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BEFORE THE DEPARTMENT OF COMMERCE AND INSURANCE
FOR THE STATE OF TENNESSEE
CONTRACTOR'S LICENSING BOARD

TRANSCRIPT OF MEETING
HELD ON JANUARY 20, 2009
11:00 O' CLOCK A. M.
710 JAMES ROBERTSON PARKWAY
NASHVILLE, TENNESSEE

BOARD MEMBERS PRESENT:

MARK BROOD
ERNEST M. OWENS
REESE SMITH, III
CLIFF HUNT
FRANK NEAL

ATTORNEY FOR THE BOARD:

MICHAEL DRIVER, ESQUIRE

ALSO PRESENT:

CAROLYN LAZENBY

PREPARED BY:

CAROLE K. BRIGGS, CSR
BRIGGS & ASSOCIATES
1339 SYDNEY TERRACE
MT. JULIET, TENNESSEE 37122

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(Whereupon, the following meeting of the Contractor's Licensing Board was held, to wit:)

MR. NEAL: Call the meeting of the board of Licensing contractors to order, please. Starting with a roll call to my left, identified by name and city.

MR. SMITH: Reese Smith, Franklin.

MR. NEAL: Frank Neal, Nashville.

MR. HUNT: Cliff Hunt, Memphis.

MR. OWENS: Ernest Owens, Memphis.

MR. BROOD: Mark Brood, Knoxville.

MR. NEAL: Thank you. The next item on the agenda is review and adopt the agenda. If all of you would look at it for a few minutes and make sure that you all understand what we're going to be discussing today. I'd entertain a motion to adopt the agenda.

MR. BROOD: So moved.

MR. HUNT: Second.

MR. NEAL: All in favor say aye. All opposed, like sign. Unanimous. Next item on agenda is hardships. A number of those have been approved by various members of the board and the executive director. Entertain a motion for approval of those.

MR. OWENS: So moved.

MR. SMITH: Second.

1 MR. NEAL: Any other discussion?

2 MR. HUNT: Do we have a list of those
3 anywhere?

4 MS. LAZENBY: It's behind Tab 1.

5 MR. NEAL: I have a motion and a second.
6 We'll have discussion while we review what is behind Tab
7 1, I believe you said, Carolyn. Right?

8 MS. LAZENBY: Right.

9 MR. NEAL: If any member has any comments
10 about any of those, please speak up now.

11 MS. LAZENBY: They're also listed in Tabs 6
12 and 7. They'll be highlighted on the revision list and
13 on the waived list. That same information will be
14 highlighted in those lists that goes to each contractor
15 on the hardship list.

16 MR. NEAL: At this time the chair would also
17 ask if there are any that need to come before the full
18 board for approval, let that be done also.

19 MR. HUNT: In the hardship, is that your
20 question, relative to hardship?

21 MR. NEAL: Yes. Sometimes somebody will
22 bring one to the full board. I didn't have any. Have
23 we had enough time to review those? There's been a
24 motion and a second. All in favor say aye. Opposed,
25 like sign. Unanimous.

1 Next item on the agenda is annual
2 requirements. There are several things that the board
3 must take official action on at its first board meeting
4 of the year. The first item listed is 2009 officers.
5 The officers were discussed and motions were made at the
6 last board meeting in regard to the 2009 officers. Is
7 that right, Carolyn?

8 MS. LAZENBY: Yes.

9 MR. NEAL: Do you have who they were?

10 MS. LAZENBY: Yes. Due to the departure of
11 Larry Parks, he was the chairman, we then went to Cindy
12 Debusk who moved from vice chairman to chair. Keith
13 Whittington went from secretary to vice chair, and Frank
14 Neal was elected secretary. We can put that on record
15 as the officers elected for 2009.

16 MR. NEAL: Doesn't anybody want to object to
17 that?

18 MR. SMITH: No.

19 MR. HUNT: No.

20 MR. NEAL: Next item is 2009 board meeting
21 dates. We've all been furnished with a list of those
22 dates, I believe. Did anybody have conflicts or -- I
23 think Carolyn has already checked that out.

24 Next item is to adopt Roberts Rules of Order.
25 We do that each year at this time.

1 MR. SMITH: So moved.

2 MR. HUNT: Seconded.

3 MR. NEAL: Discussion? All in favor say aye.
4 Opposed, like sign. The Roberts Rules of Order are
5 adopted.

6 MR. HUNT: Does anybody have a copy of those
7 with them?

8 MS. LAZENBY: I don't have one with me, but I
9 may --

10 MR. HUNT: The main one, if someone could
11 check on it, has to do with the chairman voting. The
12 way I have read it, and I don't know if it's changed in
13 the past, Roberts Rules of Order, as I understand it was
14 that the chairman can vote to make or break a tie, is
15 the only time the chairman votes.

16 MR. DRIVER: I'll confirm that.

17 MR. NEAL: I wish you would. I don't think
18 we agree on that. I think a chairman can vote to break
19 a tie, but I don't think he can vote to make a tie.

20 MR. HUNT: Make a bet on that?

21 MR. NEAL: A dollar. But you will let us
22 know that before the board meeting?

23 MR. DRIVER: I will let you know before the
24 next board meeting.

25 MR. NEAL: Thank you. Conflicts of interest

1 policy. Each of us -- I think, Carolyn, are you going
2 to have that and we'll sign that today before we leave?

3 MS. LAZENBY: Yes. The policy is in the
4 book. I can e-mail you that same policy. It hasn't
5 changed, and there is a form for you to sign and turn
6 in. The department asks that these are signed and
7 turned in after the first meeting every year.

8 MR. NEAL: The next item on the agenda is the
9 power of attorney, which we have a form for that also,
10 right?

11 MS. LAZENBY: Yes. That was something asked
12 by the assistant commissioner just to ensure that you
13 get your per diems timely. With the new pay system, if
14 we were to forget to get your signature, this will allow
15 me to sign your name and allow the time to be turned in
16 timely without having justification submitted for a
17 later date.

18 MR. NEAL: All of you sign those two items
19 and leave them in front of you.

20 The next item is the November 2008
21 transcript, 101 pages long. I'm sure at least one of
22 you has read that. And I would entertain a motion that
23 either it is approved or if changes need to be made.

24 MR. BROOD: I move for approval.

25 MR. OWENS: Second.

1 MR. NEAL: Motion and a second. Further
2 discussion? All in favor say aye. Opposed, I like sign.
3 Vote is unanimous.

4 Next item on the agenda is the interview or
5 waived applicants. That would be the ones we've
6 interviewed today or waived applicants that were done
7 prior to the board meeting.

8 MR. SMITH: I'll bring up one that I am not
9 sure -- since we asked them to appear, I will give a
10 report. M-5 Enterprises, LLC, Cordova. They were
11 pulled from the waived and asked to appear. Both
12 Chairman Neal and myself met with him, and at the end of
13 the day, we approved them for a \$250,000 license under
14 the classifications of MU and HRA-A. There is a
15 personal interview involved -- personal bankruptcy
16 involved in this, but M-5 Enterprises has not filed for
17 bankruptcy. So I would include that in the move for
18 approval whenever we get to that of all of the
19 interviews today.

20 MR. NEAL: Do you want to handle that one
21 separately rather than putting it in with all the rest
22 of the waived and interview items? Does anyone else
23 have any others today?

24 MR. OWENS: I had one where the applicant
25 didn't have the proper insurance. He just had a binder.

1 And his approval is pending a copy of his insurance.

2 MR. NEAL: Okay.

3 MR. HUNT: I had one also. Do you want to go
4 into the details or how are we going to handle it? How
5 are we going to proceed with these as far as the board
6 voting on them?

7 MR. NEAL: Well, the waived and the
8 interviewed, I really would like to have a motion for
9 those.

10 MR. SMITH: Okay. Back to me, Mr. Hunt.
11 Then I would move for approval of M-5 Enterprises, LLC
12 under the classifications of MU and HRA-A with a limit
13 amount of \$250,000.

14 MR. NEAL: Is there a second to the motion?

15 MR. BROOD: I'll second.

16 MR. NEAL: Discussion? Motion and a second.
17 Go ahead.

18 MR. SMITH: I was just going to say we've had
19 two board members that sat in on this one and we both
20 came up with the same recommendation here, if it makes
21 you feel any better.

22 MR. HUNT: Mr. Chairman, I'm going to abstain
23 from voting on this one.

24 MR. NEAL: Let's do a roll call on this one.

25 MR. SMITH: Reese Smith, yes.

1 MR. NEAL: Frank Neal, yes.

2 MR. OWENS: Ernest --

3 MR. HUNT: Cliff Hunt. I'm abstaining.

4 MR. OWENS: Ernest Owens, yes.

5 MR. BROOD: Mark Brood, yes.

6 MR. NEAL: Are you telling me I can't vote?

7 That's another thing to check on, Mr. Attorney, if you
8 would, whether or not the chairman under Roberts Rules
9 of Order is authorized to vote on motions that are made.

10 MR. DRIVER: I'll get it to you before the
11 next board meeting.

12 MR. NEAL: Unless you can sooner. Only
13 kidding.

14 MR. DRIVER: My time machine needs an oil
15 change.

16 MR. NEAL: Okay. Four votes yes, or three,
17 whichever way it turns out to be, and one abstaining.
18 So basically unanimous approval. On yours, Ernest, you
19 want to make a motion?

20 MR. OWENS: I would like to make a motion
21 that it's approved once the certificate of insurance is
22 received.

23 MR. NEAL: Second to that motion?

24 MR. SMITH: Second.

25 MR. NEAL: Any further discussion? All in

1 favor say aye. All opposed, like sign. Unanimous. Mr.
2 Hunt, you have one, I believe?

3 MR. HUNT: Yes, Mr. Chairman, I have
4 Northcross Restoration and Construction out of Jackson,
5 Tennessee. Mr. Northcross had a prior license. I'm not
6 exactly sure when he obtained it. Yes, I do know. He
7 obtained it in 2003. He had another person that was his
8 qualifying agent. There was some -- the board heard a
9 case relative to his license where someone had altered
10 his -- the license on this prior company had altered the
11 expiration date in an effort to obtain a building
12 permit. The board, back in 2005, heard this case and
13 issued a consent order in the amount of \$10,000 relative
14 to that alteration of the license. It's been almost
15 four years since that occurred.

16 Mr. Northcross continues to work for the city
17 of Jackson. He is a fireman; has been for 30-plus
18 years. He's working for Lowe's in their rehab and
19 maintenance department doing roofs and siding and those
20 types of jobs for Lowe's in I think he said nine
21 different stores.

22 We had an informal hearing back in 2005 when
23 we discussed the first case. Did he not -- he was not
24 the one that altered the license. It was the qualifying
25 agent working for him who had told him the license had

1 been renewed and so forth, and she's the one that
2 actually altered the license and started the ball
3 rolling as far as his old license. Since then, as I
4 said, he's continued to work as a fireman. He works for
5 Lowe's. He's been out of state and worked some in
6 Louisiana and Florida.

7 The bottom line, I'm recommending, based on
8 my discussions with him, that we license this new
9 company. It's worth \$70,000 limit. The classification
10 is limited residential, BC-A/r. I'm also recommending
11 that we change the consent order from 2005, whether it's
12 issued or altered, I'll leave that to the legal staff,
13 but I recommend the civil penalty part of that be
14 changed to \$1,000 based on the circumstances that I
15 heard today. I put that in the form of a motion.

16 MR. NEAL: Is there a second to Mr. Hunt's
17 motion?

18 MR. SMITH: Second.

19 MR. NEAL: Further discussion? All in favor
20 say aye. Opposed, like sign. Unanimous.

21 The next item on the agenda is revisions,
22 approve and approve. And then it says, Carolyn,
23 question, revisions for inactive licensees retired.
24 What is that?

25 MS. LAZENBY: We've had staff concerned with

1 contractors with a retired status, whether or not they
2 could submit a request to revise the license. And
3 Michael checked the law. There is nothing in the law
4 that prevents someone with a retired license from having
5 a mode change or any type of thing, any kind of revision
6 done. Before we allow retire licensees to do that,
7 before we give them to the board, we want it on record
8 of whether you all would do a revision on a retired
9 license.

10 MR. NEAL: Would it not depend on how long
11 it's been retired and whether or not it was pretesting
12 and whether or not they should test in order to regain
13 their license?

14 MS. LAZENBY: The question is they're going
15 to leave it in retirement.

16 MR. SMITH: They're not activating it.
17 They're just calling in and saying, hey, change my --
18 what is the word? Retired license, change that to an
19 LLC, or I've sold my company and I want to change the
20 name back from Smith to Neal on that retired license.
21 That's the way I understood the question.

22 MS. LAZENBY: Right.

23 MR. NEAL: So it would still stay retired
24 even though he had sold the company to somebody else.
25 They, in turn, would have to come in and ask for a

1 license?

2 MS. LAZENBY: Yeah, I think the most common
3 thing is where they want to change the name or change
4 the mode of operation.

5 MR. NEAL: To an LLC or something?

6 MS. LAZENBY: Yes.

7 MR. NEAL: Any board member have any problem
8 with that?

9 (Board answered no.)

10 MR. NEAL: That being said, let it be noted
11 that the board --

12 MS. LAZENBY: But please ask if you all would
13 increase a contractor's monetary limit on a retired
14 license. I guess something like that --

15 MR. NEAL: I can't imagine why that would be
16 done.

17 MS. LAZENBY: I guess we can leave it on a
18 case-by-case basis, that we won't automatically reject
19 them just because they're retired and just let them
20 explain why they want to change something on their
21 license.

22 MR. OWENS: Would that be subject to a new
23 financial statement?

24 MS. LAZENBY: For increases, yes.

25 MR. NEAL: I can't imagine why we'd grant an

1 increase on a retired license.

2 MS. LAZENBY: Yeah, I can't imagine it
3 either, but --

4 MR. SMITH: They would have to have a
5 reviewed financial statement and have to spend some
6 money.

7 MR. NEAL: Could we say that we're not
8 allowing increases on retired licenses, but changes of
9 mode and operation or name changes, then we would allow
10 that?

11 MS. LAZENBY: Okay.

12 MR. SMITH: Sure.

13 MR. NEAL: So that request is secured with
14 full board approval, then.

15 Next item is LLC applicants reviewed and
16 approved. I assume somebody had a bunch of those.

17 MR. HUNT: Yes, Mr. Chairman, I reviewed I
18 think behind the tab here the list, behind Tab 8, and
19 recommending approval of all of those listed there.

20 MR. NEAL: That's your motion?

21 MR. HUNT: Yes.

22 MR. SMITH: Second.

23 MR. NEAL: Any further discussion? All in
24 favor please say aye. Oppose, like sign. Unanimously
25 approved.

1 Home improvement applicants review and
2 approve. Do you have those, Reese?

3 MR. SMITH: Were there just two of them?

4 MR. BROOD: Yes.

5 MR. SMITH: Yes, I did, and I move for
6 approval.

7 MR. NEAL: Is there a second?

8 MR. BROOD: So moved.

9 MR. NEAL: Any further discussion? All in
10 favor say aye. Opposed, I like sign. Unanimous. Next
11 item on the agenda is a legal report. Michael, you're
12 up.

13 MR. DRIVER: I'm going to start in a slightly
14 different order and get the home improvements sub-
15 committee out of the way. I think Nicole provided you
16 all a copy at the beginning of the meeting, a copy of
17 the home improvement subcommittee report. It was
18 approved by the home improvement subcommittee with the
19 recommendations as listed with no changes.

20 MR. NEAL: Entertain a motion to approve the
21 home improvement subcommittee recommendations.

22 MR. HUNT: So moved.

23 MR. BROOD: Second.

24 MR. NEAL: Any further discussion? All in
25 favor say aye. Opposed, I like sign. Unanimous.

1 MR. DRIVER: All right. On the -- start on
2 the residential report. I'm working off of the revised
3 copy with the residential and commercial separated on
4 there. Number 2, residential subcommittee recommended
5 changing the amount of consent order from \$2,000 to
6 \$500. Number 9, the subcommittee recommended changing
7 the recommendation to close. Number 12, recommendation
8 is to change the amount of consent order from \$1,000 to
9 \$500. Number 14, recommendation is to change the amount
10 of consent order from \$2500 to \$1,000. Number 24,
11 recommendation is to increase the amount of consent
12 order from \$500 to \$1,000. Number 25, recommendation is
13 to close. Number 26, recommendation is to close.
14 Number 28, recommendation is to lower the amount of
15 civil penalty from \$5,000 to \$1,000. Number 30,
16 recommendation is to close with a letter of warning.
17 Number 35, recommendation is to lower the amount of
18 civil penalty from \$1,000 to \$500. Number 37,
19 recommendation is for a full board discussion. That's
20 files ending in number 22331 and 22311. If you would
21 like to go ahead and have that discussion now or if you
22 would like to hold it.

23 MR. NEAL: Let's do it now. What page is
24 that on?

25 MR. DRIVER: It is the top of Page 12.

1 MR. SMITH: I've reviewed this, and Michael
2 recommended full board discussion. This is primarily on
3 a company that's out there. It's a franchise called --
4 I think it's You Build It.

5 MR. DRIVER: This is a different one. You
6 Build It, I believe the recommendation was to close, if
7 that's the one you were referring to.

8 MR. SMITH: All right.

9 MR. HUNT: This is the one that I reviewed.
10 The additional information that was provided was that
11 this was -- of course my question is, is this condos or
12 apartments, but they're actually individual lots and
13 residences in a development in a subdivision. I just
14 felt that the board would want to look at this and make
15 a determination because if you do the math, it's 36
16 residences and they average \$5,000 each. That's a
17 hundred and -- you know, about \$200,000 worth of work
18 that they've signed a contract for, but the work will
19 actually be done on individual residences individually
20 titled and separate parcels of land and over who knows
21 what time period. And it may take a number of years for
22 them -- for the work to actually be performed.

23 MR. NEAL: Do we know whether or not there
24 are going to be 36 individual contracts executed?

25 MR. DRIVER: My understanding on this one is

1 it is one contract that lists the thirty-six individual
2 homes within that one contract and the amount of the
3 price per each individual home, but it's only one
4 document.

5 MR. NEAL: Seems like they exceeded their
6 limit. What is the opinion of others on the board? Mr.
7 Hunt, do you have a recommendation?

8 MR. HUNT: It appears that they exceeded the
9 limit by signing one contract, but the circumstances,
10 you know, the details, paint a broader picture. I felt
11 like the full board needed to decide this and not just
12 one board member because this is the same old question
13 we've asked over the years of condos and apartments,
14 what is a project and --

15 MR. SMITH: But this is a subdivision, you
16 said?

17 MR. HUNT: Yes.

18 MR. SMITH: It's a little different than an
19 apartment or a condo. It's 29 separate building sites.

20 MR. DRIVER: I will note, though, the law
21 says you can't enter into a contract for a project the
22 value of which is over \$25,000. So if one contract
23 theoretically included what the board considered five
24 different projects, the value of each was \$20,000, then
25 that would be allowable, from my understanding in the

1 past, but the board has cited apartment buildings, and
2 in particular, the work is so intertwined and being done
3 all at once, that that's one project. I believe in the
4 past on condos it states that they were separable
5 because the work is being done over time, so each condo
6 was one project, but certainly it's before the board now
7 to make the determination on this circumstance.

8 MR. OWENS: Was it permitted as one contract?

9 MR. DRIVER: I don't believe we had the
10 permits on the case.

11 MR. NEAL: I wouldn't think so. You normally
12 don't get permits for 36 individual houses, do you, if
13 you're doing a development?

14 MR. SMITH: What was the nature of the work?

15 MR. DRIVER: Electrical work on single family
16 homes.

17 MR. SMITH: You can pull 36 different permits
18 or 29 different permits.

19 MR. NEAL: But would you pull them all at one
20 time?

21 MR. SMITH: Oh, no, I can't imagine that they
22 would all be at the same stages.

23 MR. OWENS: But they would have to have
24 inspections singularly on each individual house.

25 MR. DRIVER: Right.

1 MR. BROOD: Do we know if the electrical
2 contractor is one contract that he has, what the value
3 of that contract is?

4 MR. DRIVER: Well, again, if you count all of
5 them together, I know it's in the file. I believe it's
6 somewhere around \$200,000, like we suggested, the total
7 value of all of the work on all 36 residences.

8 MR. NEAL: And the general contractor in
9 question took the bid from electrical subcontractors for
10 all of these jobs at one time, not separately?

11 MR. DRIVER: Right.

12 MR. NEAL: Well, Mr. Hunt, do you have a
13 recommendation to the board, your feelings on this?

14 MR. HUNT: Based on the information that has
15 been provided, I feel like it is a violation. I base
16 that on that it is one contract that they entered into
17 with one owner for around \$200,000. The other work was
18 done on 36 different pieces of property, but it did
19 enter into one contract.

20 MR. NEAL: Is that a motion?

21 MR. HUNT: My motion would be that there is a
22 violation of the license limit, and I'm recommending a
23 consent order of \$2,000 for violation of their license
24 limit.

25 MR. NEAL: Board members, I understand the

1 motion. Is there a second?

2 MR. OWENS: I second.

3 MR. NEAL: Any further discussion? All in
4 favor say aye. Opposed, like sign. Unanimous.

5 MR. DRIVER: Number 40, similar situation.
6 It says poultry farm. The recommendation on that one
7 was a \$500 consent order. Number 41, the recommendation
8 is to decrease the amount of civil penalty from 1,000 to
9 \$500. Number 43, recommendation is to decrease the
10 amount of civil penalty from 5,000 to 2500. Number 46,
11 the recommendation is to decrease the amount of civil
12 penalty from 5,000 to 1,000.

13 Number 48 was a -- the respondent in this
14 matter revealed a conviction of child battery on an
15 application that had not been previously disclosed. The
16 prior application was just before the board had added
17 the requirement for disclosure of felonies to the
18 application. So this was the first application in which
19 that respondent was required to disclose the felony.

20 MR. HUNT: I had reviewed this. The
21 respondent had received his license in 1992. He
22 currently has BC-A and B. The residential is in the
23 amount of a million dollars and the commercial has a
24 \$500,000 limit. From what I understand, there was a
25 conviction in 2002. And it was not until this latest

1 renewal form that had the question have you ever been
2 convicted of a felony. And that's when this surfaced.

3 So once again, I wanted to turn it over to
4 the full board to determine where we want to go in the
5 future because this may come up quite a few times since
6 this is a new part of the renewal form. And I believe
7 you stated that his conviction was for child sex abuse.

8 MR. DRIVER: Child molestation.

9 MR. NEAL: When did that occur?

10 MR. DRIVER: The conviction was in 2002. I
11 believe the sentence was 20 years probation.

12 MR. HUNT: I do not have a recommendation.
13 That's a tough one.

14 MR. NEAL: And what was your recommendation?

15 MR. DRIVER: Well, my recommendation was a
16 formal hearing for the board to determine the renewal,
17 but I mean, you know, if the board wanted to do
18 something else, or I mean either let this person keep
19 their license, which is an option, give them a chance to
20 surrender their license which is an option. I'm not
21 sure in this case that a civil penalty would be
22 appropriate, but aside from that.

23 MR. NEAL: Has this man had a license since
24 1992?

25 MR. DRIVER: I believe that's correct.

1 MR. NEAL: We've not had any complaints
2 against him?

3 MR. DRIVER: I believe it is zero complaints.
4 Yeah.

5 MR. HUNT: He's kept his license current,
6 renewed it each time.

7 MR. DRIVER: Yes.

8 MR. NEAL: Well, it seems to me like it would
9 be hard to penalize him 17 years after the fact with no
10 complaints or no questions, and yet he does have three
11 or four more years to serve his probationary period.

12 MR. DRIVER: Now, the conviction was in 2002.
13 The licensure was in '93 or '92.

14 MR. NEAL: So it's been seven years since he
15 was convicted, not since he held a license.

16 MR. HUNT: I know we've had some discussion
17 on applicants, primarily when we've been talking about
18 MLE's that had felony convictions and the fact that
19 they're possibly going into people's houses, and whether
20 or not we want to license someone. But this is
21 something new where we're finding out about it after the
22 fact and not by anybody's fault. The contractor has not
23 hidden any information from us. It was just the result
24 of our new form.

25 MR. SMITH: Is he up for renewal?

1 MR. HUNT: Yes.

2 MR. SMITH: So we're trying to decide whether
3 or not to renew his license about something that he was
4 convicted of in '02 and he's on 20-year probation.

5 MR. NEAL: What kind of license does he have?

6 MR. HUNT: Residential and commercial, BC-A,
7 one million, BC-B, half a million.

8 MR. NEAL: Back to your earlier comments,
9 it's less likely than an electrician or a plumber that
10 would be going into somebody's house, but certainly he
11 could if he's doing a remodel job under BC-A. Any other
12 board member have any sort of recommendation whatsoever
13 to the full board as to how this should be handled?
14 Would we want him to come in at the next board meeting
15 and appear before the full board and discuss his
16 situation? I mean, does anybody feel like we might do a
17 little better job of assessing the situation by looking
18 at the man or asking him questions or is it something
19 that is not necessary?

20 MR. HUNT: My personal opinion is that we
21 just need, as these things come up, we need to look at
22 the circumstances in each case. And in this case, the
23 fact that it's just one charge and it's been seven
24 years, The Court has taken action, and he is abiding by
25 what the criminal court has handed down, I'm going to

1 recommend approval of the renewal based on the
2 circumstances that have been presented here.

3 MR. SMITH: I second that. And under
4 discussion, from what our information was, he didn't
5 receive any jail time. It was all probation.

6 MR. DRIVER: I believe that's correct.

7 MR. SMITH: It is a long probationary period.

8 MR. DRIVER: It's worth noting, just brought
9 to my attention, on the initial application, the felony
10 box just was not checked. It was left blank.

11 MR. NEAL: Back in '02?

12 MR. DRIVER: This most recent application.
13 And when it was sent back by my administrative staff and
14 said, hey, you left these questions blank, rather
15 through error or ill will, we don't know, but when it
16 came back, it included all of that information, whether
17 or not that's pertinent.

18 MR. NEAL: Do we know whether or not this
19 individual is listed on a predator list?

20 MR. DRIVER: Yes.

21 MR. NEAL: He is?

22 MR. DRIVER: Yes.

23 MR. NEAL: There's been a motion and a
24 second. Is there any further discussion?

25 MR. HUNT: Is there any way to -- all of the

1 licenses are renewed bi annually now. Is there any way
2 to have a change renewal to a more frequent time period?

3 MR. DRIVER: Change the renewal? That's in
4 the rules, isn't it, Carolyn?

5 MS. LAZENBY: It's in the law.

6 MR. DRIVER: So not without a legislative
7 change.

8 MR. HUNT: I was thinking if we could review
9 every year or something, get an update from someone in a
10 situation like this.

11 MR. DRIVER: And something that may be worth
12 looking into is I know some other boards have something
13 in their rules that say if you are convicted of a
14 felony, you must notify the board within 30 days or
15 within 60 days of said conviction if you presently hold
16 a license. And that might serve the purpose.

17 MR. NEAL: Yeah, but you know, it takes 20
18 years to get on the docket in a lot of instances. Maybe
19 not in a child molestation case. We wouldn't know very
20 fast, I don't think.

21 MR. DRIVER: You still wouldn't know if a
22 case is over and done with, but it's difficult to --

23 MR. NEAL: How about rewording that and
24 saying if the applicant is charged with a felony?

25 MR. DRIVER: Well --

1 MR. NEAL: That he has to be reviewed by the
2 board.

3 MR. DRIVER: The only problem with that is
4 the charge doesn't hold a whole lot of water,
5 necessarily.

6 MR. NEAL: Well, it might with us. If he
7 gets charged again with child molestation, I'd say we'd
8 want to take him to a formal and take his license away.

9 MR. DRIVER: The difference is if you're just
10 looking for a charge, what that's going to be is you're
11 going to have a situation where what is going to have to
12 be proven is the underlying conduct. A simple charge
13 under the board's laws and rules isn't sufficient to
14 take disciplinary action. A conviction of a felony is a
15 specific enumerated act that allows the board to take
16 disciplinary action.

17 MR. NEAL: We've already got that authority.

18 MR. DRIVER: That's what I'm saying. What
19 I'm suggesting is if all you're waiting for is you have
20 to tell us if you're charged with something, you're
21 going to get a whole lot of complaints in that then what
22 you have to prove is the underlying conduct. Jim Bob is
23 out there and is charged with felony possession of a
24 firearm. Well, what would have to be proven is the
25 actual possession of a firearm because the charge itself

1 isn't sufficient to support disciplinary action.

2 MR. NEAL: I don't think we'd be worried
3 about firearm. I think we'd be worried about child
4 molestation.

5 MR. DRIVER: It's the same situation. It's a
6 difference of -- I mean, I understand what you're
7 saying, but the simple charge, again, what this board
8 would be in a situation of doing is hearing a case as to
9 whether or not this person committed child molestation,
10 not they were convicted of a felony, what action does
11 the board want to take as a result of the conviction of
12 the felony.

13 MR. HUNT: Our options here are to renew the
14 license or the only way we cannot review it is to have a
15 formal hearing.

16 MR. DRIVER: Yes, and then proof will be put
17 on and it will be up to the board at that point to
18 decide then.

19 MR. NEAL: There's been a motion and a
20 second, plenty of discussion. All in favor say aye.
21 Opposed, like sign. Unanimous. Any others on the
22 residential subcommittee report?

23 MR. DRIVER: Yes, sir. Number 51, is
24 actually something that was set to be discussed under
25 discussion topics later. Essentially, it's a situation

1 where a contractor owned a piece of land and then built,
2 I believe in this case, a custom home on the land and
3 then sold both the land and the home to the person.
4 Now, the question is, this person had a \$350,000 limit
5 not including the piece of land which was purchased
6 before this contract was entered. The construction of
7 the home was \$347,000, however, if you include the piece
8 of land, I believe it was somewhere up around \$450,000,
9 well over the limit plus the 10 percent threshold.

10 So the question is, in a case where someone
11 is building a spec home or if they own the land and
12 they're building a custom home, is the value of the land
13 included in the cost of the project for the purposes of
14 determining a contractor's limits.

15 MR. HUNT: First, by definition, the way I've
16 always understood it for a custom home, that is when you
17 contract on the front end. Does everybody agree with
18 that?

19 MR. SMITH: That's correct. I think on a
20 spec house, which brings on another, what is a spec
21 house? When does it go from spec to contract? But on a
22 spec house the value of the land is not included. It
23 would be the value of the building permit. On a
24 contract job from start to finish, then you would be
25 contracting outside of your monetary limit if you

1 contracted for more than 10 percent of your license
2 limit. The land would be included. Profit would be
3 included. Everything would be included.

4 MR. NEAL: As I understand what you're
5 saying, Mr. Smith, that is if a contract were entered
6 into --

7 MR. SMITH: Prior to construction.

8 MR. NEAL: -- prior to construction, and the
9 contract was for more than his license plus his 10
10 percent, even though he pulled a permit for construction
11 of less, then he would be in violation of his license.

12 MR. SMITH: That's the way we've ruled it in
13 the past, yes, sir.

14 MR. NEAL: I can't disagree with that.

15 MR. HUNT: I was thinking that that's the way
16 we did a spec home, that if you were -- had cost of
17 \$300,000 for the construction and you were selling this
18 spec home for 500,000, that you would need a \$500,000
19 limit.

20 MR. SMITH: I didn't remember us doing that
21 on spec houses where it wasn't sold prior to
22 construction.

23 MR. NEAL: I think the key to it is whether
24 or not there was a contract entered into prior to the
25 time the guy pulled this permit.

1 MR. SMITH: Yeah.

2 MR. NEAL: If he entered into a contract more
3 than 10 percent over his license prior to the time that
4 he pulled his permit, would that not even apply on your
5 spec house deal?

6 MR. SMITH: It wouldn't be a spec house.

7 MR. NEAL: It's sold if it's prior to.

8 MR. SMITH: Right.

9 MR. DRIVER: Just to clarify, just so I
10 understand, you're saying on the spec home even if --
11 you're saying if it's sold on the back end after it's
12 constructed, the cost of land is still included in your
13 opinion or no?

14 MR. NEAL: I don't think so.

15 MR. DRIVER: Okay.

16 MR. NEAL: The key to it is when he entered
17 into the contract. If he entered into a contract for
18 more than his license plus 10 percent at the outset,
19 then he violated the law. Do you agree with that?

20 MR. HUNT: I don't agree, because I don't
21 think the land really should be included.

22 MR. NEAL: Regardless.

23 MR. HUNT: Regardless, because that's not
24 your --

25 MR. NEAL: If it's his land.

1 MR. HUNT: Correct.

2 MR. SMITH: If it's the builder's land.

3 MR. HUNT: Right, if it's the builder's land.
4 If it's the owner's land, then obviously the land is not
5 included anyway. And one of the reasons I feel that way
6 is you could, in theory, build the same house right next
7 to each other, two houses, and if one of them is on your
8 land and one of them is on an owner's land, it's the
9 exact same house, but depending on who owns the land
10 determines how much monetary limit you need to have.
11 Again, it's the same house, same quality construction,
12 same cost for construction.

13 MR. SMITH: The way we were able to monitor
14 it was by the amount of the building permit, because I
15 could pay 80 for the land and you could pay 40.

16 MR. HUNT: But a lot of times we look at the
17 sales contract, too.

18 MR. SMITH: That's exactly right, we do.

19 MR. NEAL: Because all of the counties
20 aren't, I don't believe, are equal in the way they
21 calculate the buildings permit, are they?

22 MR. SMITH: They're getting more and more.
23 Some don't even have permitting, but they're getting
24 more and more by a formula.

25 MR. HUNT: We don't have any attorney

1 general's opinion or there is no case law that we can --

2 MR. DRIVER: I don't believe there has been
3 any that's on point on this. The question is that, you
4 know, I think the crux is what is the cost of the
5 project, and that's the language that is used. And is
6 the land part of the project or is the project the thing
7 you're building on the land. So...

8 MR. NEAL: I believe it says in here that
9 they went to court or something, and the court ruled
10 that the guy had violated his license; is that right?
11 Civil litigation regarding breach of contract resulted
12 in transaction and judgment was entered in favor of the
13 respondent. Is that the same one, 51?

14 MR. DRIVER: Judgment entered in favor of the
15 respondent would mean in favor of the contractor in this
16 case.

17 MR. HUNT: And that was for breach of
18 contract, civil litigation.

19 MR. NEAL: So The Court says he didn't
20 violate his contract.

21 MR. DRIVER: I don't believe that necessarily
22 came up. This was purely, you owe me money, you didn't
23 pay me money, and The Court said you need to pay the
24 contractor the money. I'm not sure it's necessarily
25 conclusory either way on what is before the board right

1 now.

2 MR. NEAL: I must be looking at a different
3 one than you're looking at. Are we looking at 51?

4 MR. DRIVER: Yes.

5 MR. NEAL: Where is the dispute of the money?

6 MR. DRIVER: Civil litigation regarding
7 breach of contract resulted from this transaction.
8 Judgment was entered in favor of the respondent.

9 MR. NEAL: Well, how did he breach his
10 contract? Just because he exceeded his monetary limit?

11 MR. DRIVER: I think there were other non-
12 disciplinary issues in this matter.

13 MR. NEAL: Well, I think we ought to know
14 what that is. Because the way I read it, all we're
15 talking about is whether or not he violated the
16 licensing law because of exceeding his contract more
17 than his license.

18 MR. DRIVER: And the reason it's presented
19 that way is because I really felt like that was the only
20 disciplinary issue that was raised by this file. If you
21 would like additional information, we could certainly
22 get that.

23 MR. NEAL: Do you think additional
24 information would help?

25 MR. HUNT: Not on the main issue that we're

1 di scussi ng.

2 MR. NEAL: Which is whether or not he
3 violated his license --

4 MR. HUNT: Which is determined or the tipping
5 point is whether or not you include the cost of the
6 land.

7 MR. SMITH: And we have said that we have two
8 different rules on that. A spec house has one, it's not
9 included, and the contract job, it is included. A lot
10 of people's limits are going to be raised somewhat
11 artificially if it's just -- is that right? Yeah.

12 MR. HUNT: When does this particular case,
13 when does the renewal need to be decided on? I'm sorry,
14 not the renewal.

15 MR. DRIVER: This is not a renewal case.

16 MR. HUNT: So we could defer this until the
17 next meeting?

18 MR. DRIVER: You can. I will say there has
19 been a separate request that was under the discussion
20 topics by another party outside of a complaint situation
21 asking for their purposes what the board's opinion is on
22 this same situation.

23 MS. LAZENBY: The reason it's on the agenda
24 separate from this complaint case, it's not the same
25 case.

1 MR. DRIVER: But certainly the board isn't
2 obliged to hear it today or to make a decision today.

3 MR. NEAL: I think the biggest thing is
4 whether or not we concur with your recommendation.

5 MR. SMITH: So, Cliff, you're saying you
6 would just go by the building permit? Whatever the
7 permitting authority, that would be your license limit?
8 You couldn't pull a permit for more than your monetary
9 limit?

10 MR. HUNT: That's my -- where I'm heading is
11 I wonder if we could -- we don't have all of our
12 residential members here today, and this probably solely
13 has to do with residential construction. If we couldn't
14 defer this until the next meeting, then hopefully we
15 will have the full residential committee there and let
16 them discuss it.

17 MR. SMITH: I won't be here, but I'll have my
18 thoughts. I don't have any problem with that, Mr.
19 Chairman. We've been wrestling this for my entire
20 duration on the board, on what is a spec.

21 MR. HUNT: We need to shoot toward having a
22 rule on this, do we not, that would clarify things?

23 MS. LAZENBY: Yes.

24 MR. HUNT: In the meantime, we can decide --

25 MR. NEAL: The question then would become

1 whether or not we establish a rule that violates the
2 licensing law. That would be up to somebody's
3 interpretation, but I guess if we had a rule, we could
4 say that's our rule.

5 MR. HUNT: Part of the rulemaking process is
6 that it's reviewed by somebody at the attorney general's
7 office, isn't it?

8 MR. DRIVER: Yes, that is part of the
9 process, for the A.G. to look at the rule and determine
10 if it's in violation of contracting law or any other
11 law.

12 MR. NEAL: Mr. Hunt, do you want to make a
13 recommendation that this be deferred until the next
14 board meeting?

15 MR. HUNT: I would recommend that this be
16 deferred to the residential committee to come up with a
17 recommendation at the next board meeting or a future
18 board meeting if they can't do it by the next. That it
19 be referred to the residential review committee.

20 MR. NEAL: That's Reese, Keith and --

21 MR. SMITH: Jack Tickle, Ronnie Tickle.

22 MR. NEAL: Is there a second to that motion?

23 MR. OWENS: I second.

24 MR. NEAL: Any further discussion? All in
25 favor say aye. Opposed, like sign. Unanimous.

1 MR. DRIVER: If I may, in the past opinion of
2 the board on spec houses, the land is not included, and
3 on custom houses the land is included?

4 MR. SMITH: Correct.

5 MR. DRIVER: Is everyone on -- that that has
6 been in the past. I know some of you haven't been here
7 as long as others.

8 MR. SMITH: That's the way it's been
9 interpreted.

10 MR. DRIVER: Spec houses, the land is not
11 included; on custom houses, the land is included. That
12 has been the opinion on past --

13 MR. SMITH: Yes.

14 MR. DRIVER: Okay. Number 52, change from
15 close to \$250 consent order and authorizing a formal
16 hearing for failure to pull a permit. Number 55, which
17 changed to board discussion. This was a respondent that
18 on the most recent renewal stated that there were no
19 outstanding judgments against the owner or the company
20 regarding contracting. That was found to be incorrect.
21 There were outstanding judgments against I believe both
22 the owner and the company, at least the owner, I
23 believe, involving contracting situations. Also, there
24 is information that the respondent continued to contract
25 between the expiration of their license and the renewal

1 date. I know unlicensed contracting is a big deal. I
2 think, you know, it's what appears to be -- putting
3 false information on an application is always a fairly
4 serious situation.

5 Once again, I had reviewed this, and there
6 are a lot of moving parts to it because we had -- we
7 issued the renewal, so the contractor has a valid
8 license. But in this particular case if the judgments
9 weren't listed and possibly the financial information
10 wasn't correct, then the renewal was based on, but I
11 just also wanted to get the full board's opinion in
12 cases where we find out things like this after the fact.
13 Do we automatically schedule a formal hearing or issue a
14 consent order along with maybe some change to the
15 license that has been issued? Once the renewal is
16 issued, the only way to take it is through a formal
17 hearing or to alter the renewal.

18 MR. SMITH: So what is the question? We've
19 issued a renewal, and now after the fact we've found out
20 a discrepancy in the renewal form?

21 MR. DRIVER: That's correct.

22 MR. SMITH: What is your answer? I mean,
23 that's legal.

24 MR. DRIVER: My initial recommendation was to
25 ask for a surrender of the license and a civil penalty

1 of a thousand dollars. I said I think failing to --
2 essentially what appears to be information that supports
3 an allegation of falsifying an application is --

4 MR. SMITH: Let's be practical. If that's
5 how the guy is making a living, he is not just going to
6 turn his license in.

7 MR. DRIVER: Then in the alternative it would
8 go to a formal hearing. If you would like to make an
9 alternative recommendation, I am more than comfortable.

10 MR. SMITH: I think it would depend on how
11 much he did falsify on whether we would pull his
12 license.

13 MR. NEAL: I'm like Mr. Smith. I can't
14 imagine a guy surrendering his license.

15 MR. DRIVER: And this is just a case, again,
16 looking at the circumstances, I was recommending that
17 the license be closed out. Surrendering is typically, I
18 suppose, a less violent way of doing that than asking
19 them to agree to a revocation of the license just
20 because the terminology is substantially less offensive
21 to licensees.

22 MR. SMITH: Well, did he not check -- how did
23 he falsify the renewal?

24 MR. HUNT: Outstanding judgments against him
25 individually and the company.

1 MR. DRIVER: I believe that's correct. And
2 Nicole has gone to retrieve the file, and I can tell you
3 what those judgments were listed as.

4 MR. HUNT: Would this be a case where we
5 could take one board member to kind of spearhead some
6 negotiations, participate in some negotiations with the
7 contractor? It may be a case where there is a 250
8 outstanding judgment that really have material effect on
9 the monetary limit, but it could be multi-million-
10 dollar judgments, too. Rather than -- and attempt to go
11 that route to renegotiate the situation based on full
12 information, and then come back at a later meeting with
13 a recommendation which the recommendation may be to go
14 to a formal hearing if you are not getting cooperation.

15 MR. DRIVER: Absolutely.

16 MR. NEAL: Without objection from the other
17 board members, I would ask Mr. Hunt to occupy that slot
18 and work with our staff attorney.

19 MR. HUNT: Can I object?

20 MR. NEAL: No, you can't object.

21 MR. DRIVER: So are you wanting to set up an
22 informal conference with Mr. Hunt working with myself
23 and the respondent and Ms. Lazenby to see if this
24 situation can be resolved, and if it can't, for Mr. Hunt
25 to make a recommendation to the board at the next

1 meeting?

2 MR. NEAL: Yes, unless there is an objection
3 from any board member other than Mr. Hunt. Thank you.

4 MR. DRIVER: I'll change the recommendation
5 on No. 55 to an informal conference with Cliff Hunt.
6 Number 57, delete the civil penalty off the surrender of
7 license and add the option of paying a \$10,000 civil
8 penalty in lieu of the surrender of license. Number 58,
9 authorize a civil penalty of \$500 for each contract over
10 \$55,000.

11 MR. HUNT: Five hundred and fifty?

12 MR. DRIVER: Five hundred and fifty thousand,
13 dollars, excuse me.

14 MR. NEAL: Did I understand you to say on 57
15 instead of 1,000 it went to 10,000?

16 MR. DRIVER: It became a surrender of license
17 or a \$10,000 civil penalty was the recommendation on
18 that. So the \$1,000 penalty is no longer there. It's
19 now either they choose to surrender their license or
20 they can pay \$10,000 or it can go to a formal. Number
21 58, the recommendation was to change the civil penalty
22 to \$500 for each home that the file showed the value of
23 which was over \$550,000. Going all of the way to Page
24 20, 21, No. 67, civil penalty was lowered from \$5,000 to
25 \$2,750. Number 70, the consent order value was changed

1 from \$5,000 to \$2,500. Number 71, the file will be
2 closed and flagged and the respondent will be sent a
3 letter of warning letting them know that their file has
4 been closed and flagged should they choose to renew or
5 seek a license in the future. That is it for the
6 residential report.

7 MR. NEAL: Entertain a motion for approval
8 subject to changes as amended.

9 MR. SMITH: So moved.

10 MR. HUNT: Second.

11 MR. NEAL: Any further discussion? All in
12 favor say aye. Opposed, like sign. Unanimous.

13 Commercial subcommittee recommendations
14 review and approve.

15 MR. DRIVER: Number two, what is being sent
16 for additional information. It won't be considered as
17 part of this report. Number 3 had no recommendation
18 that is changed to close which was the recommendation
19 and was adopted by the subcommittee. Number eight, the
20 consent order was increased from 1,000 to \$2,500.
21 Number 10 is being sent for additional information and
22 won't be considered as part of this report. That's all
23 for the commercial subcommittee report.

24 MR. NEAL: Entertain a motion for the
25 commercial subcommittee.

1 MR. OWENS: So moved.

2 MR. BROOD: Second.

3 MR. NEAL: Any further discussion? All in
4 favor say aye. Opposed, I like sign. Unanimous.

5 Next item on the agenda is discussion topics,
6 Mrs. Lazenby.

7 MS. LAZENBY: Bankruptcy is a concern that we
8 had on that question on our agenda on our application
9 and our renewal forms, and whether or not we need to
10 leave it on our forms. It's been brought to our
11 attention that we cannot make a contractor file a new
12 application if he does a merger -- or a reorganization,
13 I'm sorry, due to bankruptcy. So we wanted to bring
14 that to your attention. We can't hold a license due to
15 bankruptcy.

16 MR. NEAL: Why?

17 MR. DRIVER: The reason is actually federal
18 law 11 USC Section 525. The section that's pertinent
19 says a governmental group may not deny, revoke, suspend
20 or refuse to renew a license solely because such
21 bankrupt or debtor is or has been a debtor under this
22 title or a bankrupt or debtor under the Bankruptcy Act.

23 MR. NEAL: We've never solely attempted to do
24 that. Other board members correct me if I'm wrong, but
25 absent having all of the information, including that,

1 there may be other reasons why the license would not be
2 granted. I can't imagine us not wanting to know if
3 somebody has filed bankruptcy. I can hear the public
4 out there saying real quick like when they get harmed by
5 somebody who's filing bankruptcy to the extent it cost
6 them \$50,000, and they come up here and look at us and
7 say, why did you bunch of idiots give this guy a
8 license? Well, I mean, you know, we didn't know he had
9 bankruptcy. Why not? Can we stand on some federal law
10 14 million miles away from here and say, well, that's
11 why we didn't do it?

12 MR. DRIVER: What the board might want to
13 entertain is asking for a formal opinion from the
14 Tennessee Attorney General's office regarding what
15 action it should take.

16 MR. NEAL: I mean, I can't imagine it's been
17 on there forever and nobody's ever said anything about
18 it before. Other board members' comments, please.

19 MR. SMITH: Who brought this? I mean, did
20 legal bring it up that we need to take it off?

21 MS. LAZENBY: Yeah, an incident happened. A
22 contractor submitted a renewal and he had filed
23 bankruptcy. And we wrote him. We didn't renew the
24 license. We told him he needed to file a new
25 application due to the bankruptcy. And they contacted

1 our legal staff and said -- basically said we can't
2 require that.

3 MR. SMITH: That doesn't say you can't ask.

4 MR. DRIVER: Right.

5 MR. SMITH: And then there might be other
6 reasons. He might have outstanding judgments. He might
7 not have paid other licensed contractors that are --
8 could be outside of the umbrella of bankruptcy. So
9 that's why we would choose not to renew the license.

10 MR. DRIVER: It is worth noting in the past
11 the attorney general's office had, and this was in 1998,
12 had requested that the mere filing of bankruptcy be
13 deleted from the list of criteria for the requirement of
14 an audited financial statement or consideration of the
15 license for renewal. So this is not the first time it's
16 been brought up.

17 MR. NEAL: I'm surprised they just asked and
18 didn't tell us that we must. I mean, there is a
19 difference.

20 MR. DRIVER: To my knowledge, the attorney
21 general doesn't have -- they are to be the advisory
22 source for state entities. They don't bind you. Just
23 as my recommendations on the legal report, I can't
24 require you to adopt my recommendations on the legal
25 report.

1 MR. NEAL: What is the opinion of the board?
2 Does the board want to leave it on there or does the
3 board want to take it off?

4 MR. SMITH: Now more than ever I'd say leave
5 it on there until I'm handcuffed.

6 MR. NEAL: Is that a motion?

7 MR. SMITH: Yes.

8 MR. OWENS: Second.

9 MR. NEAL: Any further discussion? All in
10 favor say aye. Opposed, like sign. Unanimously the
11 board approves leaving it on the application until such
12 time as we are directed by the powers that be to remove
13 it from the application.

14 MR. HUNT: Do we want to ask the attorney
15 general's office?

16 FOUR: He just gave us his earlier opinion.
17 He said that we should remove it, but they didn't tell
18 us we had to remove it.

19 MR. HUNT: Well, I think that's when we were
20 required to get an audited statement if you had
21 bankruptcy. I think that was a specific situation.

22 MR. NEAL: You're probably right. I seem to
23 recall that.

24 MR. HUNT: Do we want to get some guidance?
25 Can we ask for guidance from the attorney general's

1 office? Tell them that we would like to leave that on
2 the application but guide us on how to use that
3 information once we obtain it.

4 MS. LAZENBY: Basically we need to know when
5 somebody does file bankruptcy, can we still make them
6 file a new application which is getting a new financial
7 statement, reviewed or audited.

8 MR. NEAL: That goes along with Mr. Smith's
9 comments that there are other things than the fact that
10 somebody just filed bankruptcy that we're looking for,
11 know that they've done that. I mean we have approved
12 application after application where there's been
13 bankruptcies involved. Generally, we look at it, it's
14 been settled or dismissed or discharged or they're under
15 some sort of reorganization with the court pay-out
16 established. Generally, you ask the attorney general
17 for an opinion of the law, but if it can be asked in a
18 fashion as Mr. Hunt has suggested, then that will be
19 fine, with the understanding that the board has voted
20 unanimously to leave it on the application.

21 MR. DRIVER: Absolutely.

22 MR. NEAL: Next item, monetary limit,
23 Carolyn.

24 MS. LAZENBY: I guess this is basically the
25 same question.

1 MR. SMITH: We've discussed that.

2 MR. DRIVER: Yeah, the top one was discussed.
3 I believe Ms. Lazenby still wanted to bring up the
4 second one which is if the board views -- again, the
5 language that is in the statute most often is the cost
6 of the project. If the board views the contract price
7 as binding, if the board looks at it on a case-by-case
8 situation, which I think is more or less what the
9 situation has been in the past, or of the actual cost of
10 all of the individual parts, you've got the sub-
11 contractor cost, the materials cost, is the amount at
12 you're looking for for the limit. That is, is it the
13 contract value or is it the cost to the contractor of
14 the project?

15 MR. SMITH: I thought we decided earlier that
16 that would be reference to the residential review
17 committee and reported back at our next board meeting.

18 MR. DRIVER: That had to do purely with
19 weighing costs. This is saying even that
20 notwithstanding, I believe it's a lot of situations,
21 Carolyn can correct me if I'm wrong, where someone has a
22 \$350,000 limit, they build a house, the cost to them is
23 \$348,000. The contract is a straight contract for
24 \$425,000. They signed that contract knowing full well
25 that \$75,000 of the contract is profit. And does the

1 cost of the contract, is that the situation that we're
2 typically talking about?

3 MS. LAZENBY: Right.

4 MR. SMITH: And another 75 is land. And so a
5 guy can have about a \$250,000 license and build a
6 \$400,000 house.

7 MR. HUNT: I've always determined profit or
8 mark-up, that you've got to be licensed to include that.
9 That that's part of the cost.

10 MR. BROOD: Construction cost.

11 MR. SMITH: That's been commercial and
12 residential.

13 MR. NEAL: Well, you go back to the situation
14 what did the contractor pull a permit for.

15 MR. DRIVER: Right.

16 MR. NEAL: I mean, if he pulled a permit for
17 something within his license limit, what do you do then?

18 MR. SMITH: I know it.

19 MR. DRIVER: In that case the permit is going
20 to be pulled probably for the \$350,000 because it's the
21 value of the construction. You all can correct me if I
22 am incorrect, but that would be what I would expect.

23 MR. SMITH: Less land. You wouldn't have
24 land in a building permit.

25 MR. DRIVER: Well, if this is a custom home

1 on someone else's land or whatever. If the actual cost
2 of the construction of the home is \$350,000, the
3 contract is still for \$425,000. So if you're saying the
4 mark-up is included, well, the permit, I believe what
5 Mr. Neal is saying, is only for \$350,000. I'm not
6 trying to put words in your mouth, but that's what I
7 understood.

8 MR. SMITH: But you contract for 425.

9 MR. DRIVER: Right.

10 MR. SMITH: And you have a \$350,000 limit.

11 MR HUNT: Let's think this through. You take
12 an electrical contractor, he's buying material and
13 providing labor, quoting ABC Construction, and bids
14 \$500,000, that's what we require him to have.

15 MR. SMITH: That's right.

16 MR. HUNT: You know, list on the envelope. I
17 mean, it's more the contract amount that we look at in
18 most situations, I think.

19 MR. SMITH: I agree.

20 MR. OWENS: What would you do in the case
21 that he got change orders and that ran it over his
22 monetary limit? So you've got another scenario there.

23 MR. SMITH: We've had that.

24 MR. NEAL: On Hillsboro Road.

25 MR. SMITH: And we've gone on case by case

1 because some of them are organized crime and some of
2 them are just --

3 MR. NEAL: Yeah.

4 MR. DRIVER: Yeah, my opinion is typically,
5 for what it's worth, is that if the change order wasn't
6 foreseeable before the construction, and I think that's
7 been the board's position in the past, that you're not
8 going to hold that against them; but if the change order
9 was entered with the understanding when they signed the
10 contract and he said you just pick that cheap floor and
11 then when we're done, we'll upgrade it to slate, then
12 that's not going to -- that will be counted against
13 them. So I think that's been the board's position
14 historically in that case.

15 MR. NEAL: Okay. Where are we on that one?

16 MR. DRIVER: Well, I believe Mr. Hunt, Mr.
17 Smith had agreed, at least in their opinion so far, that
18 the contract price was the controlling aspect. Is that
19 right?

20 MR. SMITH: On a contract house, that the
21 contract price was the controlling, yes.

22 MR. NEAL: And that it was entered into prior
23 to the pulling of the permit.

24 MR. SMITH: Correct.

25 MR. NEAL: Anybody disagree with that?

1 MR. BROOD: The contract price would include
2 the price of the land?

3 MR. SMITH: Yes, and profit. I just thought
4 that's what we referred to.

5 MR. DRIVER: The land issue, I think, is
6 going to be handled separately by the residential sub-
7 committee. If we take that out of it and look at purely
8 as a home being built on land owned by the other entity,
9 then I think it can be handled as a separate issue in
10 that case. This one is about private margin as opposed
11 to land.

12 MR. NEAL: The key to is whether or not the
13 contract was entered into prior to the time the building
14 permit was pulled.

15 MR. SMITH: Well, I am not sure it made any
16 difference, spec or otherwise, because you're going to
17 pull the permit for the amount of the construction cost
18 whether it was spec or a contract job.

19 MR. NEAL: The only point I'm making is if
20 the contract were entered into after the guy had pulled
21 a permit.

22 MR. SMITH: Uh-huh.

23 MR. NEAL: If he entered into a contract for
24 more than his license plus 10 percent prior to pulling
25 the permit, then he has violated the law.

1 MR. SMITH: He's in violation.

2 MR. NEAL: If he had this house and this lot
3 and all of this stuff and he's working on it and he's
4 got it half built and he goes and before that, he pulls
5 a permit and then he signs a contract after the date of
6 the permit, then --

7 MR. SMITH: He is not in violation. I don't
8 see how at that point.

9 MR. NEAL: So the key to it is whether or not
10 he signed the contract before he pulled the permit.
11 Does everybody agree with that?

12 MR. OWENS: Only thing about it is in Memphis
13 you cannot. You have to show your contract to pull a
14 permit.

15 MR. NEAL: Even though you're building a spec
16 house?

17 MR. OWENS: Oh, I'm going to get out of the
18 spec houses. I'm speaking strictly in commercial. But
19 the contract has to be reviewed. The home building, I'm
20 not in that. I don't know exactly what happens.

21 MR. BROOD: My opinion is the land value
22 should not be in the cost whether it's beforehand or
23 afterward of signing the contract with the owner. There
24 should be some adjustment made for --

25 MR. NEAL: And you're continuing to say the

1 profit should be --

2 MR. BROOD: Yes.

3 MR. NEAL: But what is your opinion on the
4 before and after the pulling of the permit of executing
5 a contract?

6 MR. BROOD: If a contract is executed before
7 you pull a permit, I think there should be an adjustment
8 made for the value of the land when you consider whether
9 or not you're going over the license limit.

10 MR. NEAL: Okay. That would apply. But
11 otherwise, if the contract is executed after the permit
12 is pulled, all I'm saying is that it would indicate that
13 either the guy is building for himself or it's a spec
14 house. If that's the case and he's got the foundation
15 done and the roof on it and somebody comes along and
16 says I want to buy it, and he enters into a contract
17 then in excess of his monetary limit, can he do that?

18 MR. BROOD: Assuming that there is a
19 reasonable price for the land in there. I mean, if he
20 pulls a permit for \$300,000 and the land is worth
21 100,000 and he sells it for a million, then he's lied as
22 to the value of the construction work, I would say.

23 MR. NEAL: Unless he has an \$800,000 lot. I
24 mean, it's not likely, but...

25 MR. BROOD: Yeah.

1 MR. NEAL: Could on the lake.

2 MR. SMITH: You might have lake front that's
3 400 and you might have somewhere in rural west Tennessee
4 that's 22,500, and the guy has the same license.

5 MR. DRIVER: What you are saying, if the
6 contract is signed before the permit is pulled, you
7 think the contract value should control; if the permit
8 is pulled first, you think the permit value should
9 control?

10 MR. NEAL: As long as it's somewhat
11 realistic.

12 MR. DRIVER: Well, we are assuming good faith
13 in this situation. As long as the person made a
14 reasonable --

15 MR. NEAL: Reasonable.

16 MR. DRIVER: If they went to someone and
17 said, hey, we'll sign a contract to build a house here,
18 but, hey, let me go pull the permit on it real quick and
19 then --

20 MR. NEAL: Tough luck.

21 MR. DRIVER: Yeah. No. If they pulled the
22 permit that they've got halfway through a spec house and
23 then someone said, hey, can I buy that and you can do
24 the next half of it custom, then the permit value is
25 what you're wanting to go look at.

1 MR. SMITH: That's what we've done because it
2 sure was hard to monitor after the fact.

3 MR. NEAL: Okay. We've beat that horse to
4 death. Let's move on to administrative law judge
5 hearings. In other words, do we want to do those, as I
6 understand it, without the board and let the
7 administrative law judge make the decision or do you
8 want to continue to have the board involved in any
9 revocation of license?

10 MR. DRIVER: And the board would still be
11 involved regardless. Just if a case came up on appeal,
12 the appeal would be from the ALJ sitting alone to the
13 board hearing the case.

14 MR. NEAL: You're just talking about appeals?

15 MR. DRIVER: Right. But the board would
16 continue to hear appeals. If an ALJ made a decision
17 that either the state or the other party are --

18 MR. NEAL: So it's the other way around. We
19 wouldn't hear until it was appealed?

20 MR. DRIVER: That's correct. The reason is I
21 don't know exactly the number of cases that need
22 formal s, but it's somewhere over 200 right now.

23 MR. SMITH: Dang.

24 MR. NEAL: You know, they never go to a
25 formal .

1 MR. DRIVER: And the scheduling flexibility
2 for an ALJ is much greater than the scheduling
3 flexibility for a board meeting.

4 MR. NEAL: We'll all be dead and gone before
5 200 of them could ever be heard by the board. I don't
6 know whether they could ever be heard by just an
7 administrative law judge. What's happening to these 200
8 people? Are they still out there contracting and doing
9 whatever they want to do?

10 MS. LAZENBY: Some of them are.

11 MR. DRIVER: No action has been taken on
12 those files. That's all I know.

13 MR. SMITH: You talk about reading about
14 that.

15 MR. NEAL: I can't imagine that we've gotten
16 that far behind on formals.

17 MS. LAZENBY: It's been three years since
18 your last formal.

19 MR. NEAL: I understand that, but I didn't
20 know that we had that many that went to a formal.

21 MS. LAZENBY: Yeah, it's on cases where they
22 don't -- where you authorize a consent order or a formal
23 hearing. When they ignore the consent order --

24 MR. SMITH: That's where a bunch of them are.

25 MR. DRIVER: That's where the bulk of those

1 cases come from, is the board authorizes a consent
2 order. The consent order is sent out. The consent
3 order isn't responded to. In that case, the only
4 possible resolution other than closing the file out at
5 the board's recommendation is to go to a formal hearing
6 so the board can formally issue some sort of civil
7 penalty, revocation of license, et cetera.

8 MR. NEAL: We need some sort of provision
9 amended in the law that says in the absence of
10 satisfying a citation, that the board can automatically
11 put the license in suspension, not revoke it, but
12 suspend it --

13 MR. SMITH: Like your driver's license.

14 MR. NEAL: -- until it's satisfied. I can't
15 imagine we can't do that.

16 MR. DRIVER: All the board can do is offer to
17 settle a case beforehand. The only way you can take
18 action unless the legislature wants to take action on it
19 is to, again, take -- you offer a consent order to
20 settle the matter. If they don't respond to the consent
21 order, then again, it has to go to a formal hearing.
22 It's a due process matter where people have to be given
23 a certain amount of --

24 MR. NEAL: But it says to take their license
25 away. We don't want to take it away.

1 MR. DRIVER: Or to a -- suspend is included
2 in that.

3 MR. NEAL: It says that the only thing you
4 can do is to take away. Where does it say anything
5 about suspending? It's kind of like Mr. Smith said, you
6 drive down the road here and you get a ticket, you're
7 going 85 in a 30-mile zone, you either pay the ticket or
8 you go to court.

9 MR. DRIVER: The board does not have the
10 authority to issue citations to licensed individuals,
11 only to unlicensed individuals. The citations to
12 unlicensed individuals that are issued by Ms. Lazenby
13 under the law, hopefully there is something coming down
14 the pike to help resolve that.

15 MR. HUNT: The original question is basically
16 turning our authority over to an ALJ, which I'm hesitant
17 to do that.

18 MR. NEAL: I am, too. Can we --

19 MR. HUNT: Can we not have an ALJ go through
20 maybe some summary judgment type motions that would weed
21 out 80 to 90 percent of these 200? Because a lot of
22 these, the people aren't going to show up, and they're
23 just going to say, well, I'm through contracting, I'm
24 working at Sears selling carpet or something and I don't
25 care anymore, but we don't know that until we actually

1 schedule and set up this hearing.

2 MR. DRIVER: It's going to be the same with
3 the ALJ. It's going to be scheduling the hearing and
4 going through all of that anyway.

5 MR. HUNT: But if you're doing it just for a
6 summary judgment type hearing.

7 MR. DRIVER: I guess the question is if the
8 summary judgment is not held, then where does the case
9 go?

10 MR. HUNT: Then it comes to us. Then we
11 schedule a formal hearing before the board. My point is
12 I could -- I would be willing to go along with a limited
13 --

14 MR. SMITH: Prioritized.

15 MR. NEAL: I think, just an opinion, I think
16 a lot of this pile-up, build-up or whatever you want to
17 call it, has been with the frequency of the change of
18 our staff attorneys. I mean, you know, one attorney has
19 been here and they have 42 formals, and then the next
20 thing you know they're gone. And then another attorney
21 comes along and they've got 27, and then they're gone.
22 That's how they've all built up. In times gone by, a
23 hundred years ago, we had formals, but when the staff
24 attorney said, look, brother, we're going to bring you
25 in here or you pay this \$5,000 fine and you're going to

1 lose your the license in all likelihood when we bring
2 you in, and they pay the \$5,000 fine and it's gone. But
3 if you don't have somebody following up on that process,
4 they just stack up.

5 MS. LAZENBY: Yeah, that's what happened.

6 MR. NEAL: It's difficult. And I think Mr.
7 Hunt is on the right track. It looks to me like a law
8 judge can say, look, guys, I want 87 of you in here and
9 we're going to run through these cases. Bring your
10 lawyer and bring your checkbook.

11 MR. DRIVER: Again, what the judge can do is
12 not -- the consent order is an offer of negotiation that
13 isn't admissible to any hearing. That's worth noting.
14 Now, citation cases against unlicensed people are
15 slightly different.

16 MR. NEAL: I understand, but where does it
17 say in there that we can't suspend a contractor's
18 license?

19 MR. DRIVER: You have to have a formal
20 hearing under the APA.

21 MR. NEAL: Uniform Administrative Procedures
22 Act, yeah, I understand.

23 MR. DRIVER: Uniform Administrative
24 Procedures Act required that any action taken against a
25 licensee's license in the State of Tennessee has to be

1 done. That includes revoking, suspending, refusing to
2 renew.

3 MR. SMITH: Can we prioritize these to go to
4 an ALJ where we say only consent orders that haven't
5 been responded to will go to the ALJ and everybody else
6 must come to the board?

7 MR. DRIVER: If you would like to offer some
8 sort of limited jurisdiction, it's something that we can
9 approach the secretary of state's office which is where
10 the ALJ's are, and say this is what the board wants to
11 do.

12 MR. SMITH: That may be a blessing in
13 disguise for us, Mr. Chairman. We might get rid of 162
14 of them and be down to 40 and go ahead and try to knock
15 them out two at a time.

16 MR. DRIVER: Another alternative is to say
17 you only want an ALJ sitting on cases involving
18 unlicensed conduct. That way, any case that has to do
19 with a revocation or suspension, refusal to renew
20 someone's license, still comes in front of the board.
21 So if you're talking about a contractor as a bad actor,
22 it's going to come in front of the board. If you're
23 talking about someone out there doing unlicensed
24 conduct, it can go to the ALJ.

25 MR. NEAL: Well, if what you just said is

1 possible, it looks to me like the board ought to be able
2 to handle about 190 of those cases, because over the 10
3 or 15 years that these have been building up, or the
4 last 2 or 4 or 5, all of these people's licenses have
5 come up for renewal. Why didn't we just refuse to renew
6 them until they satisfied --

7 MR. DRIVER: Again, sir, you have to have a
8 formal hearing to refuse to renew a license. You have a
9 property right in a license.

10 MS. LAZENBY: That is how we handled it years
11 ago. Whenever they didn't do the consent order, we just
12 held the renewal. It was like that for several years,
13 but they said that was wrong, that they needed a
14 hearing.

15 MR. NEAL: Can an ALJ have preliminary
16 hearings and that type and the process be similar to
17 chancery court?

18 MR. DRIVER: The process, it goes through
19 preliminary hearings, even with the board cases. And
20 almost anything other than a summary judgment, the ALJ
21 sitting alone, even if it's going to be a board case,
22 will hearing preliminary discovery motions, that sort of
23 thing. But a summary judgment, the board needs to hear
24 it because you're making a determination on the merits
25 of the case, notwithstanding some sort of independent

1 authority from the board for the ALJ.

2 MR. HUNT: I am thinking of it in terms of
3 probably a large percentage of these people aren't even
4 going to show up.

5 MR. DRIVER: That very well may be the case.

6 MR. HUNT: If there is a way to weed those
7 out and knock those out quickly and soon, then you could
8 get down to the real problem situations.

9 MR. NEAL: Another way, Carolyn, can you go
10 on line and determine with this list of ones that are
11 out there whether or not any of them have failed to
12 renew on their own? So if they failed to renew, if they
13 didn't send in an application and it's been a year or
14 two years or whatever, then can we just not wipe them
15 out?

16 MS. LAZENBY: Yes.

17 MR. DRIVER: I know some boards -- I think I
18 spoke earlier, said the biggest hammer the board has is
19 the revocation of the license. Once that's gone, you're
20 right, a lot of the people just aren't going to --
21 they're going to say, well, you can't take away my
22 livelihood anymore, so I'm out here working at the
23 grocery store. If that's something the board's
24 interested in doing, we would be more than happy to go
25 through and on the next legal report any of the cases

1 that are in a formal stance not involving unlicensed
2 conduct where the person has not renewed for over a year
3 we'll present to be closed out at the next meeting.

4 MR. SMITH: Good idea. Whittle them down a
5 few at a time and see how many are left.

6 MR. DRIVER: We'll set all of those as close
7 and flags so if they do reopen when we're looking at
8 another license, you can say, well, there was this
9 situation in the past. It was closed out for resource
10 reasons.

11 MR. NEAL: So right now, then, the board does
12 not want administrative law judge hearings without the
13 board's input until we get some of this straightened
14 out?

15 MR. SMITH: Yes, sir.

16 MR. NEAL: So the answer to that one is no.
17 Carolyn, mowing services?

18 MS. LAZENBY: We've had a request, I guess
19 from a contractor, a couple of licensed contractors, who
20 bid on this contract and it's behind Tab 11. And I've
21 redacted all of the information so the parties aren't
22 identified. This was something I had sent you all by
23 e-mail to give you a chance to look at it. It's
24 basically the owner says this is different, this is
25 mowing services, and they feel like a license is not

1 required. And so we have sort of an issue between
2 licensed contractors versus the unlicensed contractors
3 that are being awarded the mowing job. We just need to
4 respond to them and need you all to review it in order
5 for us to respond and say the board looked at this and
6 they define it as yes or no.

7 MR. SMITH: I am not exactly sure how I feel
8 right now, but this was presented that all this fellow
9 does is mow grass and pull off. He doesn't do any
10 trimming, no landscaping of any kind. He just cuts the
11 grass and loads back up and leaves.

12 MR. DRIVER: That is the situation as it's
13 being presented to the board, the very limited
14 situation. He takes a lawn mower out there, drives it
15 over the land, drives it back onto the truck.

16 MR. NEAL: The only way I disagree with that,
17 I guess, is the fact that the department of
18 transportation has mowing contracts. All they do is
19 mow. Mow the right-of-way on the interstate, but they
20 have to have a license in order to bid on the job.

21 MR. HUNT: No, they have to be pre-qualified
22 with the department of transportation.

23 MR. NEAL: They do, but they have to have a
24 license if they are awarded the job. They don't have to
25 be licensed to bid.

1 MR. SMITH: On a state job they require a
2 license?

3 MR. NEAL: Yeah, it's always been that way.

4 MR. HUNT: No, they're excluded.

5 MR. SMITH: Unless they specified mowing.

6 MR. NEAL: No, not mowing.

7 MR. SMITH: I mean, a contractor might not, a
8 building contractor.

9 MR. HUNT: I thought DOT worked with
10 specifically excluded.

11 MR. NEAL: You don't have to have a license
12 to bid it.

13 MR. SMITH: But you have to have a license to
14 perform it?

15 MR. NEAL: That's been my understanding.

16 MS. LAZENBY: I didn't know that.

17 MR. HUNT: Is there an attorney general's --
18 (Whereupon, Mr. Neal placed a telephone
19 call.)

20 MR. HUNT: I move we adjourn for about three
21 minutes.

22 (Brief recess observed.)

23 MR. NEAL: Mr. Hunt, is correct. You don't
24 have to be licensed.

25 MR. DRIVER: Is that what the board's opinion

1 is --

2 MR. NEAL: As long as TDOT let the job.

3 MR. DRIVER: -- on general mowing contracts?

4 MR. NEAL: Yeah.

5 MS. LAZENBY: This isn't a TDOT job, though.

6 MR. HUNT: What I was going to say back to
7 the attorney general's opinion, that case, I looked
8 through that, and that had landscaping. One of the
9 items in there was mowing. So I don't think that
10 attorney general's opinion necessarily covers the
11 circumstances of this case. In my opinion to just mow
12 you do not need a license. That's my opinion. I put
13 that in the form of a motion.

14 MR. OWENS: I second that.

15 MR. NEAL: Motion made and seconded. Is
16 there any further discussion?

17 MR. SMITH: Only let's be specific. They're
18 just very few mowing contracts out there, but there
19 might be.

20 MR. HUNT: You're probably going to see more
21 and more.

22 MR. SMITH: What about weed eaters, is that
23 mowing?

24 FOUR: What are we going to do about the
25 State of Tennessee if it's not a TDOT job? In other

1 words, if the park service says --

2 MR. HUNT: I don't think you need a license
3 to just mow.

4 MR. NEAL: All in favor say aye. Opposed,
5 like sign. Unanimous. Don't need a license to mow
6 according to the board.

7 MS. LAZENBY: If you're going to do brush
8 control or weed control?

9 MR. NEAL: There is a class for that.

10 MS. LAZENBY: So strictly mowing, no license.
11 I think that's it.

12 MR. NEAL: That was the last item on my list.
13 Anything else to come before the board? If not, I'll
14 entertain a motion to adjourn.

15 MR. HUNT: So moved.

16 MR. OWENS: Seconded.

17 MR. NEAL: All in favor say aye. Opposed,
18 like sign. Unanimous. We are adjourned.

19 (Whereupon, the meeting was adjourned.)
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CERTIFICATE

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I, CAROLE K. BRIGGS, do hereby certify that the foregoing, Pages 1 to and including 70, is a true and correct transcription of my stenographic notes of the meeting of the Contractor's Licensing Board held at 710 James Robertson Parkway, Nashville, Tennessee, on the 20th day of January 2009.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

IN WITNESS WHEREOF, I have hereunto affixed my hand this 13th day of February 2009.

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