

MINUTES OF THE
COLLIER COUNTY CONTRACTORS' LICENSING BOARD
MEETING

Naples, Florida, April 20, 2011

LET IT BE REMEMBERED that the Collier County Contractors' Licensing Board, having conducted business herein, met on this date at 9:00 AM in REGULAR SESSION in Administrative Building "F," 3rd floor, Collier County Government Complex, Naples, Florida, with the following members present:

CHAIRMAN: Kyle Lantz
Vice Chair: Lee Horn
Michael Boyd
Terry Jerulle
Richard Joslin
Thomas Lykos (Excused)
Robert Meister
Jon Walker
Patrick White

ALSO PRESENT:

Jamie French, Director – Operations & Regulatory Management, GMD
Michael Ossorio, Contractors' Licensing Supervisor
Ian Jackson, Licensing Compliance Officer
Patrick Neale, Esq., Attorney for the Board
Steve Williams, Esq., Assistant County Attorney (Absent)

Any person who decides to appeal a decision of this Board will need a record of the proceedings pertaining thereto, and therefore may need to ensure that a verbatim record of the proceedings is made, which record includes that testimony and evidence upon which the Appeal is to be based.

I. ROLL CALL:

Chairman Lantz called the meeting to order at 9:02 AM and read the procedures to be followed to appeal a decision.
Roll call was taken and a quorum was established.

II. ADDITIONS OR DELETIONS:

Changes:

- Item VIII, “Public Hearings” –
 - under (A): Case #2011-04 – James B. Schuck was *closed*

III. APPROVAL OF AGENDA:

Patrick White moved to approve the Agenda as amended. Second by Richard Joslin. Carried unanimously, 7 – 0.

IV. APPROVAL OF MINUTES – March 16, 2011:

Patrick White moved to approve the Minutes of the March 16, 2011 meeting as submitted. Second by Richard Joslin. Carried unanimously, 7 – 0.

V. DISCUSSION:

(None)

(Jon Walker arrived at 9:05 AM.)

VI. NEW BUSINESS:

(Note: In each of the cases heard under this Section and Section VIII, as follows, the individuals to testify were sworn in.)

(A) Gustavo DeLeon – Application for Waiver of Examination

Michael Ossorio provided background information:

- Mr. DeLeon was the Qualifier for “G. F. Concrete Corp.”
- In 2009, he failed to renew his Specialty License (concrete forming and placing) and it is currently null/void
- He is applying to reinstate his license and is requesting a Waiver of Examination
- The Code requires retesting or proof of experience

Mr. DeLeon requested to renew his License without taking the test.

Attorney Neal cited Chapter 22-184 (c), “Standards for the Issuance or Denial of a Certificate of Competency,” of the County’s Ordinance as follows:

“(c) When an application is referred to the Contractors' Licensing Board, the Board shall take testimony from the applicant and shall consider other relevant evidence regarding whether the application meets the requirements of this Division. Upon the evidence presented by the applicant and the Contractor Licensing Supervisor, the Contractors' Licensing Board shall determine whether the applicant is qualified or unqualified for the trade in which application has been made.

The Board may consider the applicant's relevant recent experience in the specific trade and, based upon such experience, may waive testing requirements if convinced that the applicant is qualified by experience whereby such competency testing would be superfluous.”

Michael Ossorio noted:

- Mr. DeLeon has not been working in his specific construction trade for the past two years
- Mr. DeLeon is not licensed in other Counties

Mr. Ossorio stated he did not have a recommendation for the Board.

Chairman Lantz asked if the Applicant’s credit score was to be considered.

Mr. Neale stated the Applicant is before the Board for a Waiver. If Staff determines the credit report is inadequate, the Applicant will return.

Mr. Ossorio clarified the Applicant submitted a full applicant to the Board and any information contained in it could be considered.

Attorney Neal concurred.

Mr. DeLeon stated:

- The down-turn in the economy affected his business
- He has been working for another Contractor doing concrete work (pouring slabs, flatwork – driveways/sidewalks.)
- He was initially tested for his License in 1988.
- He has not taken any Continuing Education courses.

Mr. Joslin asked if there was a requirement to take CE courses in Collier County and Mr. Ossorio responded, “no.”

Mr. Neale outlined the permitted activities under the Specialty License for concrete forming and placing:

- Qualified to form, place and finish concrete flatwork

When asked if any complaints had been registered against the Applicant while his license was active, Mr. Ossorio responded, “no.”

Mr. DeLeon stated he has job offers and wants his license back in order to work as a Subcontractor.

Richard Joslin stated while he did not have an objection to approving the application for a Waiver, he suggested placing the Applicant on probation for a six-month period to give him time to improve his credit. At the end of six months, the Applicant will be required to return and present an updated credit report to the Board. He stated the foregoing constitutes his Motion.

Mr. Meister offered a second in support.

Chairman Lantz outlined the Motion:

- Approve the application for a Waiver of Testing and approve issuance of a license
- Institute a six-month probationary period while Applicant is allowed to work
- Mr. DeLeon is to return at the end of the probationary period with an updated business credit report

Motion carried, 6 – “Yes”/2 – “No.” Terry Jerulle and Patrick White were opposed.

(B) Mark Lee Neff – Application to Place License into Dormancy

Michael Ossorio noted:

- Mr. Neff owns “United Pool Service, Inc.” and has been in the pool business since 1984
- His license was cancelled in 2008
- Currently registered with the State of Florida Department of Business and Professional Regulation as a Swimming Pool/Spa Servicing Contractor
- Continuing Education Credits are current
- Applying to place his license into dormancy
- Submitted only a partial application

Mr. Ossorio recommended issuing the Certificate for Dormancy. He stated when the dormancy period has ended, the Applicant will submit a full application and review at that time.

Mr. Neff stated he has been in the pool business since 1984 and one of the reasons for the application is because United Pool Service owns property in an industrial park. He is currently working for another company, his license was in dormancy but he missed paying the renewal fee.

Chairman Lantz questioned if Mr. Neff’s State registration would also become dormant and the reply was “no.”

Richard Joslin stated he is a pool contractor and has worked with Mr. Neff's company in the past without a problem.

Jon Walker moved to approve Mark Lee Neff's application to place his Collier County license into dormancy. Second by Michael Boyd. Carried unanimously, 8 – 0.

(C) **Robert J. Waring – Contesting Citation(s)**

Citations: #6117 and #6118

Date: March 18, 2011

Fine: \$300.00 each

Description of Violations:

(#6117) *Engage in the business or act in the capacity of a Contractor, or advertise self or business organization as available to engage in the business of or act in the capacity of a contractor, without being duly registered or certified.*

(#6118) *Commence or perform work for which a Building Permit is required pursuant to an adopted State Minimum Building Code, without such Permit being in effect.*

Robert J. Waring presented his case:

- He received a Citation for working beyond the scope of his license
- He does not believe he was outside the scope of his license
- He stated he is allowed to do concrete work as necessary as long as it is not structural in nature
- He is a Certified Aluminum Specialty Contractor
- He did not think a Permit was necessary because the work consisted only of repair

Ian Jackson, Licensing Compliance Officer, presented the County's case:

(A copy of the County's information packet was provided to Mr. Waring.)

- A complaint was received from the City of Naples Building Department at the Colonnade at Park Shore
- He conducted a site inspection and observed work being done to a column by Mr. Waring's employees (*see E-5; E-10 through E-13*)
- He contacted Mr. Waring via telephone and discussed the Permitting requirement
- He contacted a Structural Inspector for the City of Naples and requested that he inspect the site and make an official determination of whether or not the City required a Permit for the work being done
- The Structural Inspector agreed a Permit was necessary
- Mr. Waring was contacted again and advised of the Permitting requirement, as well as the licensing issue
- He met with Mr. Waring after researching the issue and informed him the work being done could not be performed by a Certified Aluminum Specialty Contractor and two Citations were issued to Mr. Waring

Mr. Waring clarified the term used by the State is “Certified Specialty Structure Contractor” and the Statutes allow him to do concrete work. He reiterated the work done at The Colonnade was not structural.

He stated:

- he has pulled Permits when necessary, but did not think a Permit was required for “*a little repair like that.*”
- he did pull an after-the-fact Permit for the job for which he paid \$350.

When asked if he performed an aluminum work, he responded he fabricated an aluminum plate for the bottom of the column.

He confirmed he was contesting the Citation for scope of work and questioned whether he should be required to pay an additional fine because he had paid a triple fee for the Permit.

Mr. Ossorio stated if the Board found that Mr. Waring was not in violation of the Citation for working outside the scope of his license, the County would withdraw the Citation for unpermitted work.

When questioned about the amount of fines involved, Mr. Ossorio clarified the amount paid for the Building Permit was not related to the Citation.

He reminded the Board the first issue to be determined was whether or not Robert Waring worked outside the scope of his license.

Jamie French stated the City of Naples sets its fees while Collier County has a different fee structure.

Terry Jerulle noted his question was whether Mr. Waring should pay a fine in addition to the fine paid for the Permit.

Michael Ossorio replied affirmatively. He continued if the Board found Mr. Waring was guilty of working outside the scope of his license, he is subject to a fine of \$300.

Mr. Waring again stated he didn’t think he needed a Permit in the first place.

Mr. White asked Mr. Neale for direction concerning whether the Board had some latitude if a violation was abated prior to a Hearing.

Attorney Neale noted the Board has the option to dismiss the Citation and cited Florida Statutes, Chapter 489, Section 127, entitled “Prohibitions; penalties:”

“If the person issued the Citation, or his designated representative, shows that the Citation is invalid or the violation has been corrected prior to appearing before the Enforcement or Licensing Board, the Enforcement or Licensing Board may dismiss the Citation unless the violation is irreparable or irreversible.”

Mr. Neale continued the Board could determine that the violation has been corrected and waive the Citation. He noted there were two separate Citations; one for a Permit violation and one for a license violation.

Patrick White noted if wood framing and concrete were done as incidental to aluminum work, then Mr. Waring was within the scope of his license. He stated it depended on how the job was viewed.

Mr. Neale concurred if the work done was primarily aluminum, then Mr. Waring was within the scope of his license. If the job consisted primarily of concrete work, then he was in violation.

Chairman Lantz asked the Respondent if he was issued a Permit by the City of Naples under his license and credentials.

Robert Waring responded affirmatively.

Chairman Lantz stated if Mr. Waring was issued a Building Permit, it indicated the City of Naples Building Department determined he was not working beyond the scope of his license. He concluded the fine was not warranted.

Patrick White supported the Chairman's conclusion.

Joseph Burko testified as follows:

- He is the Deputy Building Official for the City of Naples and works with the Director of the Building Department
- His State License Number is BU-1601

When asked if the City of Naples considered the column to be a structural component to the building as a whole, Mr. Burko replied "yes." He stated it is common in remodeling work for a Contractor to not know the depth of the work involved until after the job had begun. His concern with a column was to first determine if any load was being transferred. He continued after examining the photographs, he was unable to conclude the column did not bear any weight. He stated if he had reviewed the Permit, his conclusion would have been that the aluminum work was clearly incidental to the scope of work. He further stated the aluminum appeared to be "*an elaborate flashing detail*" and was not a structural component.

After reviewing the pictures, Mr. Burko stated the column was encased in stucco and appeared to come down to a type of foundation. The column was cut shy of the foundation because someone sawed it. He further stated to cut through a column without knowing the ramifications of that action without first consulting a design professional, i.e., an architect or engineer, was not a good decision.

He stated the City's policy is to be accessible to Specialty Contractors to answer questions. He concluded the work did require a Permit, but was unsure why a Permit was issued to the Mr. Waring under a Specialty License.

Ian Jackson asked Mr. Burko if, in his opinion, Mr. Waring altered the structural integrity of the building by altering the foundation of the column.

Mr. Burko agreed the column had definitively been altered but stated he would not be able to determine the level of integrity that may have been compromised without a report from a Structural Engineer.

Mr. Jackson again asked if the work depicted in the photographs required a Permit from the City of Naples.

Joseph Burko replied “*absolutely yes – a multi-family edition alteration Permit.*”

Richard Joslin asked when the Permit was in the process of being issued, if review by an engineer would have been required.

Mr. Burko responded if a Plans Examiner received the plan and had structural questions concerning the column, he would have requested confirmation that it was only a decorative column.

Patrick White asked if the information packet for the Permit contained either an architect’s certification or an opinion from a professional engineer regarding whether or not the column was load-bearing.

Mr. Burko stated there were only a few unidentified handwritten notes.

Mr. White asked what materials would have been acceptable.

Joseph Burko replied if the column had been determined to be a non-structural component, there were a number of ways to repair it. He cited using lumber or pressure-treated wood as an example in addition steel studs or plywood with wire lathe.

He stated the key element was that the work was begun without a Permit and without knowing what was inside the column.

Chairman Lantz stated the objection from Mr. Waring was not the violation for the Permit, but the scope of work. He accepted that it was required and he obtained one.

Mr. Waring stated the Clubhouse contained a set of plans which he examined prior to beginning the work. He claimed if a saw had been used to cut the column, the nails would also have been cut. The photographs showed nails were visible. He maintained the column had rotted and was not sawed. It had been propped up by a 2 x 6 because it was only decorative. He stated the job was completed after the Permit was issued.

When questioned as to why he completed the work after he had been issued a Citation because he was not licensed to do the work, Robert Waring stated he reviewed the Statutes and determined he was allowed to perform concrete work.

Mr. Burko disputed Mr. Waring’s conclusion and cited from the Statutes:

“Certification of Specialty Structure Contractors:

2. Definition:

- (c) The scope of such work shall include masonry concrete work and be limited to foundations, slabs and block knee walls incidental to the aluminum and allied construction materials construction work.

The Specialty Structure Contractor, whose services are limited, shall not perform any work that alters the structural integrity of the building including, but not limited to, roof trusses, lintels, load-bearing walls, and foundations.”

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Attorney Neale stated it is the responsibility of the Contractors’ Licensing Board to interpret the Florida Statutes. He suggested the Board read Paragraph (b) under “Definition” on E-3 which outlined the Scope of Work and indicated it is primarily a fabric and metal license with concrete work as incidental.

He continued the next step would be for the Board to determine if the concrete work was incidental to the aluminum.

Robert Meister asked why the owners of the building would engage an Aluminum Contractor instead of a General Contractor when it was unknown if there could be any structural problems.

Mr. Waring replied the plans indicated it was not a structural column. “*It was just a simple little repair.*”

Richard Joslin moved to approve upholding Citation #6117. Second by Terry Jerulle.

Attorney Neale reminded the Board there were two Citations to be reviewed and suggested the Motion should be limited to working outside the scope.

Patrick White stated he was not willing to give Mr. Waring the benefit of doubt concerning the scope of work, but he was willing to waive the penalty for Citation #6118 because Mr. Waring did obtain an after-the-fact Permit from the City of Naples.

The Motion and the second concerning Citation #6117 were withdrawn.

Patrick White moved to approve waiving the penalty for Citation #6118 by finding that the Respondent abated the violation by timely obtaining the necessary Permit from the City of Naples and it was unnecessary to impose the fine.

(Note: No second was offered in support of the Motion.)

A question was raised as to whether proof of the issued Permit, i.e. physical evidence, had been submitted by Mr. Waring.

Mr. White stated there had been testimony under oath from the Deputy Building Official that an after-the-fact Permit had been obtained and the cost to obtain it was approximately \$350.

He continued Mr. Waring conducted a reasonable investigation to determine whether or not the column was structural by reviewing the building plans contained in the Clubhouse. He further stated it was a grey area because even the City of Naples was not sure, but it issued the Permit allowing Mr. Waring to

do the work under his license. The question of whether the aluminum was incidental to the concrete or vice versa was “close.”

Chairman Lantz stated Mr. Waring paid a triple cost for the Permit and he should not be fined twice.

Mr. White stated he would feel differently if no investigation had been done at all.

Terry Jerulle noted the Respondent was not licensed or certified to perform the investigative work and stated there was no evidence as to what was paid, the original cost of a Permit, the double factor

Mr. Waring stated the exact amount of the Permit was \$331.50. He was unsure if the amount was double or triple the normal fee.

Joseph Burko clarified the fee imposed for the after-the-fact Permit by the City of Naples was double the original Permit fee. He noted the Respondent was originally fined for working outside the scope of his license. The double Permit fee applied by the City of Naples was because work was begun without first obtaining a Permit. .

He continued the two fines were independent of each other, were not linked in anyway, and that he could not reduce a fee imposed by Collier County.

Robert Waring stated he sent the same information presented to the Board to the State of Florida and spoke with a representative who informed the Respondent he was within the scope of his license. He further stated he is waiting for a letter from the State.

Patrick White asked why Mr. Waring did not share this information with the Board at the beginning of the Hearing.

Mr. Waring replied he was completely overwhelmed by the Hearing process.

Patrick White withdrew his previous Motion.

Mr. White stated he was interested in learning the opinion of the State’s licensing professionals concerning the case at hand and requested to review the State’s Opinion Letter before making a final determination in the matter.

Chairman Lantz asked Mr. Waring if he made a request for a Declaratory Statement and he answered affirmatively.

Robert Waring confirmed he was informed he would not receive a letter from the State for approximately four to six weeks.

Michael Ossorio noted the Contractor Licensing Board is considered to be the State’s local regulatory board with the jurisdiction to consider and interpret the evidence as presented. The State’s Licensing Board is not going to dictate policy for the Collier County Contractor Licensing Board.

He continued the Building Official has determined there as a violation. He stated he was comfortable going forward with upholding the Citation.

He further stated he consulted his counterpart at the State’s Board who reviewed the photographs and informed Mr. Ossorio it was to the local Licensing Board to determine what was incidental.

Patrick White stated he did not dispute the Board’s jurisdiction but asked if the Board had the appropriate weight of evidence.

Attorney Neale suggested the Board could continue the matter until such time as the Respondent has received feedback from the State, which would be one other piece of evidence to be considered in the matter.

Terry Jerulle reiterated as a construction professional, he would not hire an aluminum subcontractor to do the type of work required. He stated from his perspective, the matter was “cut and dry.”

Robert Meister stated the Citations were intermingled. He further stated he was “on the fence” about both of them. He was willing to waive the Permit Citation. He continued Mr. Waring was “lucky” he was able to install the aluminum caps and pour the concrete – which was incidental to the other could be argued both ways.

He concluded the job could have turned out to be something completely over his head and Mr. Waring should not have become involved.

Mr. Waring stated he has a CBC (“Certified Building Contractor”) working for him who was at the job site that day.

Ian Fleming objected, stating the CBC was working as subcontractor for Mr. Waring and did not pull permits or do anything other than as instructed by the Respondent.

Jon Walker agreed to waive the Citation for the Building Permit but stated he supported upholding the Citation for working outside the scope.

Patrick White moved to approve upholding Citation #6117 issued for working outside the scope. Second by Richard Joslin. Motion carried, 7 – “Yes”/1 – “No.” Chairman Lantz was opposed.

Attorney Neale stated there was a penalty portion. He noted the minimum amount was the amount of the Citation, i.e., \$300, and a maximum penalty of up to \$1,000 per day.

He cited Florida Statutes, Chapter 489, Section 127:

“If the Enforcement or Licensing Board or designated Special Magistrate finds that a violation exists, the Enforcement/Licensing Board may order the violator to pay a civil penalty of not less than the amount set forth on the Citation, but not more than \$1,000 per day for each violation.”

In determining the amount of the penalty, the Enforcement/Licensing Board or designated Special Magistrate shall consider the following factors:

- 1. The gravity of the violation.*

2. *Any actions taken by the violator to correct the violation.*
3. *Any previous violations committed by the violator.”*

Patrick White moved to approve imposing the fine as stated on Citation #6771 in the amount of \$300. Second by Richard Joslin. Carried unanimously, 8 – 0

***Patrick White moved to approve waiving the \$300 fee for Citation #6118 due to timely abatement. Second by Jon Walker. Motion carried, 5 – “Yes”/ 3 – “No”
Lee Horn, Terry Jerulle, and Richard Joslin were opposed.***

Joseph Burko offered to meet with Mr. Waring to explain the work permitted under his license.

Michael Ossorio stated he would send a Finding of Fact to Mr. Waring in the near future.

Mr. Joslin strongly suggested Mr. Waring should meet with Mr. Ossorio instead of Mr. Burko in order to obtain instruction concerning what work he is and is not allowed to perform under his license.

(D) Paul Martin Gembecki – Waiver of Examinations(s)

Michael Ossorio provided background information:

- Mr. Gembecki is a masonry contractor whose license was cancelled in 1997
- He is currently licensed in Lee County, Cape Coral, Sanibel and Charlotte County
- He has worked in the masonry field for many years
- He did not renew his Certificate in Collier County but is asking to reinstate his license without being required to take an examination

Mr. Ossorio recommended approving the application and waiving the testing requirement.

Paul Gembecki stated:

- He has been continually licensed in Lee County since 1989
- He did not renew his license in Collier County because he did not have sufficient work
- He now has opportunities to return to Collier County
- His insurance has been kept up to date

Michael Ossorio stated Mr. Gembecki will be required to pay all fees for the past three years before the license will be renewed. He noted Mr. Gembecki’s

application fell under the category of “Renewal” because he did have a Collier County license and has been working in other jurisdictions.

He continued if the Application was to obtain a license, Mr. Gembecki would be required to take the tests and provide proof of his experience in the field.

Richard Joslin moved to approve the reinstatement of Mr. Gembecki’s license and waive the requirement for testing. Second by Richard White.

Carried unanimously, 8 – 0.

(E) Marisol Santos – Review of Credit Report

Michael Ossorio provided the following information:

- Ms. Santos has appeared before the Board in the past for credit issues
- She has been in business for over two years
- She is currently on probation
- Her business credit is impeccable
- No complaints have been made against the business
- Her personal credit still has some issues

Mr. Ossorio recommended removing Ms. Santos from probation.

Marisol Santos stated:

- She had experienced some medical issues for the past year that resulted in surgery in December and January
- She fell behind on some payments, but business has picked up and she is in the process of catching up

Richard White moved to approve adopting the recommendation of the Contractors’ Licensing Supervisor to remove Ms. Santos from probation.

Second by Terry Jerulle. Carried unanimously, 8 – 0.

VII. OLD BUSINESS:

A. Orders of the Board

Patrick White moved to approve the signing of the Orders of the Board by the Chairman. Second by Richard Joslin. Carried unanimously, 8 – 0.

VIII. PUBLIC HEARINGS:

(Withdrawn per amendment to the Agenda.)

IX. REPORTS:

(None)

X. NEXT MEETING DATE: Wednesday, May 18, 2011

**Board of County Commissioners’ Chambers, Administrative Building “F,”
3rd Floor (Courthouse Complex), 3301 E. Tamiami Trail, Naples, FL 34112**

There being no further business for the good of the County, the meeting was adjourned by the order of the Chair at 10:41 AM.

**COLLIER COUNTY CONTRACTOR
LICENSING BOARD**

Kyle Lantz, Chairman

The Minutes were approved by the Board/Chairman on _____, 2011,
“as submitted” **OR** “as amended” .