeal:

“Red Square requests that a finding be made that the houses are not a danger to public health and safety and that the Town of Waynesville be required to issue a building permit in order that Red Square can proceed to bring all work into compliance with the Residential Code.”

FINDINGS

Based on information submitted by the appellant, the following findings are made:

1. No permits were obtained before repair and renovation work began. Licensed trade contractors are required to obtain permits when required and are subject to their Licensing Board rules.
2. Permit applications were filed on November 22, 2017 for 73 and 75 Hunters Crossing Ridge in Waynesville, North Carolina with attached documents showing the scope of work for each home. The work included site work, interior/exterior work, plumbing, mechanical and electrical work.
3. Several Engineering Reports and a publication have been documented, including:
 - a. Alpha Environmental – In which recommended monitoring the slope but did not determine if the slope had stabilized.
 - b. Brooks & Medlock – Stated that “Due to the excessive movement of the residential structure, the framing member are under extreme pressure and could cause serious harm to human life if disturbed.”
 - c. Geological Society, London – A published report on “The Hunters Crossing weathered rock slide, Haywood County, North Carolina, USA.”
 - d. Bunnell-Lammons – Reported site observations of the subject properties.
 - e. SKA Engineering – Found the structures to be safe.
4. On November 21, 2017 in an email sent by Melanie Butler, PE working for the NC Department of Insurance Engineering Division stated in part, “In order for the existing building to be occupied, an engineer should provide detailed data to substantiate the conclusion that the building is no longer a hazard or provide a plan to ensure that the building will not be a hazard moving forward.”

CONCLUSIONS

Based on the forgoing findings of fact, the following conclusions are made:

The **2012 North Carolina Administrative Code and Policies, Section 104.1.1 Action on permits** states in part, "If the inspection department is satisfied that the work described in the application conforms to the requirements of the technical codes and other pertinent laws and ordinances, it shall issue a permit to the applicant. If the application does not conform to the requirements of the technical codes and other pertinent laws and ordinances, the application shall be returned to the applicant with the reasons for refusal stated."

The **2012 North Carolina Residential Code, Section R401.4 Soil Tests** states in part, "Where quantifiable data created by accepted soil science methodologies indicate expansive, compressible, shifting or other questionable soil characteristics are to be present, the *building official* shall determine whether to require a soil test to determine the soil's characteristics at a particular location. This test shall be done by an *approved agency* using an *approved method*."

Pursuant to G.S. 160A-434, the appellee is correct in denying the issuance of building permits because the appellant has not provided a report from an engineer specializing in soils with a detailed analysis and data that would **conclude that the soil under the two homes is stable and no longer a hazard moving forward.**

Further, the request that a finding be made that the homes at 73 and 75 Hunters Crossing Ridge are not a danger to public health and safety **would fall under the conclusions from an engineer specializing in soils as stated above.**

APPEAL DECISION

Based on the above findings and conclusions:

The decision to deny issuance of building permits for 73 and 75 Hunters Crossing Ridge in this case is upheld.

This 24th day of July 2019.

North Carolina Department of Insurance

- *Cip L...*, PE

FURTHER APPEAL RIGHTS

You have the right to appeal this decision to the NC Building Code Council. Please refer to GS 160A-434 and the NC Administrative Code and Policies, Section 202.9.2 for further appeal rights. You have 30 days in which to appeal this decision.

Cc:

William Cannon, Town of Waynesville

Tom MaGuire, Town of Waynesville