

MINUTES OF THE
COLLIER COUNTY CONTRACTORS' LICENSING BOARD
MEETING

Naples, Florida, May 18, 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 (Excused)
Terry Jerulle
Richard Joslin
Thomas Lykos
Robert Meister
Jon Walker
Patrick White

ALSO PRESENT:

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

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 9:00 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:

Correction:

- Item X, “Next Meeting Date” –
 - The June meeting has been cancelled. The next meeting date is July 19, 2011. .

III. APPROVAL OF AGENDA:

Thomas Lykos moved to approve the Agenda as amended. Second by Terry Jerulle Carried unanimously, 7 – 0.

IV. APPROVAL OF MINUTES – April 20, 2011:

Lee Horn moved to approve the Minutes of the April 20 2011 meeting as submitted. Second by Richard Joslin. Carried unanimously, 7 – 0.

(Patrick White arrived at 9:04 AM.)

V. DISCUSSION:

(None)

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) Nelly A. Nava – Review of Credit Report

Michael Ossorio provided background information:

- Ms. Nava is applying for a Contractor’s License for Cabinets
- If issued, the license will be restricted to “Countertops only” due to a lack of millwork experience
- The Applicant took and passed the Business Procedures Test
- Her credit report indicates problems

Thomas Lykos clarified with the Applicant that she understood the restriction to her license and the penalties for working outside the scope of her license.

Mr. Ossorio noted the Applicant could gain experience in millwork/cabinet and, if it is verified, she can apply to have the restriction removed from her license. If she works outside the scope of her license, she can be fined between \$300 to \$500 and must appear before the Board.

Chairman Lantz asked the Applicant to explain the credit problems. **Ms. Nava** explained she had been trying to pay off her medical debts but her salary was too low. She stated she contacted some of her creditors to make payment arrangements but only one responded.

Michael Ossorio stated when the Applicant was cited for working without a license, she immediately came to the office and paid the fine.

- She was not aware that she was required to have a license to install countertops.
- She drove to Ocala to take the test and then returned to complete her application.
- The County recommends granting r restricted license to her with a one year probationary period due to her credit issues.

Richard Joslin suggested the Applicant should return to the Board in six months with a copy of her updated credit report and then again at the end of the probationary year.

Attorney Neale suggested that she obtain credit counseling from a not-for-profit organization.

Thomas Lykos asked the Applicant to explain why she applied for an exemption from Worker' Compensation insurance coverage requirement.

Ms. Nava stated the company, "J. H. Countertop Innovations, Inc.," consists of her husband and herself. Currently, they are not fabricating and may hire a helper on an as-needed basis. She applied for an exemption for herself only and will obtain the insurance to cover her husband and his helper.

Richard Joslin moved to approve the application for a Contractor's License for Cabinets, restricted to Countertops Only, for "J. H. Countertop Innovations, Inc." as follows:

- ***A one-year probationary period will be imposed,***
- ***The Applicant will return in six months and produce an updated credit report,***
- ***The Applicant will provide proof of credit counseling by a not-for-profit agency,***
- ***The Applicant will return at the end of the probationary period and produce an updated credit report.***

Second by Terry Jerulle.

Thomas Lykos suggested amending the Motion to include that the Applicant is required to produce proof of Workers Compensation Insurance coverage for all employees, and produce a list of current employees when she returns before the Board..

Mr. Joslin amended his Motion to include the requirements to produce proof of Workers' Compensation Insurance coverage for the employees of "J. H. Countertop Innovations, Inc." and a list of current company employees. Second by Terry Jerulle. Carried unanimously, 8 – 0.

(B) James McKnight – Contesting Citation

Citation: #6238

Date: April 8, 2011

Fine: \$300.00

Description of Violations:

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.

James McKnight stated he was helping a friend paint his house when he was approached by Rob Ganguli who asked if he had a license to paint the house.

Rob Ganguli, Licensing Compliance Officer, stated:

- Received a complaint on April 8, 2011 and conducted a site inspection
- He observed Mr. McKnight painting the exterior of the home
- Mr. McKnight stated he *was* being compensated by the homeowner for painting the house, as well as for other tasks. The homeowner was not available to confirm Mr. McKnight's statement
- Mr. McKnight stated he possessed a "handyman's license"
- A Citation was issued and the fine imposed is \$300

There was a question concerning why the Hearing was being held because the payment option was checked on the Citation indicating the Respondent intended to pay the \$300 penalty.

Attorney Neale cited *Florida Statutes*, under Chapter 489, Section 127:

"2 (d). The act for which the Citation is issued shall be ceased upon receipt of the Citation; and the person charged with the violation shall elect either to correct the violation and pay the civil penalty in the manner indicated on the Citation within 10 days of receipt of the Citation, exclusive of weekends and legal holidays, or request an administrative hearing before the Enforcement/Licensing Board to appeal the issuance of the Citation by the Code Enforcement Officer."

Richard Joslin noted Mr. McKnight's written statement claimed he was not compensated for the work.

James McKnight stated he often used his friend's skidoo or boat instead of being paid.

Mr. Joslin stated that, under the circumstances, the Respondent was being compensated for his work – just not in cash.

Mr. McKnight claimed they were friends who "helped each other out."

Thomas Lykos noted the Respondent's written statement was date-stamped as "received on April 14, 2011" which was within the ten-day timeframe.

Kenneth R. McKee, the homeowner, appeared as a witness for the Respondent and stated James McKnight was helping him to paint the house.

Mr. McKee further stated he left briefly to return an overdue book to the library. He noted some neighbors have complained when Mr. McKnight visits because he drives a truck and parks it on the street. He stated he "absolutely" did not pay James McKnight in cash.

When questioned about his "handyman" activities, James McKnight stated he cleans pools and provides lawn service. He confirmed he has a "handyman license" but did not bring it with him. He stated he took the course offered by Rookery Bay to be eligible to cut lawns. He further stated he paid \$35.00 for his license at the County's Horseshoe Drive office.

Michael Ossorio stated Rob Ganguli testified he checked the Business Tax receipts but did not find any indication of payment by Mr. McKnight for a license. He clarified the correct terminology is "Maintenance" License, not a "Handyman's" License. He further stated a competency card is required to clean pools and a "Handyman" cannot clean pools.

James McKnight stated his brother owns a pool company and he works for him and his brother also has a license for lawn maintenance.

Chairman Lantz stated since the homeowner verified no compensation was paid, it was legitimately a situation where a friend was helping a friend.

Lee Horn asked Mr. McKnight what happens when he cleans pools – is his brother with him.

James McKnight stated his brother may be with him or may drop him off at one location while he [the brother] cleaned a pool at a location down the street. He verified he was paid by his brother for the work and that the homeowner paid his brother for the cleaning.

When asked if he could pay the \$300 fine, Mr. McKnight stated it would be a financial hardship for him.

Questions were asked concerning what Mr. Ganguli stated Mr. McKnight told him during the site inspection, and what Mr. McKnight stated he actually said.

Attorney Neale noted Mr. Ganguli's testimony is hearsay, but the testimony from Mr. McKnight and Mr. McKee was considered "direct" testimony. **He** cautioned the Board that direct testimony has the greater weight, and hearsay should not be the sole basis when making a decision.

Jon Walker moved to dismiss Citation #6238. Second by Thomas Lykos.

It was suggested to Mr. McKnight that he bring his documentation to the Contractor's Licensing Department for either the City of Naples or the County to verify exactly what he was issued and what else may be required.

Motion carried, 6 – "Yes"/ 2 – "No." Mr. Horn and Mr. Joslin were opposed.

(C) **Joseph Donnelly – Waiver of Examination(s)**

Michael Ossorio provided background information:

- Mr. Donnelly is a Residential Contractor but his Collier County Certificate was cancelled
- Mr. Donnelly's State Registration is current
- Mr. Donnelly has continued taking educational courses
- Recommendation: Mr. Donnelly has kept his credit hours current, and he should be allowed to renew his Certificate when his fees are paid in full.

Mr. Donnelly stated his State License had been delinquent because he forgot to pay his fees, but the situation was corrected and the license is current.

Richard Joslin moved to approve granting the application to renew the Certificate and waive taking an examination, but required the Applicant to pay all fees before the Certificate will be issued. Second by Robert Meister. Carried unanimously, 8 – 0.

(D) **Robert L. McCray – Waiver of Examinations(s)**

Michael Ossorio noted a *Scrivener's Error*: the correct date for the exam was January 14, 1989. (See Page 5 of)

Mr. Ossorio provided background information:

- Mr. McCray had been licensed for many years in Collier County but he elected to let it lapse while maintaining licenses in Lee County and the City of Cape Coral
- Because his license has been lapsed for a period of three years, he is required to take an exam
- He has applied to have his license reinstated without taking an exam
- There are no continuing education requirements for Specialty Licenses, i.e., Concrete Placing and Finishing

Mr. McCray stated his Lee County license has remained current and he has worked continually for the past 23 years.

Richard Joslin moved to approve granting the application to renew the Certificate and waive taking an examination, but required the Applicant to pay all fees before the Certificate will be issued. Second by Thomas Lykos. Carried unanimously, 8 – 0.

(E) Daniel D. Tucker – Approval of Company Name

Michael Ossorio provided the following information:

- It is a new application
- Mr. Tucker took and passed both the Business & Law exam and the Carpentry Contractor exam in May, 2008
- There are no credit issues
- There is a problem with the name of his business, “Diversified Remodeling, LLC,” because Mr. Tucker is licensed to perform only Carpentry work
 - The implication is the Scope of Work has been expanded
- Mr. Tucker is licensed in Lee and Broward Counties, and with the City of Cape Coral

Daniel Tucker stated:

- He has been licensed since 2006: Lee County, Broward County, Hendry County, City of Cape Coral, and Sanibel
- Under those licenses, he is allowed to work/install any wood product throughout a home, install impact windows up to 50% of a building, trim work, structural trusses
- If a remodeling job calls for electrical or plumbing work, he does not perform the work, and requires the homeowner to hire whomever is necessary in Collier County to complete the job

Mr. Tucker confirmed he understood the difference between what he is allowed to do in Collier County versus what is permitted in other Counties.

Mr. Ossorio verified that Mr. Tucker understands the Scope of Work permitted under Collier County’s “Certificate of Competency” does not include the installation of windows.

Thomas Lykos expressed concern that the company’s name, “Diversified Remodeling, LLC,” implies the company is able to perform an entire kitchen or home or bathroom remodel which is not the case and could mislead the public. He further stated the Applicant is not a General Contractor.

Attorney Neale outlined the Scope of the County’s Responsibilities under Section 22- 163: **“(b) The County shall be responsible for issuing licenses in accordance with this Article to authorize Contractors to work within the geographic boundaries of the County and the City.”**

He also cited *Florida Statutes*, under Chapter 489 – “Contracting,” Section 127 – “Prohibitions; penalties,”

“(1) **No person shall:**

(a) *falsely hold himself or herself or a business organization out as a licensee, Certificate holder, or registrant ...*”

Attorney Neale stated the question to the Board is whether or not a company calling itself a “remodeling” company, but working only under a Carpentry license, constitutes “falsely holding oneself out as a Certificate holder.”

Michael Ossorio gave an example: If there was a Specialty Structural Contractor certified by Tallahassee whose name was remodeling and he was working within his scope, a Citation would not be issued.

The question was whether or not using the term, “remodeling,” in a company’s name crosses the line into “falsely holding” but Staff determined it does not.

Thomas Lykos reiterated his concern that if a homeowner contacts the Applicant with a project encompassing work beyond the scope of his license, how is that communicated to the homeowner.

He gave an example: a homeowner cannot pull a permit for work to be done in a condominium because it is considered to be a “commercial” property.

He continued unless the company name is changed, the consumer will be misled.

He stated he could not approve the name of the company.

Richard Joslin pointed out it is up to the homeowner to investigate the Contractor and ask what licenses the person possesses before hiring him/her for a project.

Discussion continued. It was mentioned there is a distinction between what could possibly be misleading and deliberate false advertising.

Attorney Neale stated the County did not produce evidence that the Applicant had advertised his business as able to perform whole house remodeling, including plumbing and electrical work. He noted the Applicant’s testimony was that he clearly understands the scope of his work.

Richard Joslin asked Michael Ossorio to explain what is noted on the Competency Card issued by the County. He stated the Lee County card cites “Licensed for Carpentry Contractor,” the Broward County card notes “Finished Carpentry,” and the City of Cape Coral Certificate highlights “Specialty Carpentry.”

Mr. Ossorio confirmed the license issued by Collier County will state “carpentry.”

Robert Meister moved to approve the company name. Second by Jon Walker. Motion carried, 7 – “Yes,”/ 1 – “No.” Thomas Lykos was opposed.

VII. OLD BUSINESS:

A. Orders of the Board

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

Patrick White stated there were some minor typos which he detected in the April meeting minutes and would advise the transcriber of same.

BREAK: 10:08 AM

RECONVENED: 10:20 AM

VIII. PUBLIC HEARINGS:

A. Case #2011-08:

John Dennis Below

d/b/a “Allstate Aluminum of SW FL, LLC.”

Chairman Lantz outlined the manner in which the Public Hearing will be conducted:

- Hearings will be conducted pursuant to the procedures contained in Collier County Ordinance #90-105, as amended, and Florida Statutes, Title XXXII, “*Regulation of Professions and Occupations*,” Chapter 489.
- Hearings are quasi-judicial in nature.
- Formal “Rules of Evidence” shall not apply.
- Fundamental fairness and due process shall be observed and govern the proceedings.
- Irrelevant, immaterial, or cumulative evidence shall be excluded.
- All other evidence of the type commonly relied upon by reasonably prudent persons shall be admissible, whether or not such evidence would be admissible in a trial in the Courts of the State of Florida.
- Hearsay evidence may be used for the purpose of supplementing or explaining any evidence but shall not be deemed sufficient by itself to support a Finding, unless such hearsay would be admissible over objection in a civil action in Court.
- The “Rules of Privilege” shall be effective to the same extent that such Rules are now, or hereafter may be, recognized in civil actions.
- Any member of the Contractors’ Licensing Board may question any witness before the Board.
- Each party to the proceedings shall have the right to call and examine witnesses, to introduce Exhibits, to cross-examine witnesses, to impeach any witness regardless of which party called the witness to testify, and to rebut any evidence presented against the party.
- The Chairperson or, in his/her absence, the Vice Chair, shall have all powers necessary to conduct the proceedings at the Hearing in a full, fair, and impartial manner, and to preserve order and decorum.

- The general process of the Hearing is for the County to present an Opening Statement to set forth the charges and, in general terms, how the County intends to prove the charges.
- The Respondent will present his/her Opening Statement setting forth, in general terms, defenses to the charges.
- The County will present its *Case in Chief* by calling witnesses and presenting evidence.
- The Respondent may cross-examine the witnesses.
- After the County has closed its *Case in Chief*, the Respondent may present his/her defense as described previously, i.e., to call and examine witnesses, to introduce Exhibits, to cross-examine witnesses, to impeach any witness regardless of which party called the witness to testify, and to rebut any evidence presented against the party.
- After the Respondent has presented his/her case, the County will present a rebuttal to the Respondent's presentation.
- When the Rebuttal is concluded, each party is permitted to present a Closing Statement.
- The County is allowed a second opportunity to rebut the Respondent's Closing Statement.
- The Board will close the Public Hearing and begin deliberations.
- Prior to beginning deliberations, the Board's Attorney will give a "charge" to the Board, similar to the charge given to a jury, setting forth the parameters on which the decision will be based.
- During deliberations, the Board can request additional information and clarification from the parties.
- The Board will decide two different issues:
 - Whether the Respondent is guilty of the offense as charged in the Administrative Complaint. A vote will be taken on the matter.
 - If the Respondent is found guilty, the Board must decide the sanctions to be imposed.
- The Board's Attorney will advise the Board concerning the sanctions and the factors to be considered.
- The Board will discuss the sanctions and vote.
- After the matters are decided, the Chair/Vice Chair will read a Summary of the Order to be issued by the Board. The Summary is a basic outline of the Order and may not reflect the same language contained in the Final Order.
- The Final Order will include complete details as required under State laws and procedures.

Rob Ganguli, Licensing Compliance Officer, requested to enter Case No. 2011-08 into evidence.

Lee Horn moved to approve entering Case No. 2011-08 into evidence. Second by Richard Joslin. Carried unanimously, 8 – 0.

Rob Ganguli, Licensing Compliance Officer, presented the County's case:

- April 7, 2011 – received a call from the Building Department for the City of Marco Island concerning a jobsite with two permits which were outstanding for the construction of a residential swimming pool
- The pool construction needed a final inspection and C/O
- He called the pool company to begin the process
- Investigation revealed the second permit was in reference to the aluminum screen enclosure – a permit had been applied for but had not been issued to the subcontractor, Allstate Aluminum of SW FL LLC.
- The work on the enclosure had been completed without a Permit
- Allstate Aluminum has been contacted the Contractors' Licensing Office for working without required permits and Cease & Desist Agreements were issued on three previous occasions
- April 13, 2011 – a meeting was held with John Dennis Below, the qualifier for Allstate Aluminum, and a 4th Cease & Desist Agreement was signed.
- April 13, 2011 – John Dennis Below received the Notice of Hearing to appear before the Contractor's Licensing Board for violation of Ordinance 2006-46, Section 4.1.18, i.e., proceeding on any job without obtaining applicable permits or inspections from the City Building and Zoning Division or the County Building Review and Permitting Department.
- April 25, 2011 – met with Mr. Below who agreed to sign a Stipulation concerning the charges against him (see Exhibit E-10).

Mr. Ganguli read the terms of the Stipulation into the record, as follows:

**BOARD OF COUNTY COMMISSIONERS
Collier County, Florida,**

Petitioner,

Case No. 2011-08

vs.

**John Dennis Below,
d/b/a Allstate Aluminum of SW FL, LLC,**

License – C.C. #33911

Respondent(s).

COMES NOW, the undersigned, John Dennis Below, on behalf of himself or as representative for the Respondent, and enter into this Stipulation and Agreement with Collier County as to the resolution of the Administrative Complaint referenced in Case Number 2011-08.

In consideration of the disposition and resolution of the matters outlined in said

Administrative Complaint, to promote efficiency in the Administrative Complaint process, the parties hereto agree as follows:

1) The violations noted in the referenced Administrative Complaint are accurate and I stipulate to their existence. Collier County Ordinance 2006-46, Section 4.1.18: Proceeding on any job without obtaining applicable permits or inspections from the City Building and Zoning Division, or the County Building Review and Permitting Department.

THEREFORE, it is agreed between the parties that the Respondent shall:

1. (There was no recommendation from the Contractors’ Licensing Office.)

/s/ John Dennis Below – 04/26/11
Respondent – Date

/s/ Rob Janguli – 04/26/11
Supervisor or Designee – Date

Board Chair – Date

* * * * *

Chairman Lantz asked if the Contractors’ Licensing Office had no recommendation to make for punitive action, or recommended “no action”?

Michael Ossorio asked the Respondent if the County promised him anything to sign the Stipulated Agreement, or if he signed it of his own free will.

Mr. Below indicated he signed the document freely.

Mr. Ossorio stated the County had no recommendation, other than the Respondent was found to be in violation. He recommended the Chairman sign the Stipulation as an Order of the Board.

Attorney Neale stated the Board should review and adopt the Stipulation if they determine it is appropriate. After that, sanctions should be reviewed and imposed.

John Dennis Below, the Respondent, presented his case:

- He bought the company in November, 2007
- The company has grown from 4 employees to 19
- In 2010, the company built 288 pool cages
- The four incidents referred to were isolated incidents
- He understands his responsibility as the qualifier for the company and takes/accepts full blame

Mr. Below stated his office manager at the time was in charge of obtaining required permits. The Marco Island incident apparently “slipped through the cracks” because the application had been submitted and approved, it was ready for pick-up, the cage

was built, but the Permit had not been picked up.

He stated none of the incidents referred to were done maliciously. He continued when he realized there was a problem, he rectified the situation by hiring a Permit Courier Service to ensure that the Permits were picked up prior to construction of the cages beginning.

John Below stated based on the volume of business over the past two years, the number of incidents cited where there “hiccups and they tripped and stumbled” was a very small percentage of the work that was performed

Richard Joslin asked when the permits were actually issued or applied for.

Attorney Neale suggested the Board vote on the Stipulation as the first step. If the Board determines it is appropriate, then review the sanctions. The Agreement is stipulating to the violation.

Patrick White questioned the process and asked what was being agreed to between the parties, other than the Respondent stipulating to being in violation, since a recommendation was not included.

Attorney Neale outlined the process:

- The Stipulation acknowledges the violation as charged does exist,
- There is testimony on the record that the document was signed voluntarily by the Respondent,
- The Board then votes on whether or not to authorize the Board Chair to sign the Stipulation and accept that the Respondent has admitted to the violations as charged, and finally
- The Board determines the appropriate sanctions to be imposed.

Patrick White compared the process to a “plea bargain” arrangement in a criminal case, except that the “Defendant” did not know in advance what sentence would be imposed. He stated the Stipulation Agreement does not state what the “sentence” will be.

Patrick White moved, based upon the signed Stipulation, to find that the cited provision (4.1.18) was violated and to approve authorizing the Chairman to sign the Stipulation.

Richard Joslin noted the Stipulation states the Respondent has been found in violation, not that he is guilty.

Patrick White stated the Respondent stipulated to the violation which is an admission of guilt.

Mr. Below clarified when he signed the document he meant that he was guilty. He stated in a couple of instances we were “dead wrong” because the Permits had not been applied for and in the other two, the Permits just didn’t get picked up.

Second by Robert Meister. Carried unanimously, 8 – 0.

Chairman Lantz stated the next phase is the penalty phase.

Attorney Neale stated the Board has adoption the Stipulation Agreement. The sanctions are set out in Section 22-203(b)(1) of the County's Ordinance, as follows:

- (1) Revocation of a Collier County Certificate of Competency;
- (2) Suspension of a Collier County Certificate of Competency;
- (3) Denial of the issuance or renewal of a Collier County Certificate of Competency;
- (4) Imposition of a period of probation of reasonable length, not to exceed two years, during which the Contractor's contracting activities shall be under the supervision of the Contractor's Licensing Board, and/or participating in a duly-accredited program of continuing education directly related to the Contractor's contracting activity. Any period of probation or continuing education program ordered by the CLB may be revoked for cause by said Board at a Hearing noted to consider said purpose.
- (5) Restitution;
- (6) A fine not to exceed five thousand dollars (\$5,000.);
- (7) A public reprimand;
- (8) Re-examination requirement;
- (9) Denial of the issuance of Collier County (or City) Building permits or requiring the issuance of permits with specific conditions;
- (10) Reasonable legal and investigative costs for the prosecution of the violation.

Attorney Neale continued in determining the sanctions, the Board shall consider the following:

- (1) The gravity of the violation;
- (2) The impact of the violation on public Health/Safety or Welfare;
- (3) Any actions taken by the Respondent to correct the violation;
- (4) Any previous violations committed by the Respondent, and
- (5) Any other evidence presented at the Hearing by the parties relevant as to the sanction which appropriate for the case given the nature of the violation.

A question was asked concerning when the application for the Marco Island permit had been applied for and the Board was directed to Exhibit E-6, i.e., July 6, 2010.

Terry Jerulle asked if anyone was residing in the property and stated an un-inspected pool cage presents a life/safety issue.

Mr. Below stated it appeared as if people were living in the house, and confirmed the final inspection of the pool cage would take place next week.

Patrick White asked if Staff could estimate the costs to prosecute the case.

Michael Ossorio stated the investigative costs were approximately \$500.

Mr. White asked Mr. Below what actions he had taken to prevent the situation from occurring in the future.

Mr. Below replied he hired a Permit Courier Service. He stated permitting was the most time-consuming portion of his day. By hiring a Permit Courier Service, it freed up time during his day to focus on other areas of the company.

He explained as soon as an application for a Pool Permit is made, the Courier Service assumes all of the permitting responsibilities. He stated he also changed his in-house procedures, i.e., a cage does not leave his shop unless the crew has the permit in hand.

Richard Joslin asked who called in to the County to schedule a final inspection.

Mr. Below replied he does now.

Richard Joslin asked why did he not call for a final inspection on the Marco Island pool.

Mr. Below responded the calls were made previously by the office manager.

Thomas Lykos stated as a business grows, an owner usually delegates responsibility based on a cost/benefit analysis. He stated his company utilizes the services of a Permit Courier and found that it was a good solution.

Patrick White asked what will be done that is different to prevent the situation from occurring again.

John Below stated Mr. Ossorio was willing to allow him a six-month period to “tighten up” the open permits. By hiring the permit courier service, he has more time to focus on all aspects of his company.

Patrick White stated the Board is to consider is what actions have been taken by the Respondent to preclude the situation from occurring again because there is concern about a life/safety issue relative to the pool’s final inspection. He asked what event or activity will remind the Respondent to call for a final inspection. He cautioned one failure could lead to a loss of life.

John Below stated there were four Cease & Desist Orders out of 288 – he further stated it was his responsibility to call for a final inspection and he would do so.

Discussion continued concerning management oversight issues and the need for a system of checks and balances.

Chairman Lantz stated the Board’s responsibility is to determine a punishment. He continued it appeared the Respondent has good operating procedure in place to prevent a job starting without a permit being issued and in hand but he does not have procedures in place to deal with calling for a final inspection.

Sanction were suggested by Board members that included probation and “hefty” fines. It was noted the cost to obtain an after-the-fact Permit was usually two or three times the initial cost for a Permit.

Additional sanctions:

- Mr. Below re-take the Business and Law exam within six months,
- A fine of \$500 will be imposed to cover the County’s administrative costs,

- Mr. Below will call in all jobs on a weekly basis to the Contractors' Licensing Office,
- All "open" permits will be closed within six months,
- Mr. Below is placed on probation for a period of one year and will appear before the Board in six months, and
- Imposition of a \$2,500 fine.

Discussed ensued concerning a payment plan for the fines.

Michael Ossorio stated Mr. Below will have thirty days to pay the administrative costs of \$500 and ninety days to pay the \$2,500 fine.

John Below stated he would accept his responsibility as a business owner.

Patrick White moved to approve imposing the following sanctions:

- *Imposition of a one-year probationary period,*
- *Payment of administrative costs of \$500 within thirty days,*
- *Payment of a fine of \$2,500 within ninety days,*
- *Completion and passing of the Business Law Exam within six months,*
- *All "open" permits will be closed within six months,*
- *Weekly notification to the Contractors' Licensing Office to identify all open jobs, and*
- *Mr. Below will appear before the Board in six months to provide a status report.*

Second by Richard Joslin. Carried unanimously, 8 – 0.

Chairman Lantz stated:

- This cause came on before the Contractors' Licensing Board on May 18th for consideration of the Administrative Complaint filed against John Dennis Below is the holder of record of Collier County Certificate Number 33911
- Service of the Complaint was made in accordance with Collier County Ordinance 90-105, as amended.
- The Board, at this Hearing, having heard testimony under oath, received evidence and heard arguments respective to all appropriate matters, therefore issues its Findings of Facts and Conclusions of Law as follows.

Findings of Fact:

- John Dennis Below is the holder of record of Collier County Certificate Number 33911
- The Board of County Commissioners, Collier County, Florida, Contractors' Licensing Board is the Petitioner (Complainant) in this matter.
- The Board has jurisdiction of the person of the Respondent.
- The Respondent, John Dennis Below, was present at the Public Hearing held on May 18, 2011.
- The Respondent, John Dennis Below, was not represented by Counsel.

- All notices required by Collier County Ordinance 90-105, as amended, have been properly issued and were personally delivered
- The Respondent acted in a manner that is in violation of Collier County Ordinance and is the one who committed the act
- The allegations set forth in Administrative Complaint as Count I, under Section 4.1.18, “*Proceeding on any job without obtaining applicable permits or inspections from the City Building and Zoning Division, or the County Building Review and Permitting Department,*” have been found to be supported by the evidence presented at the Hearing

Conclusions of Law:

- The Conclusions of Law alleged and set forth in the Administrative Complaint as Count I have been approved, adopted and incorporated herein, to wit:
 - The Respondent violated Section 4.1.18, “*Proceeding on any job without obtaining applicable permits or inspections from the City Building and Zoning Division, or the County Building Review and Permitting Department,*” of Collier County Ordinance 90-105, as amended, in the performance of his contracting business in Collier County by acting in violation of the Section set out in the Administrative Complaint with particularity.

Orders of the Board:

- Based upon the foregoing Findings of Fact and Conclusions of Law, and pursuant to the authority granted in Chapter 489, *Florida Statutes*, and in Collier County Ordinance 90-105, as amended, by a vote of 8 in favor and zero in opposition, a majority vote of the Board members present, the Respondent has been found in violation as set out above.
- Further, it is hereby ordered by a vote of 8 in favor, a unanimous vote of the Board members present, that the following disciplinary actions and related Orders are hereby imposed upon the holder of Collier County Certificate of Competency Number 33911.
- Sanctions:
 - Imposition of a one-year probationary period,
 - Payment of administrative costs of \$500 within thirty days,
 - Payment of a fine of \$2,500 within ninety days,
 - Completion and passing of the Business Law Exam within six months,
 - All “open” permits will be closed within six months,
 - Weekly notification to the Contractors’ Licensing Office to identify all open jobs, and
 - Mr. Below will appear before the Board in six months to provide a status report.

Thomas Lykos moved to close the Public Hearing. Second by Richard Joslin. Carried unanimously, 8 – 0.

Chairman Lantz stated the case was closed.

IX. REPORTS:
(None)

X. NEXT MEETING DATE: Wednesday, July 19, 2011
Board of County Commissioners' Chambers, Administrative Building "F,"
3rd Floor (Government 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 11:27 AM.

**COLLIER COUNTY CONTRACTOR
LICENSING BOARD**

Kyle Lantz, Chairman

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