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**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF LABOR AND INDUSTRY
BEFORE THE SECRETARY OF LABOR AND INDUSTRY**

**IN RE:
BOROUGH OF SHARON HILL
ORDINANCE NO.: 1311**

:
:
:

DOCKET NO. 007 UCC 06

ADJUDICATION AND ORDER

**Stephen M. Schmerin
Secretary
Department of Labor & Industry
Commonwealth of Pennsylvania**

Date of Hearing: December 18, 2006

HISTORY

This matter is before the Secretary of Labor and Industry (“Secretary”) pursuant to section 503(k) of the Pennsylvania Construction Code Act, 35 P.S. §7210.503 (“the Act”) on a challenge filed by the Pennsylvania Builders Association, the Home Builders Association of Chester and Delaware Counties, SHC, Inc., Realtors Legislative Alliance, Tomeika Bryant, William H. Beall, Jr. and Steven Paul Bliven, Esquire (collectively, “the Challengers”) to the validity of Ordinance No. 1311 of the Borough of Sharon Hill (hereinafter, “the Borough” or “Sharon Hill”) which adopts requirements regarding sprinkler systems that exceed the provisions of the Uniform Construction Code (“the UCC”).

The Borough enacted Ordinance No. 1311 on August 24, 2006. Pursuant to section 503(j)(1) of the Act, the Challengers filed a timely challenge to Ordinance No. 1311 with the Department of Labor and Industry, Bureau of Occupational and Industrial Safety (“Department”) on September 22, 2006.

On September 27, 2006, the Department notified the Borough that a challenge had been filed with the Department and directed the Borough to file a written answer to the challenge within 20 days. The Borough’s Answer to the challenge was filed on October 13, 2006.

On October 17, 2006, a Hearing Notice was issued by the Department scheduling a hearing on the Ordinance Challenge for December 18, 2006, commencing at 10:00 a.m. at the Sharon Hill Borough Building, 250 Sharon Avenue, Sharon Hill, PA.

The hearing was held as scheduled on December 18, 2006 before Hearing Officer, Jackie Wiest Lutz, Esquire. Karen L. Galli, Esquire, was present on behalf of the Department; Richard C. Tinucci, Esquire, Borough Solicitor, represented the Borough; and, Loudon L. Campbell, Esquire, represented the Challengers.

Following the close of the hearing, the record was left open for 10 business days to allow the parties to file post-hearing briefs.

The matter is now before the Secretary for disposition.

FINDINGS OF FACT

BACKGROUND:

1. On September 25, 1997, the Borough enacted Ordinance No. 1258, which was the Borough's first ordinance pertaining to sprinkler systems. (N.T. 16-17; Borough Exhibit 1)

2. Ordinance No. 1258 requires that all buildings and/or structures hereinafter constructed and all buildings that are being renovated or modified for more than 50% of its value shall be equipped with an approved automatic sprinkler system. (Borough Exhibit 1)

3. On September 25, 2003, the Borough enacted Ordinance No. 1293; Ordinance No. 1293 requires that all buildings that are converted from owner occupied single-family dwellings to single-family rental units or to multi-family dwellings or increasing the number of dwelling units shall be equipped with an approved sprinkler system. (N.T. 19; Borough Exhibit 4)

4. The Borough received a directive from the Department to immediately cease all enforcement of Ordinance No. 1293 because the ordinance was not submitted to the Department for review under the procedures set forth in the Uniform Construction Code. (N.T. 32; Official Notice)

5. On April 22, 2004, the Borough adopted Ordinance No. 1298. (N.T. 17; Borough Exhibit 2)

6. Ordinance No. 1298 adopts the Uniform Construction Code contained in 34 Pa. Code, Chapters 401-405 as the Municipal Building Code of the Borough and provides, in pertinent part:

All building code ordinances or portions of ordinances which were adopted by the Borough of Sharon Hill on or before July 1, 1999, and which equal or exceed the requirements of the Code shall continue in full force and effect until such time as such provisions fail to equal or exceed the minimum requirements of the Code, as amended from time to time. (N.T. 17; Borough Exhibit 2)

7. Ordinance No. 1311 was adopted by the Borough on August 24, 2006. (N.T. 21; Borough Exhibit 6)
8. Ordinance No. 1311 combines all of the Borough's sprinkler ordinances into one ordinance, and is a combination of Ordinance Nos. 1293 and 1258. (N.T. 21; Borough Exhibit 6).
9. Prior to its adoption, Ordinance No. 1311 was reviewed by the Department under the procedures set forth in the Uniform Construction Code. (N.T. 20-21; Borough Exhibit 5)
10. By letter dated June 22, 2006 the Department notified the Borough that the "sprinklering requirements" proposed in Ordinance No. 1311 equal or exceed the requirements of the UCC. (20-21, 31; Borough Exhibit 5)
11. The Department also informed the Borough that three changes were necessary for the ordinance to fully satisfy the requirements found in 35 P.S. §7210.503(b); however, assuming that these changes were made, the Borough was authorized to proceed to adopt the changes in accordance with 35 P.S. §7210.503 without further action by the Department. (N.T. 20-21; Borough Exhibit 5)
12. The only difference between Ordinance No. 1311 and Ordinance No. 1258 (which was adopted by the Borough prior to the adoption of the Pennsylvania Uniform Construction Code on July 1, 1999) is section 5(E). (Borough Exhibits 1, 4 and 6)

13. Section 5(E) of Ordinance No. 1311 incorporates the requirements that were set forth in Ordinance No. 1293 that required an approved automatic sprinkler system to be installed in “[a]ll buildings that are converted from owner-occupied single-family dwellings to single-family rental units or to multifamily dwellings or increasing the number of dwelling units. . . .” (N.T. 21; Borough Exhibit 6)

14. The Borough adopted Ordinance No. 1311 as a result of overcrowded conditions that the Borough is starting to experience in rental properties. (N.T. 48)

15. By letter dated September 22, 2006, the Challengers filed a timely challenge to the validity of Ordinance No. 1311 with the Department. (BOIS Exhibit 1)

SHARON HILL:

16. The Borough of Sharon Hill is located approximately one quarter of a mile east of the Philadelphia, PA borderline. (N.T. 22)

17. Sharon Hill is a relatively small borough consisting of approximately 7/10 of a square mile. (N.T.45, 116-117)

18. Approximately 50% of the Borough is made up of row homes; 25% of the Borough is made up of twins homes, and the remaining 25% is large single-family homes or homes that have been converted into apartments. (N.T. 22)

19. The majority of the Borough has alleyways in the rear of the properties that are very narrow; most of the streets are 25 feet wide. (N.T. 66, 71; Borough Exhibit 7)

20. Within the past 10 years, more and more renters have been moving into the Borough. (N.T. 22-23)

21. Currently, there are approximately 1200 owner-occupied units in the Borough and 700 rental units. (N.T. 46)

22. The majority of the homes in the Borough are pre-1940/1945 homes. (N.T. 22, 79-80)
23. Many of the rental units in Sharon Hill are older units; the wiring is old, knob to tube wiring and firewalls do not go all the way up to or through the roof. (N.T. 29, 79-80)
24. Rental units and owner-occupied residential units are required to have one smoke detector per floor and one smoke detector per bedroom. (N.T. 47)
25. Rental dwellings are inspected once a year and are required to have a battery-operated smoke detector in each bedroom and on the first floor if it is a multi-unit/multi-floor property; rental dwellings are also required to have an electric operated smoke detector on the top of the second floor level and in the basement area. (N.T. 40, 48)
26. Random inspections of rental units are generally not conducted in the Borough; however, random inspections may be conducted if the Borough suspects that health and/or safety violations are occurring. (N.T. 40)
27. Owner-occupied units are only inspected when a Use and Occupancy inspection is done, which is generally when the unit is sold. (N.T. 48)
28. Sharon Hill has one fire station located roughly in the middle of the Borough. (N.T. 117)
29. The Sharon Hill Fire Company has a very large base of volunteers. (N.T. 115)
30. Because Sharon Hill is only approximately 7/10 of a square mile in size, the longest distance that the Sharon Hill Fire Company has to respond when dispatched to a fire is four to five blocks. (N.T. 117)
31. The typical dispatch time, depending on the time of day, is four to six minutes. (N.T. 118)

32. The most cumbersome problem that the fire company has with streets in the Borough is with cars parked on both sides of the street; although a fire truck can make it down the street, it has to slow down. (N.T. 101)
33. At least eight to ten streets in the Borough are narrow with parking on both sides. (N.T. 110)
34. The Sharon Hill Fire Company has a special truck, called a "093", which is a mini pumper that is able to access alleyways in the Borough. (N.T. 105, 114)
35. William Scott (Scott) is the Code Enforcement Officer for the Borough, the Borough Manager and the Borough Fire Marshall. (N.T. 13-14)
36. One of Scott's responsibilities as Code Enforcement Officer is to perform rental dwelling inspections. (N.T. 24)
37. The Borough has adopted as its inspection guideline the 2003 International Property Maintenance Code. (N.T. 37)
38. The 2003 International Property Maintenance Code requires that homes using 70 square feet of living space, which are generally three-bedroom homes, should be occupied by five people. (N.T. 24, 37)
39. The 2003 International Property Maintenance Code also requires egress in a basement level and a bathroom facility if there is a bedroom in the basement. (N.T. 38)
40. Scott is finding through rental dwelling inspections that bedrooms are being made out of basements with no exits and that three bedroom homes are being occupied by eight to eleven people. (N.T. 24)

41. Scott has found mattresses leaned up against the wall in both the basement and bedroom areas; however, when he questions the tenants about the extra mattresses, they simply respond that they are trash. (N.T. 25)
42. On many occasions, Scott has volunteered to contact the Highway Department to have the excess mattresses removed but the tenants respond that the mattresses are being given to somebody else. (N.T. 25)
43. If Scott finds a home that has more occupants than allowed under the square footage requirement of the 2003 International Property Maintenance Code or that occupants are sleeping in an area that is not appropriate for sleeping, Scott has the authority to cite the landlords for those violations; however, the Borough generally sends the landlord a letter asking him/her to remedy the situation first and 99% of the time, the landlord takes care of the problem at that time. (N.T. 39-41)
44. The *International Residential Code* ® (2003 edition)(IRC) establishes regulations for one and two-family dwellings and townhouses not more than three stories in height with separate means of egress. (N.T. 132)
45. Section R313 of the (IRC) is entitled "Smoke Alarms" and provides, in pertinent part, as follows:

R313.1 Smoke alarms. Smoke alarms shall be installed in the following locations:

1. In each sleeping room.
2. Outside each separate sleeping area in the immediate vicinity of the bedrooms.
3. On each additional story of the dwelling, including basements but not including crawl spaces and uninhabitable attics. In dwellings or dwelling units with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the

adjacent lower level provided that the lower level is less than one full story below the upper level.

(Official Notice, section R313 of the *International Residential Code* ® (2003 edition))

46. The IRC does not require sprinklers in one and two family detached structures or in townhouses that do not exceed three stories in height. (N.T. 133-134, 170-171; Official Notice)

47. The *International Building Code* ® (2003 edition) (IBC) applies to all construction *except* one and two-family dwellings and townhouses not more than three stories in height with a separate means of egress. (Official Notice)

48. Under the IBC, automatic sprinkler systems are required only in certain structures that are less than 5,000 square feet; including buildings used as H Group occupancies (high hazard occupancies) and I Group occupancies (institutional occupancies). (Official Notice)

49. The IRC and the IBC are designed to meet the needs of thousands of building code officials from across the country in all settings, including, cities, suburbs, rural communities, high density, low density, renter, owner, old buildings and new buildings; the codes are designed to provide adequate protection for public health and safety in all communities large and small. (N.T. 139)

50. Both the IRC and the IBC are adopted by Pennsylvania as part of its Uniform Construction Code. (N.T. 133; Official Notice)

51. There are no distinctions with respect to sprinklers in any Code provision based upon whether or not the occupancy is used as an owner-occupied dwelling or a tenant-occupied dwelling. (N.T. 171)

52. The International Fire Code is adopted by Pennsylvania as part of its Uniform Construction Code. (N.T. 172-173; Official Notice)

53. The 2003 and 2006 editions of the International Fire Code provide guidance on the minimum width of streets for fire department apparatus access; the minimum width is 20 feet. (N.T. 172-173)

CONCLUSIONS OF LAW

1. The Borough has failed to establish that clear and convincing local climatic, geologic, topographic or public health and safety circumstances or conditions justify the exception contemplated under the Act for Section 5(E) of Ordinance No. 1311. (Findings of Fact Nos. 1-53)

2. The Borough has failed to establish that Section 5(E) of Ordinance No. 1311, as enacted, is not inconsistent with the legislative findings and purposes described in section 102 of the Act, 35 P.S. §7210.102. (Findings of Fact Nos. 1-53)

DISCUSSION

Background:

The Pennsylvania Construction Code Act, 35 P.S. §7210.101, *et. seq.* (Act) was enacted by the General Assembly in 1999 to establish and provide uniform construction standards and regulations throughout Pennsylvania for the protection of life, health, safety and welfare of consumers, the general public and owners and occupants of buildings and structures.

Pursuant to the Act, the Department promulgated regulations which adopted and incorporated by reference various codes, including, the *International Residential Code*® (IRC) and Chapters 2 through 29 and 31 through 35 of the *International Building Code*® (IBC), as the “Uniform Construction Code” (UCC), 34 Pa. Code §403.21. With limited exceptions, the UCC preempts and rescinds construction standards provided by any statute, local ordinance or regulation.¹ Although municipalities may enact ordinances that equal or exceed the minimum requirements of the UCC, such ordinances are subject to Department review² and to challenge by any aggrieved party.

When a written challenge to an ordinance is filed with the Department, the Department is required by section 503(j)(2) to review the ordinance based on the following standards:

- (i) that certain clear and convincing local climatic, geologic, topographic or public health and safety circumstances or conditions justify the exception;

¹ The rescission or preemption does not apply to ordinances in effect on July 1, 1999, or reenactments of simultaneously repealed ordinances which were originally adopted before July 1, 1999, which contain provisions which meet or exceed the Uniform Construction Code. 34 Pa. Code §403.2.

² The Department’s review is limited to a determination that the ordinance complies with the Act’s minimum requirements. 35 P.S. §7210.503.

(ii) the exception shall be adequate for the purpose intended and shall meet a standard of performance equal to or greater than that prescribed by the Uniform Construction Code;

(iii) the exception would not diminish or threaten the health, safety and welfare of the public; and

(iv) the exception would not be inconsistent with the legislative findings and purpose described in section 102.³

All four criteria must be satisfied in order to justify an exception to the UCC requirements. Absent a showing by a municipality that the standards enumerated in section 503(j)(2) justify an exception to uniformity, the legislature recognized that the way to insure uniform, modern construction standards throughout Pennsylvania is for municipalities to adopt a Uniform Construction Code.

Ordinance No. 1311:

Ordinance No. 1311 was enacted by the Borough on August 24, 2006 for the purpose of combining all of the Borough's sprinkler ordinances into one ordinance.

With one exception, Ordinance No. 1311 is identical to the Borough's first sprinkler ordinance (Ordinance No. 1258) which was enacted on September 25, 1997. Ordinance No. 1258 required that all buildings and/or structures and all buildings that are renovated or modified for more than 50% of their value shall be equipped with an approved automatic sprinkler system. The only difference between Ordinance No. 1258 and Ordinance No. 1311 is found in Section 5(E) of Ordinance No. 1311 which adds the requirement that automatic sprinkler systems shall be installed in "[a]ll existing buildings

³ 35 P.S. §7210.102. The Department is also instructed to take into consideration the provision, code development process history, purpose and intent of relevant provisions of the 1999 BOCA National Building Code, Fourteenth Editions, ICC International One and Two Family Dwelling Code, 1998 Edition, or their successor codes. 35 P.S. §7210.503(j)(2).

that shall be converted from owner-occupied single-family dwellings to single-family rental units or to multifamily dwellings, or increasing the number of dwelling units. . . .”⁴

There is no question that Ordinance No. 1311 *exceeds* the minimum requirements of the UCC. The IRC does not require sprinklers in one and two family dwellings and townhouses not exceeding three stories in height; Section 5(E) of Ordinance No. 1311 does. However, because all of the provisions of Ordinance No. 1311 except Section 5(E) are identical to the provisions of Ordinance No. 1298 which is properly grandfathered under the Act,⁵ the Challengers concede that the only provision of Ordinance No. 1311 that is subject to challenge is Section 5(E).

Challenge:

The challenge to Ordinance No. 1311 is based on two grounds: (1) clear and convincing local climatic, geologic, topographic or public health and safety circumstances or conditions do not justify the exception, as required under section 503(j)(2) (i); and, (2) the Ordinance is not consistent with the legislative findings and purposes described in section 102, as required under section 503(j)(2)(iv).

In support of its Ordinance, the Borough presented the testimony of several witnesses, including the Borough’s Code Enforcement Officer, the Borough’s Fire Chief and a representative of the Borough’s consulting engineering firm. These witnesses

⁴ The Borough previously attempted to add this requirement on September 25, 2003 when it enacted Ordinance No. 1293. However, the Borough was directed by the Department to cease enforcement of Ordinance No. 1293 because the ordinance was not properly submitted to the Department for review under the procedures set forth in the UCC.

⁵ On April 22, 2004, the Borough adopted Ordinance No. 1298, which adopts the UCC as the Municipal Building Code of the Borough. Ordinance No. 1298 also provides that all building code ordinances that equal or exceed the requirements of the UCC and were adopted by the Borough on or before July 1, 1999 shall continue in full force and effect until such time as they no longer equal or exceed the requirements of the UCC.

identified three public health and safety conditions which the Borough contends justify the requirement of automated sprinkler systems as required in Section 5(E): (1) the age and density of buildings within the Borough; (2) the narrowness of streets within the Borough; and, (3) overcrowded conditions that the Borough is starting to experience in rental properties.

(1) **Age and Density of Buildings:**

According to the David Damon, the Borough's engineering consultant, much of the residential housing in the Borough was developed in the late 1800's when the railroad came through. Later, when the trolley was extended to Sharon Hill in the 1920s a second portion of housing was built. Damon testified that many of these 100-year-old era homes have firewalls that do not extend through the attic areas.

William Scott, the Borough's Code Enforcement Officer, testified that approximately 50% of the Borough is made up of row homes, 25% of the Borough is made up of twin homes and the remaining 25% is large single-family homes or homes that have been converted into apartments. Like Damon, Scott testified that many of the twin homes have fire walls; however, the fire walls only go up to within a foot of the underside of the roof, which allows fire to jump from one side to the other. In addition, many of the rental units have old knob to tube wiring and firewalls that do not go all the way up to or through the roof.

Gregory Lebold, a Code Enforcement Officer for Upper Providence Township, also testified in his opinion that the row homes in the Borough of Sharon Hill pose a potential fire and safety hazard due to density and the type of construction. However, Scott also testified that these same conditions exist in owner-occupied units in the

Township which Ordinance No. 1311 does not require to be equipped with an approved automatic sprinkler system. (N.T. 42)

Regardless of the general age of the buildings in the Borough, Scott testified that both rental units and owner-occupied residential units are required to have one smoke detector per floor and one per bedroom. Scott testified that rental dwellings are inspected once a year and are required to have a battery-operated smoke detector in each bedroom and on the first floor if it is a multi-unit property. According to Scott, rental dwellings are also required to have an electric operated smoke detector on top of the second floor level and in the basement area. (N.T. 47-48) This is consistent with the requirements of the IRC with respect to smoke alarms which provides, in pertinent part:

R313.1 Smoke alarms. Smoke alarms shall be installed in the following locations:

1. In each sleeping room.
2. Outside each separate sleeping area in the immediate vicinity of the bedrooms.
3. On each additional story of the dwelling, including basements but not including crawl spaces and uninhabitable attics. In dwellings or dwelling units with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level.

(Section R313 of the *International Residential Code* ® (2003 edition))

Frank Thompson, Vice Chairman of the International Residential Code Drafting Committee and a member of the Building Code Council testified that the IRC and the IBC are national model Building Codes that are designed to address the needs of thousands of buildings across the country in all settings, including, cities, suburbs, rural communities, high density, low density, renter, owner, old

buildings and new buildings. (N.T. 139) Neither of these codes requires sprinklers in one and two family detached structures or in townhouses that do not exceed three stories in height. In addition, there are no distinctions with respect to sprinklers in any Code provision based upon whether or not the occupancy is used as an owner-occupied dwelling or a tenant-occupied dwelling.

Aside from the fact that many buildings in the Borough are of older type construction with old wiring and firewalls that do not extend through attic areas, no testimony was provided by the Borough to demonstrate a clear and convincing public health and safety reason to justify the requirement of automated sprinkler systems in tenant occupied homes as opposed to owner occupied homes due to the age and density of the buildings within the Borough.

(2) Narrow Streets Within the Borough:

Consistent with the age of the homes within the Borough, both Scott and Damon testified that the majority of the Borough has alleyways in the rear of the properties that are very, very narrow and streets that are only 25 foot wide. According to Damon, because the people who occupied these homes one hundred years ago did not have the number of cars that people have today, the Borough now has a deficiency of off-street parking. As a result, parking is allowed on both sides of the street on at least eight to ten streets within the Borough. These narrow streets and alleyways inhibit the fire company's ability to respond in emergency situations.

However, despite the narrowness of the streets and the congestion associated with parking on both sides of the street, William Benecke, the Borough's Fire Chief, testified that a fire truck is able to make it down these streets; it simply has to slow down. (N.T.

101) Benecke also testified that when a fire truck goes down any of the streets in the Borough he does not know if the truck is responding to a fire in an owner-occupied home or a single-family rental unit. (N.T. 112) More importantly, Benecke testified that the Sharon Hill fire station is located roughly in the middle of the Borough. Because the size of the Borough is only 7/10 of a square mile, the longest distance that the fire company has to respond when dispatched to a fire in the Borough is four or five blocks. According to Benecke, the typical dispatch time, depending on the time of day, is four to six minutes.

Benecke also testified that the Sharon Hill Fire Company has a very large base of volunteers as well as a mini pumper truck, called a "093" that is used by the Fire Company on approximately 90% of all dwelling fire calls to access alleyways. According to Benecke, "[w]e might not always make fire attacks from the rear, but the truck goes to the rear, so that we have something in the rear in case they have to come in." (N.T. 114-115) No testimony was provided by any witness to suggest that the narrow streets and alleyways within the Borough have ever prevented the Fire Company from responding to a fire call. Thus, despite the narrow streets and alleyways within the Borough, the Borough has failed to advance a clear and convincing public health and safety reason to justify an exception to the UCC requirements due to these conditions.

(3). Overcrowded Conditions in Rental Properties:

Another public health and safety reason articulated by the Borough for the requirement in Section 5(E) that sprinkler systems be installed in existing buildings that are converted from owner-occupied single-family dwellings to single-family rental units

is owing to overcrowded conditions that the Borough is starting to experience in its rental properties.

Scott testified that within the past 10 years, more and more renters have been coming into the Borough. According to Scott, in Sharon Hill, row homes are selling between \$60,000 to \$85,000 compared to neighboring towns such as Radnor, Havertown and Prospect Park where row homes are selling for \$100,000. Additionally, twin homes which are selling between \$90,000 and \$130,000 in Sharon Hill are selling for \$150,000 or higher elsewhere. As a result, investors are purchasing these homes and converting them into rental properties. (N.T. 28) Scott testified that there are approximately 1,200 owner-occupied units in the Borough and 700 rental units.

Scott testified that the problem that Sharon Hill is experiencing with the influx of rental properties is overcrowded conditions. According to Scott, a rental unit may be rented to a mother and father and three children; however, within a month or two later, he is finding that anywhere between seven to eleven people are living at the property. (N.T. 23)

Scott testified that during his annual inspection of rental units in the Borough he is finding that bedrooms are being made out of basements with no exits and that three bedroom homes, which should be occupied by five people, are being occupied by anywhere between eight to eleven people. In addition, during inspections, Scott has found mattresses leaned up against the wall in both the basement and bedroom areas, suggesting that more people are occupying the rental units than permitted by the 2003 International Property Maintenance Code (Code) that the Borough has adopted as its inspection guideline. According to Scott, these conditions, coupled with the age of many of the

rental units, the old wiring and lack of adequate firewalls in the older units, pose a real hazard to the occupants inside. Scott is concerned about a fire spreading from one building to the other in the row homes and the safety of the people living inside. (N.T. 26, 29) In Scott's opinion, these health and safety circumstances and conditions justify granting the exception as far as rental units are concerned in the Borough. (N.T. 29)

However, the overcrowded conditions described by Scott are Code violations that can be remedied by enforcing the Borough's inspection guidelines. Scott testified that the Borough has the authority to cite landlords for violations of the Code; nevertheless, the Borough generally sends the landlord a letter asking him/her to remedy the situation first. According to Scott, 99% of the time, the landlords usually take care of the problem at that time. Scott also testified that random inspections of rental units can be conducted if the Borough believes that health and/or safety violations are occurring; however, random inspections are generally not being done.

Conclusion:

In adopting the Uniform Construction Code, the legislature recognized that there may be circumstances in some municipalities that justify equal or higher standards than those proposed in the IRC. Standards that could justify the adoption of an ordinance that exceeds the minimum requirements of the Uniform Construction Code are set forth in section 503(j)(2). Absent a showing by a municipality that the standards enumerated in section 503(j)(2) of the Act justify an exception to uniformity, the intent behind the Act's passage was that the municipality would adopt the Uniform Construction Code provisions as currently found in the IRC.

By enacting an ordinance that exceeds the requirements of the UCC, the Borough has the burden of proving that the standards enumerated in section 503(j)(2)(i) exist in the Borough and that the ordinance, as enacted, is not inconsistent with the legislative findings and purpose, 35 P.S. §7210.503(j)(2)(iv).

Having reviewed the evidence in conjunction with the ordinance provisions, the legislative findings and purposes described in section 102 of the Act and the standards announced in section 503(j)(2), the Secretary finds that the Borough has failed to demonstrate that the enhancements to the IRC as proposed in Ordinance 1311, Section 5(E) justify an exception.

Accordingly, the following Order is entered:

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF LABOR AND INDUSTRY
BEFORE THE SECRETARY OF LABOR AND INDUSTRY**

IN RE: :
BOROUGH OF SHARON HILL : **DOCKET NO. 007 UCC 06**
ORDINANCE NO.: 1311 :

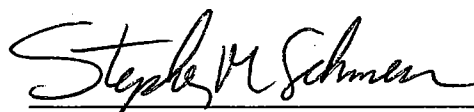
ORDER

AND NOW, this 8th day of January 2007, upon consideration of the record of this proceeding, together with the foregoing Findings of Fact, Conclusions of Law and Discussion, it is hereby ordered as follows:

(a) Section 5 (E) of Ordinance No. 1311, which requires the installation of an approved automatic sprinkler system in “[a]ll buildings that shall be converted from owner-occupied single-family dwellings to single-family rental units or to multifamily dwellings or increasing the number of dwelling units . . .” is hereby **DISAPPROVED, NULL AND VOID**, as exceeding the minimum requirements of the Uniform Construction Code.

(b) The remaining provisions of Ordinance No. 1311, having been properly grandfathered, shall continue in full force and effect until such time as the provisions fail to equal or exceed the minimum requirements of the Uniform Construction Code, 34 Pa. Code, Chapters 401-405, as amended from time to time.

BY ORDER:



Stephen M. Schmerin
Secretary
Department of Labor & Industry
Commonwealth of Pennsylvania

For the Borough:

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For the Challengers:

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For the Department:

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Seventh and Forster Streets
Harrisburg, PA 17120

Date of Mailing:

January 8, 2007