

DEPARTMENT OF COMMERCE AND INSURANCE  
TENNESSEE BOARD FOR LICENSING CONTRACTORS

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TRANSCRIPT OF AUDIO-TAPED MEETING

JANUARY 25, 2011

ANDREW JOHNSON TOWER, NASHVILLE, TENNESSEE

Board Members:

Ronnie Tickle	Cindi G. DeBusk
Ernest M. Owens	Keith Whittington, Chairman
Jerry Hayes	Reese Smith
Bill Mason	

Staff Attorney: Jenny Gray  
Executive Director: Carolyn Lazenby

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1 (Whereupon, the following meeting was  
2 transcribed from an audio recording, and as  
3 such, some speakers may be misidentified, as  
4 court reporter tried to distinguish voices to  
5 the best of her ability; and there were also  
6 certain portions of the meeting that were  
7 inaudible.)

8 MS. DEBUSK: I would like to call to order  
9 the meeting of the licensing contractors, today, January  
10 the 25th, 2011. First, I want to welcome our new board  
11 member, Mr. Bill Mason. Glad to have you. And now  
12 we'll start with a roll call. Let's start to my left.

13 MR. TICKLE: Ronnie Tickle, Memphis.

14 MR. SMITH: Reese Smith, Franklin.

15 MR. WHITTINGTON: Keith Whittington, Johnson  
16 City.

17 MS. DeBUSK: Cindi DeBusk, Knoxville.

18 MR. OWENS: Ernest Owens, Memphis.

19 MR. MASON: Bill Mason, Greenbrier.

20 MR. HAYES: Jerry Hayes, Paris.

21 MS. DeBUSK: An item that is not on our  
22 agenda, the personnel committee has met and we have a  
23 motion for 2011 officers.

24 MR. TICKLE: I'd like to nominate Keith  
25 Whittington chairman, Mark Brodd secretary and Reese

1 Smith treasurer.

2 MS. DeBUSK: So we have a motion for 2011  
3 officers. Do we have a second?

4 MR. HAYES: I'll second.

5 MS. DeBUSK: Do we have any discussion?

6 (Motion carries.)

7 MS. LAZENBY: Before she turns the gavel over  
8 to Mr. Whittington, I just wanted to thank you for your  
9 last two years of service. I know you don't get very  
10 much pay for it, \$50 a day six times a year, but we do  
11 appreciate you. This is just a little certificate.

12 MS. DeBUSK: Well, thank you.

13 MS. LAZENBY: We appreciate you. And this is  
14 what others can look forward to when you become  
15 chairman.

16 MS. DeBUSK: Well, thank you, Carolyn, and  
17 Telise and the staff. I really appreciate that. I want  
18 to officially turn the gavel over to Mr. Whittington,  
19 congratulations. May the force be with you.

20 MR. CHAIRMAN: I would really like to take  
21 just a moment and ask everyone to give Cindi a big round  
22 of applause for the job she's done. She's done a  
23 fantastic job and we really appreciate her. And when  
24 she told me late last year she was going to get off the  
25 board, it really concerned me because she's a friend and

1 I look forward to having her here at these meetings  
2 because of her knowledge and expertise in the electrical  
3 trade. And didn't want to see her leave. And I'm glad  
4 she's going to be back for six more years.

5 MS. DeBUSK: Thank you.

6 MR. CHAIRMAN: We'll continue on with the  
7 meeting at this time. The first thing I would like to  
8 do is ask --

9 MR. TICKLE: I have a question, Mr. Chairman.  
10 It's been pointed out to me that we need a vice chair in  
11 addition to chairman, secretary and treasurer.

12 MR. CHAIRMAN: It should have been chair,  
13 vice chairman, secretary/treasurer.

14 MS. DeBUSK: Well, do you want to amend your  
15 motion?

16 MR. TICKLE: I would amend my motion for it  
17 to be chairman, Mark Brodd, vice chairman --

18 MS. DeBUSK: Keith Whittington, chairman?

19 MR. TICKLE: Keith Whittington chairman, Mark  
20 Brodd vice chairman and Reese Smith secretary/treasurer.

21 MR. HAYES: I withdraw my second on the first  
22 motion.

23 MR. TICKLE: I'll withdraw.

24 MS. DeBUSK: Now do we have a second on --

25 MR. HAYES: Second.

1 MS. DeBUSK: Di scussi on? That shoul d have  
2 come up duri ng di scussi on.

3 MS. GRAY: I apol ogi ze. I was revi ewi ng  
4 these --

5 MS. DeBUSK: Okay. All i n favor.

6 (Moti on carri es.)

7 MR. CHAI RMAN: Everyone has i n front of you  
8 the agenda. Are there any questi ons or revi sions to the  
9 agenda? Seei ng no questi ons or revi sions, I'II  
10 entertain a moti on to adopt the agenda.

11 MS. DeBUSK: Moti on.

12 MR. TICKLE: Second.

13 MR. CHAI RMAN: I have a moti on and a second.

14 (Moti on carri es.)

15 MR. CHAI RMAN: The next i tem i s hardshi ps,  
16 those that are approved by our di rector duri ng our  
17 absence. Carol yn?

18 MS. LAZENBY: Yes, and these are behi nd Tab  
19 1. These have all been deci ded on by at least one board  
20 member.

21 MR. CHAI RMAN: Do I hear a moti on we approve  
22 the hardshi ps approved by our di rector?

23 MR. OWENS: So moved.

24 MR. WHI TTI NGTON: Second?

25 MR. TICKLE: Seconded.

1 MR. CHAIRMAN: Any discussion?

2 (Motion carries.)

3 MR. CHAIRMAN: The hardships have been  
4 approved. The next thing we've got to do is our annual  
5 requirements. Of course, the 2011 officers have been  
6 set. Roberts Rules of Order, where are we at on that,  
7 Carolyn?

8 MS. LAZENBY: It's the department's policy  
9 that the board adopt the Roberts Rules of Order each  
10 year. So if we could have somebody -- if it's okay with  
11 you all. Of course, you don't have to use Roberts Rules  
12 of Order, but they have said if you're going to, they  
13 would like for you to adopt it each year at the  
14 beginning of your annual meetings.

15 MR. CHAIRMAN: Okay. Any discussion or  
16 questions about the Roberts Rules of Orders?

17 MR. SMITH: I move that the state license  
18 board would adhere to Roberts Rules of Order.

19 MR. TICKLE: Second.

20 MR. CHAIRMAN: Any other discussion?

21 (Motion carries.)

22 MR. CHAIRMAN: Conflict of interest.

23 MS. LAZENBY: Have you passed those out yet?  
24 This is something that is required every year by every  
25 board member and staff person as well, that you are

1 required to sign this conflict of interest form. And  
2 it's something that auditors do look at to make sure  
3 that it's in place. So make sure you sign it and give  
4 it to Telise before you leave today. Okay.

5 MR. CHAIRMAN: Everybody please, in times  
6 past, I know I've been guilty of walking out the door  
7 before I sign that. It's real important to our staff  
8 that we keep this paperwork up and properly signed. So  
9 please take the time to sign your conflict of interest  
10 before you leave.

11 Per diem, power of attorney.

12 MS. LAZENBY: This is something -- I don't  
13 know if we've ever had to sign for you all, but this is  
14 just so it won't hold you up getting paid. So we have  
15 you all sign the per diem at the same time you do the  
16 conflict of interest. So we can sign your name, but we  
17 would always let you know if we're going to do that.  
18 It's just so we can speed up your travel check. So if  
19 Telise will, if she hasn't already, she'll give those to  
20 you as well and we'll collect those before you leave.

21 MR. MASON: Carolyn, I did all of these last  
22 month when I came over. Do I need to do that again now?

23 MS. LAZENBY: You might should because to  
24 make sure we have it in our files. So if you don't  
25 mind.

1 MR. MASON: I don't mind.

2 MS. LAZENBY: That way we'll all have a copy  
3 in the office so when the auditors check, everything is  
4 there. I think that takes care of all of the annual  
5 requirements for the year.

6 MR. CHAIRMAN: If you'll look behind Tab No.  
7 2, you'll find the transcript of the September 28th  
8 meeting in Knoxville. Everybody should have gotten this  
9 in an e-mail a couple of days ago and had a chance to  
10 review it. Does anyone need any further time to review  
11 this transcript? Are there any questions, revisions,  
12 deletions? I need a motion to approve the September  
13 transcript.

14 MS. DeBUSK: I make a motion to approve  
15 September transcript behind Tab 2.

16 MR. TICKLE: Second.

17 MR. CHAIRMAN: A motion and a second. Any  
18 other discussion?

19 (Motion carries.)

20 MR. CHAIRMAN: The September transcript has  
21 been approved. Behind Tab No. 3 is our November  
22 17th meetings. Same, likewise, here. You should have  
23 had had a chance to review it. Are there any questions,  
24 revisions, deletions? Do I have a motion?

25 MR. HAYES: I make a motion that we approve

1 the November of 2010 transcript.

2 MR. CHAIRMAN: I have a motion.

3 MS. DeBUSK: Second.

4 MR. CHAIRMAN: Any discussion?

5 (Motion carries.)

6 MR. CHAIRMAN: Behind Tab No. 4 on  
7 interviewed and weighted applicants, are there any  
8 questions about this group? They're all being done by a  
9 board member.

10 MR. SMITH: I have one that I want the entire  
11 board to know about. It was an interview with Ryan  
12 Prince doing business as Prince Technologies. He signed  
13 the affidavit and extended to us that he had bid without  
14 a license. And he agreed that we're to hold his license  
15 until May 15th, 2011. Granted a license, but it's being  
16 held until May 15th, 2011, Ryan Prince. Other than  
17 that, we can go right into whatever else.

18 MR. CHAIRMAN: Okay. I've got one that I had  
19 received as a weighted file and then requested that the  
20 company be called in for an interview. It was NKC of  
21 America. They had a monetary -- or, I'm sorry, a  
22 license, a BC-22. They were requesting to add the class  
23 CE, and they also were wanting to renew the license.  
24 Not renew, but reinstate the license where it had been  
25 expired. As I looked at the file it appeared to me as

1     though they had bid work while their license was  
2     expired, as their license had expired in '08, and they  
3     showed completion of a job in '09. As it turned out,  
4     they actually had bid the work in '06 when their license  
5     was still valid. But they, in turn, subcontracted the  
6     work to a subsidiary company of the parent corporation,  
7     NKC, and were no longer involved in any work in the  
8     project as it completed. So that kind of cleared that  
9     matter up. So I wanted to get the board's approval in  
10    the fact that I went ahead and reinstated their license  
11    and issued them their BC-22 and their CE along with it  
12    as they qualified for that. That's one in addition to  
13    Reese's.

14                   MR. SMITH: I think we can vote on this as an  
15    entire -- I remind the board that if any one person  
16    penalizes an applicant or holds their license or  
17    whatever, that that needs to be by the intention of the  
18    entire board. So one person can't be the judge and  
19    jury. So I would move for approval of the applicants as  
20    furnished to us.

21                   MR. HAYES: Second.

22                   MR. CHAIRMAN: Motion and second. Any  
23    questions?

24                   (Motion carries.)

25                   MR. CHAIRMAN: The next one is revisions.

1 That will be the --

2 MS. LAZENBY: I'm sorry, I have one for the  
3 weight that needs to be discussed.

4 MR. CHAIRMAN: Okay.

5 MS. LAZENBY: Have you all already went over  
6 all the weighed? This is Netherland Church of Christ.  
7 It was reviewed by Mark Brodd, and I think I had  
8 e-mailed it to a couple of other board members, but  
9 since Mark was the commercial board member, he looked at  
10 it. He doesn't feel comfortable approving the license  
11 for the church. But we have had churches get their  
12 license in the past. We have about eight right now that  
13 have a license and it's to be used for their own  
14 property to build their own church by their own members.  
15 In this case they have filled all of the requirements  
16 except the person that is the qualifying agent, he's a  
17 member of the church and he has his own contractor's  
18 license, but he only has a small commercial  
19 classification. So the church is requesting a limit for  
20 over a million. But before I even suggested they go and  
21 have somebody retake the test, I did -- that wasn't  
22 Mark's only concern. He just didn't feel comfortable  
23 with a church being granted a license. And so in order  
24 to deny it, I would need the whole board to either deny  
25 it or approve it. And this was an issue brought up by

1 representative, state representative, John Mark Windle,  
2 asking if we would consider granting this request.

3 MS. DeBUSK: I just want to make sure I'm  
4 clear. Somebody wants us to grant the request but our  
5 board member does not feel comfortable for a church to  
6 have a license?

7 MS. LAZENBY: Right.

8 MR. MASON: Do other churches have licenses?

9 MS. LAZENBY: There are eight other churches  
10 that have licenses. But, you know, it's been a while  
11 and I don't think Mark has ever been here when we've had  
12 a church get a license.

13 MR. MASON: Is there a First Amendment issue  
14 of the church even having to get a license?

15 MS. LAZENBY: If it's open to the public they  
16 have to get a license. A church could build like a  
17 house, a storage building, but they can't build anything  
18 that is open to the public.

19 MS. GRAY: Is part of Mark's reasoning  
20 because of the lack of expertise of the QA?

21 MS. LAZENBY: Exactly.

22 MS. GRAY: I mean, that's --

23 MS. LAZENBY: Yeah. He just, with it being  
24 built by the members, that's what he's concerned with is  
25 the safety. And, you know, I can understand. They have

1 given us a letter where the elders and members are -- do  
2 have construction experience, but...

3 MS. DeBUSK: They'll have to pull permits and  
4 go through the proper channels.

5 MS. LAZENBY: Right, they'll have to pull  
6 permits and get inspections, and it would be limited to  
7 their own property.

8 MR. TICKLE: Did you say another step was  
9 taken?

10 MS. LAZENBY: Do what?

11 MR. TICKLE: Was a test taken?

12 MS. LAZENBY: Yes, a test was taken when the  
13 qualified agent, which is a member of the church, is  
14 Mark Smith, and he did take the small commercial exam in  
15 2000 when he obtained his license.

16 MR. SMITH: And they're requesting unlimited?

17 MS. LAZENBY: I think it's 1.2 million.

18 MR. TICKLE: Well, that test only allows him  
19 to go to 750.

20 MS. LAZENBY: Right.

21 MR. TICKLE: They're trying to cut a  
22 contractor's fee out. It happens to be a church, but it  
23 would just happen to be an owner.

24 MR. CHAIRMAN: I need a motion one way or the  
25 other and we'll go from there.

1 MS. DeBUSK: Well, the QA, he can only build  
2 up to 750,000.

3 MR. SMITH: We're granting a new license.

4 MS. DeBUSK: It looks like the new license  
5 limit should be 750, is what he's qualified according to  
6 test.

7 MR. SMITH: And limited to their own work.

8 MS. GRAY: I don't know about restricting it  
9 to that. I've never heard of that kind of restriction.

10 MR. SMITH: We've done it multiple times.

11 MS. DeBUSK: You have to restrict it to that,  
12 because then other people that have \$750,000 license --

13 MS. GRAY: No, I can understand the monetary  
14 limit, but I don't think that we can do a restriction on  
15 you can only do property on your church. I mean, you  
16 give them a commercial license. I mean, they may be  
17 telling you the complete honest truth and you can factor  
18 that in, but they don't -- I mean, you can't restrict a  
19 commercial license beyond the \$750,000, I wouldn't  
20 think.

21 MR. TICKLE: So if we can't do that, then I  
22 wouldn't give it to them.

23 MR. CHAIRMAN: I would say do it and let them  
24 challenge it.

25 MS. GRAY: There is no basis that I've ever

1 seen legally to restrict -- for a reason to say a  
2 residential contractor can only do work on Maple Street  
3 or a commercial contractor can only do work on a church  
4 property.

5 MS. DeBUSK: I know when we give a license,  
6 for example, a CE, and if his experience is only  
7 residential, although CE allows him to do commercial,  
8 we've restricted him to residential only.

9 MS. GRAY: How would that appear? On that  
10 type of license, what does that look like on the  
11 license?

12 MS. LAZENBY: Just like a spec --

13 MS. GRAY: Does it say CE residential only?

14 MS. LAZENBY: Yes.

15 MS. GRAY: So it's a specialty license.

16 MS. LAZENBY: It would say restricted to own  
17 work. On CE it would say restricted to residential.

18 MR. TICKLE: So it can be restricted?

19 MS. LAZENBY: It can. It's the spec license  
20 that is restricted. It says restricted to such and such  
21 county.

22 MS. GRAY: I mean, again, I've never seen it.  
23 I just haven't been here. So I've told you all what I  
24 think. You can go ahead.

25 MR. SMITH: We've done that for like Habitat

1 for Humanity and some of those things. Other people --  
2 putting in the spec building --

3 MS. DeBUSK: What is the name?

4 MS. LAZENBY: Netherland Church of Christ.

5 MR. HAYES: Where are they from?

6 MS. LAZENBY: Livingston.

7 MS. DeBUSK: So I'll make a motion that we  
8 approve Netherland Church of Christ to a limit of  
9 \$750,000 based on the testing and to work the church  
10 work -- restricted for the church only.

11 MR. SMITH: Church property.

12 MR. HAYES: Their own church property.

13 MS. DeBUSK: Their own church property.

14 MR. MASON: Second.

15 MR. CHAIRMAN: We have a motion and a second.

16 Is there any discussion on the motion?

17 MR. TICKLE: Should that also be qualified to  
18 their own property and their own church building? They  
19 could go buy a lot across town and put up a Burger King  
20 on that wording.

21 MS. DeBUSK: Okay.

22 MR. SMITH: That's our intent.

23 MS. DeBUSK: I will amend my motion, the  
24 wording of church property --

25 MR. MASON: How about existing church

1 property, restricted to their existing --

2 MR. SMITH: They could maybe move to the  
3 suburbs of Livingston.

4 MS. DeBUSK: The motion that Netherland  
5 Church be allowed to build up to 750,000 on property  
6 owned by the church for purposes of worship activities.  
7 That way we don't have the Burger King thrown in there.

8 MR. HAYES: I don't think they're going to be  
9 building a Burger King.

10 MS. LAZENBY: They're not.

11 MR. CHAIRMAN: But it's like Reese said, that  
12 doesn't preclude them from going across town and buying  
13 a lot and building a church annex.

14 MS. DeBUSK: Well, they can build a church  
15 annex. What's wrong with that? As long as it's for the  
16 church and it's their property and it's for the church.

17 MS. LAZENBY: And codes is on top of it.  
18 When these churches get these licenses, they see it,  
19 they watch it.

20 MR. SMITH: You all come up with the right  
21 wording, but that's our intent, they can only build for  
22 themselves and their congregation.

23 MS. LAZENBY: Just in case they need it for  
24 over 1.2, if he goes back and takes the test, could we  
25 increase it then to what they're wanting? Their

1       financials are very good.

2                   MR. HAYES: Well, Cindi's motion was just for  
3       750,000.

4                   MS. DeBUSK: Right, based on testing. You  
5       should address that when the time comes. We're  
6       speculating right now.

7                   MR. CHAIRMAN: When they ask for an increase,  
8       then one of us needs to review it. Does everybody  
9       understand the motion? Does anybody have any way on the  
10      wording of the motion or are we just recording it?

11                  MR. OWENS: Question. What are we going to  
12      do about the ones that's already licensed?

13                  MR. CHAIRMAN: We haven't done nothing to  
14      them. You're talking about the churches that are  
15      already licensed?

16                  MR. OWENS: If we come up with a different  
17      license for one church, what about the ones that's  
18      already licensed?

19                  MS. GRAY: Something I found in the rule book  
20      that might pertain. It does say on Page 69 of the rule  
21      book, the board reserves the right to depart from the  
22      classification system in appropriate individual cases.  
23      So there may be something more than that. That's just  
24      what I found right now. So I do think in this case you  
25      stated your reasons for departing from the normal

1 commercial and small commercial license. And that is  
2 for this individual case. So as for the other churches,  
3 those are also individual cases I assume that the board  
4 discussed at the time of its issuing the license. I'd  
5 have to go back. I don't know what the reasons were  
6 then, but we know what they are now in this case.

7 MR. CHAIRMAN: I've got a motion and a second  
8 on the floor. Does anyone have any questions? Everyone  
9 understand the motion?

10 (Motion carries).

11 MR. CHAIRMAN: That needs to be added into  
12 the interviewed and weighted applicants' list.

13 Now, we'll move right along behind Tab 5 are  
14 your revisions. You have classes, combinations,  
15 increases, mode changes, and name changes. Go ahead and  
16 ask --

17 MR. MASON: On the name change, No. 27330,  
18 Charles Givens has asked to change his name, business  
19 name, to American Home Builders. He has a record of 15  
20 complaints, one letter of reprimand, four letters of  
21 warning. The last complaint was referred to consumer  
22 affairs for mediation. Another was simply closed by the  
23 board after they decided not to pursue it for whatever  
24 reason, water running under the garage. And I have some  
25 concerns about someone with that kind of a record

1 changing the name to something as innocuous sounding as  
2 American Home Builders because it sounds like this is an  
3 attempt to evade a pretty bad history of performance.  
4 So my inclination is to not grant this for that reason.

5 MR. CHAIRMAN: Is that a motion?

6 MR. MASON: I move not to grant this one for  
7 the reasons I stated.

8 MR. CHAIRMAN: Are there any other changes,  
9 alterations or deletions to the revisions part of the  
10 report? Okay. Now I need a motion to --

11 MS. DeBUSK: He just made a motion.

12 MR. CHAIRMAN: Okay. He made a motion on one  
13 part of it. I need a second for that motion.

14 MS. DeBUSK: Second.

15 MR. CHAIRMAN: Now I need a motion to approve  
16 the full revisions report with the noted change.

17 MR. SMITH: So moved.

18 MR. CHAIRMAN: I've got that motion. Do I  
19 have a second?

20 MR. HAYES: Second.

21 MR. CHAIRMAN: Any questions?

22 (Motion carries.)

23 MR. CHAIRMAN: The next tab is --

24 MS. LAZENBY: Oh, I'm sorry, I thought maybe  
25 I should bring this up. Does it matter that all of

1 those cases were dismissed, all of the complaints on the  
2 one that there was no finding?

3 MR. SMITH: Are you saying the Charles  
4 Givens, the complaints against Charles Givens that Bill  
5 has brought up were all dismissed and, therefore, he  
6 really didn't have any complaints? Is that what you're  
7 telling us now?

8 MS. LAZENBY: He wasn't disciplined.

9 MR. SMITH: But he got a letter of reprimand  
10 and four letters of warning and one sent to -- whether  
11 they were dismissed or not, that's my concern.

12 MS. LAZENBY: It was a condo association.

13 MS. GRAY: Well, you could request -- what I  
14 see right now in front of me is the authority to request  
15 them to come in. So you could request that they come in  
16 at the next meeting and say why they want to change the  
17 name if you are not comfortable with that. Right now  
18 I'm looking to see -- I mean, I'm almost positive you do  
19 have the authority to not grant name change, but what I  
20 do know is you definitely have the authority to call  
21 them in.

22 MR. HAYES: Well, we just agreed to not grant  
23 it. If he wants to appeal it, there is a motion to --

24 MS. LAZENBY: I just wanted to make sure you  
25 all knew the whole background to it.

1 MR. CHAIRMAN: Behind Tab 6 for the home  
2 improvement applicants.

3 MR. OWENS: I had three. And the first one  
4 was 6749 where the license had been suspended after the  
5 fact, but this applicant has a new license and has been  
6 reinstated, and I approved it.

7 MR. CHAIRMAN: Do all three of them --

8 MR. OWENS: Yeah. On 6760, complaint had six  
9 on the record. And they all closed and had been  
10 dismissed, and the current one was filed in 2003 which  
11 had been dismissed. I approved that one also. 6774,  
12 this guy had a robbery and three years suspension. And  
13 he had served all of his time and had been on three  
14 years of probation which had ended in 2006. So I  
15 approved his also.

16 MR. CHAIRMAN: Do you want to make that in  
17 the form of a motion?

18 MR. OWENS: So I'm proposing that we accept  
19 all three of these cases.

20 MR. CHAIRMAN: Do I hear a second?

21 MR. SMITH: Second.

22 MR. CHAIRMAN: Got a motion and a second.

23 Are there any questions on the home improvement  
24 applications?

25 MR. MASON: I want to ask about this 6774.

1 What was the nature of the fraud?

2 MR. OWENS: Fraud.

3 MR. MASON: What details? Do we know any  
4 details of it? What kind of fraud? Was it property  
5 fraud, financial fraud?

6 MR. OWENS: Financial fraud. He had served  
7 three years on probation.

8 MR. MASON: Was it fraud related to being a  
9 contractor?

10 MR. OWENS: I don't think it was. It had  
11 nothing to do with contracting. It was just a felony  
12 that he had earlier.

13 MR. MASON: Have you talked to him  
14 personally?

15 MR. OWENS: No.

16 MS. LAZENBY: Ernest, there is an explanation  
17 in the file, in front of the file.

18 MR. OWENS: Okay. I'm looking for it now.

19 MR. MASON: I'm always troubled by someone  
20 with two convictions related to, you know, financial,  
21 you know a robbery and a fraud, being given a license to  
22 do business with people.

23 MR. SMITH: I don't disagree, but can we hold  
24 a license, though, if the guy has been convicted and  
25 served his time and is exonerated and served on

1 probati on?

2 MS. GRAY: For a felony commi ssi on, yes.

3 MR. SMITH: Forever and forever?

4 MS. GRAY: Yes, you're allowed to. You don't  
5 have to.

6 MR. SMITH: Okay.

7 MR. OWENS: So you're saying that we should  
8 hold his li cense?

9 MR. MASON: I'm not necessarily saying  
10 anything. I'm just troubled by the whole -- his felony  
11 record. Three fel onies, two basi cally deal wi th  
12 fi nanci al di shonesty.

13 MR. OWENS: I guess my posi ti on was that he  
14 had served hi s time and it all had been di smi ssed and he  
15 hasn't had any probl ems si nce.

16 MR. MASON: Does it have any details that  
17 make it a fraud convi cti on at all?

18 MR. SMITH: Bring hi m i n next ti me and see  
19 what hi s character, what hi s deal i s.

20 MR. CHAI RMAN: We don't have a moti on on the  
21 floor yet, do we?

22 MR. HAYES: Yeah, he does have a moti on.

23 MR. CHAI RMAN: Do you wi thdraw your moti on?

24 MR. TICKLE: Well, it seems --

25 MR. HAYES: It's okay. What were you going

1 to say, Ronnie?

2 MR. TICKLE: I was just going to say if there  
3 is a question, we can bring him in for review and talk  
4 to him and find out how he is now and what's going on,  
5 if we wanted to do that. I don't know.

6 MR. OWENS: I guess the last one was five  
7 years ago. So he hadn't had any problems since then.

8 MR. CHAIRMAN: Actually, it was seven years  
9 ago if you count three years of probation.

10 MR. TICKLE: How old was he?

11 MR. OWENS: Oh, well, he was 23 years old.

12 MR. TICKLE: He was 23 years old?

13 MR. OWENS: Yes.

14 MR. TICKLE: How long has it been since that  
15 time?

16 MR. OWENS: It's been seven years. He'll be  
17 30.

18 MR. TICKLE: Okay. That's a pretty good  
19 record. You know, what I'm talking about, the most he  
20 can go --

21 (Simultaneous discussion.)

22 MR. CHAIRMAN: Any other discussion? We have  
23 a motion and a second on the floor to approve the  
24 applicants.

25 (Motion carries.)

1 MR. CHAIRMAN: Next is Tab 7, LLE applicants.

2 MS. DeBUSK: Mr. chairman, I would like to  
3 address those. The first two with the felonies, the  
4 first felony was 1994. A co-worker fired. He was  
5 stealing from this particular guy and the guy just asked  
6 to get his property back. He served time. Released.  
7 No probation. Never been in trouble since. The second  
8 felony in '93, his buddy was in a fight. He tried to  
9 break up the fight. And because he was involved, he was  
10 guilty by association. So he served six months in the  
11 county jail. The worst thing that happened during the  
12 fight was a broken nose. He paid his fine and no  
13 trouble since '93. So I would like to make a motion to  
14 approve the LLE applicants behind Tab 7.

15 MR. SMITH: Second.

16 MR. CHAIRMAN: Motion and second. Any  
17 discussion?

18 (Motion carries.)

19 MS. DeBUSK: Mr. Chairman, I do have another  
20 LLE I would like to address. And the reason I am  
21 bringing this up is we have an issue. When someone  
22 sends in their money for their renewal, the computer  
23 automatically renews them and then we receive the  
24 applicant information in the mail for the renewal. So  
25 the computer either says yes, you're renewed, you paid.

1 Now we get the information and the guy has a felony as  
2 of October the 10th. So when he got his original  
3 license he was fine, but since then he's had a felony  
4 since October 10th. And so the computer has renewed  
5 him, so two issues here. I think we should hold this --  
6 somehow we're going to have to hold this one and bring  
7 him in or talk about the felony. And the second issue  
8 is we need to work on the system renewing applicants  
9 before we get paperwork to see what's going on with  
10 them.

11 MS. GRAY: This is a holdover from the old  
12 system. What was it called? Not a license before but  
13 --

14 MS. LAZENBY: Registration.

15 MS. GRAY: They just registered with the fire  
16 marshall. So I haven't looked into it enough to know  
17 what the details are of changing the system, but I will.  
18 In this particular case I think the best option, and  
19 maybe the only option, is for the board to vote now to  
20 go ahead and with a formal hearing in order to revoke  
21 based on his past or current problems. So instead of me  
22 having to place it on a legal report for the next  
23 meeting, the board could vote now and I could get the  
24 ball rolling on that process.

25 MS. DeBUSK: And we'll do that. And you're

1 going to check into how we can change this process, the  
2 system?

3 MS. GRAY: What I think the preference would  
4 be for it to be like any other license, which is you  
5 apply and then we decide and then they're granted. But  
6 in this case they are automatically being renewed or  
7 granted.

8 MS. DeBUSK: So to change that process, can  
9 we just, as a board agree to change that process and you  
10 can go out and change it, or do we -- it's not a law  
11 change or anything, is it?

12 MS. GRAY: I don't think it's a law change.

13 MS. DeBUSK: Can you --

14 MS. LAZENBY: Can you automatically hold it  
15 because of that?

16 MS. GRAY: I don't think we can hold the  
17 renewal, no.

18 MS. DeBUSK: Why?

19 MS. GRAY: Not any renewal.

20 MR. TICKLE: Can anything be automatically  
21 done by computer? Doesn't the law require the board to  
22 approve it anyway?

23 MS. GRAY: In this case --

24 MS. LAZENBY: Not on electricians.

25 MS. GRAY: I mean, in any case for renewal of

1 current license, somebody who holds a BC, let's say, and  
2 they get in their renewal papers on time, they -- but  
3 they on their renewal say I've been convicted of second  
4 degree murder or something really bad that we would want  
5 to go back and look at, they're already renewed. So I  
6 still would have to go forward, have to do an order to  
7 keep them from renewing. Once you have a right to a  
8 license, you have a right to a renewal as long as it's  
9 submitted --

10 MS. DeBUSK: That does not sound right.

11 MS. GRAY: I mean, it's the law. And I can't  
12 --

13 MS. DeBUSK: Our law says you have the right  
14 to renew no matter what?

15 MS. GRAY: You have a right, when you obtain  
16 a license, you have a right to that license, you have a  
17 right to remain with you as long as you submit within  
18 the renewal period. But, of course, if we get the  
19 system right, then at times like this we would review  
20 them and we could say, I look at a complaint (inaudible  
21 due to someone shuffling papers into microphone.)

22 MS. DeBUSK: Because this guy, he renewed it,  
23 an LLE, and I mean, it's a case of manufacturing meth.  
24 So we're not going to send him into people's homes.

25 MS. GRAY: When was it issued?

1 MS. DeBUSK: The license or --

2 MS. GRAY: The license first issuance. Was  
3 that before he was convicted of everything?

4 MS. DeBUSK: Yeah, 2002 is when he was given  
5 a license. But just because you have a current license,  
6 to me, does not give you the right to keep that license.

7 (Simultaneous discussion.)

8 MS. DeBUSK: But he can work right now today.  
9 That should not be --

10 MS. GRAY: What I can do --

11 MS. DeBUSK: Possession of a firearm.

12 MS. GRAY: We're saving time today by not  
13 having to put it on the next legal report, by me  
14 tomorrow saying, let's go --

15 MS. DeBUSK: So tomorrow you can call this  
16 guy and say you cannot work until you --

17 MS. GRAY: No, but I can tell our litigation  
18 attorney, hey, this is top priority for the board.  
19 Let's get this on the formal hearing docket for the next  
20 --

21 MR. SMITH: What about summary suspension?

22 MS. DeBUSK: This just does not sound right  
23 to me.

24 MS. GRAY: For a summary suspension, we would  
25 have to show what we did for American Shingle, which I

1 can't -- public welfare, safety --

2 (Simultaneous discussion.)

3 MS. GRAY: I'll tell you, it's a very high  
4 standard. I'm not saying that this couldn't apply.

5 MR. SMITH: It's hard to get.

6 MS. GRAY: I'm trying to think how we did it.

7 MS. LAZENBY: We had 33 complaints.

8 MS. GRAY: Okay, we had 33 complaints. The  
9 board decided to hold a special meeting. We had to give  
10 notice. And then we did, I believe, a conference call  
11 and summarily suspended some. This case, I could have  
12 been --

13 MR. SMITH: What is he charged with?

14 MS. LAZENBY: He's charged and he entered a  
15 plea agreement.

16 MR. TICKLE: Then he's convicted.

17 MS. LAZENBY: He is.

18 MS. DeBUSK: He's convicted. And I don't  
19 think we should wait until we get a complaint for  
20 something to happen before, as a board, we take action.  
21 I think we should --

22 MS. GRAY: Well, I think --

23 MS. DeBUSK: -- to protect the welfare of the  
24 citizens of the state.

25 MS. GRAY: Right. What we can do is go

1 forward informal or try to get a summary suspension.  
2 But we have to give notice to do summary suspension. We  
3 can't just do it today.

4 MR. SMITH: No, but we can do a motion to set  
5 the process in motion.

6 MS. GRAY: Yeah, I will today.

7 MR. TICKLE: Because he served time and --

8 MS. GRAY: I think we have to give at least  
9 seven days notice. I'm not sure. I can't remember  
10 exactly the days that we have to --

11 MS. DeBUSK: He is currently four years  
12 suspended to 90 days. So this was October 10th. He  
13 pled October 5th. So we would have 90 days. But then  
14 he's going to be on four years probation. And I just  
15 don't feel comfortable continuing.

16 MR. SMITH: No, the pattern of a meth addict  
17 is one that continues. It just doesn't stop in 90 days.

18 MS. DeBUSK: He wasn't just using. He was  
19 manufacturing it.

20 MR. SMITH: Well, he's an addict.

21 MS. DeBUSK: So would we need to figure out  
22 something today to not allow this man --

23 MR. SMITH: The quickest way is a summary  
24 suspension. It's seven days.

25 MS. GRAY: I would have to give notice, and I

1 believe it's at least seven days.

2 MS. DeBUSK: You're giving notice to whom?

3 MS. GRAY: To him. And then also I believe  
4 we post it on our web site and maybe the secretary of  
5 state.

6 MS. DeBUSK: So I make a motion to start the  
7 process for summary suspension --

8 MR. SMITH: I second it.

9 MS. DeBUSK: -- for License File No. 57345.

10 MR. CHAIRMAN: We have a motion and a second  
11 to begin the process of a summary suspension for License  
12 No. 57345. Are there any questions?

13 (Motion carries.)

14 MR. CHAIRMAN: LLP applicants. Does anyone  
15 have anything else on the LLE's? Okay. I don't see any  
16 LLP's for review. I've got one more before we leave to  
17 review and approve and deny items. I have a file left  
18 over from the November meeting that I inadvertently left  
19 out. It is License No. 52221. They had made a request  
20 for an increase in their monetary limit. And as I  
21 reviewed the file it became apparent that on three  
22 different cases they had actually exceeded their limit.  
23 So I would also like to add this to our deny list that I  
24 would like to deny the revision and set up a complaint  
25 for possibly exceeding their limit.

1 MS. GRAY: Is this the one we had the  
2 informal comments on?

3 MR. CHAIRMAN: Yes.

4 MS. GRAY: Okay. I was going to discuss that  
5 one. Which we already have a proposed settlement which  
6 I was going to bring that up during --

7 MR. CHAIRMAN: I believe this is a different  
8 one than what you're thinking.

9 MS. GRAY: Okay.

10 MS. LAZENBY: Yeah, this is --

11 MS. GRAY: I apologize.

12 MR. CHAIRMAN: I can't make a motion, so I'm  
13 going to ask someone to make a motion that we move  
14 forward with the procedure on that.

15 MR. HAYES: I make a motion we hold that  
16 file.

17 MR. SMITH: Deny it.

18 MR. HAYES: Accept the complaint.

19 MS. GRAY: What was the license number?

20 MR. SMITH: 52221.

21 MR. CHAIRMAN: We have a motion. Do I have a  
22 second?

23 MS. DeBUSK: Second.

24 MR. CHAIRMAN: Any questions?

25 (Motion carries.)

1 MR. CHAIRMAN: Moving on to the legal report  
2 part of our meeting. I turn that over to Jenny Gray,  
3 our counsel.

4 MS. GRAY: We held or the board held a rule-  
5 making hearing in November. And I e-mailed everyone a  
6 copy of that transcript and also just a short summary  
7 showing what the votes were on each rule proposed. And  
8 each rule individually was passed by the board and  
9 approved by the board. Then the next step in that  
10 process is for me to submit everything to the A.G.'s  
11 office for legal review and then to the secretary of  
12 state. I did not know at the time that per statute, a  
13 roll call vote is going to be required just on  
14 everything as a whole. You know, I showed everyone here  
15 in the e-mail, and I can pass this out again. I request  
16 a roll call vote from the board basically reiterating  
17 the approval of all rules that were approved in  
18 November.

19 MS. DeBUSK: Is that e-mail in here in our  
20 book?

21 MS. GRAY: I only have one copy, but I can  
22 show the chairman and he can pass it around. It  
23 basically -- well, we can make copies. It's basically a  
24 technicality. I have it on record in the transcript  
25 showing the approval of each rule. I just did not get

1 the role call vote.

2 MR. CHAIRMAN: Does everyone understand what  
3 Jenny is saying? Basically what we've done when we held  
4 a rulemaking hearing, on each of the new rules that were  
5 proposed to the board, the board approved each and every  
6 rule by a roll call vote, however -- or by a motion,  
7 however --

8 MS. GRAY: I have to certify on this sheet  
9 that's submitted to the secretary of state that there  
10 was a roll call vote so that I can say --

11 MR. CHAIRMAN: A roll call vote?

12 MS. GRAY: I approve all of these rules.

13 MR. CHAIRMAN: Well, you've got it there.

14 MS. GRAY: Well, I have it in individual  
15 motions, second, and final approval for each individual.  
16 What I need is --

17 MR. CHAIRMAN: Did we not do a roll call vote  
18 on every motion?

19 MS. GRAY: Correct, we did not do a roll call  
20 vote.

21 MR. CHAIRMAN: I thought we did a roll call  
22 vote. Okay. The whole thing was, is we just did a  
23 motion and second and then a voice aye or yay or nay.

24 MS. GRAY: And I summarized it.

25 MR. CHAIRMAN: So we need to have a motion, I

1 guess, is that what you want?

2 MS. GRAY: When you do a motion and then  
3 someone seconds it, I'm not sure of the process of the  
4 role call. But basically what I want is approval by the  
5 board that each individual board member --

6 MR. HAYES: Like Gary Mayfield said yes, and  
7 then Bill --

8 MR. CHAIRMAN: I realize what a roll call is,  
9 but we need a motion worded properly for this.

10 MS. GRAY: To approve the rules that were  
11 proposed and reviewed and approved at the November  
12 meeting.

13 MR. CHAIRMAN: Approved by a roll call vote.

14 MS. GRAY: Correct.

15 MR. MASON: What if you weren't here?

16 MR. CHAIRMAN: Then you can't vote.

17 MR. MASON: It appears that somebody voted no  
18 on some of these, but not on all.

19 MS. GRAY: Yeah, that is in the summary, but  
20 they were all -- there was not enough.

21 MR. MASON: I understand that, but you have a  
22 separate issue on each of these different rules as far  
23 as the role call is concerned. What you're asking for  
24 is an overall approval of the whole thing?

25 MS. GRAY: Right, or we can do a roll call on

1 each individual rule.

2 MR. MASON: Well, I won't be able to vote  
3 anyway, but just...

4 (Simultaneous discussion.)

5 MS. DeBUSK: We have the transcript. Was it  
6 the November meeting we did this?

7 MS. GRAY: Right.

8 (Simultaneous discussion.)

9 MR. CHAIRMAN: This was the rulemaking  
10 hearing. The only issue I have with this, Jenny, is  
11 that we did not have a quorum of members that were  
12 present at the last meeting to be able to hold a vote  
13 right now.

14 MS. LAZENBY: Did they approve it as a whole?

15 MS. GRAY: I apologize again for missing the  
16 technicality.

17 MR. TICKLE: Jerry was here.

18 MR. CHAIRMAN: We've got one, two, three,  
19 four.

20 MR. TICKLE: Can we do it now as the business  
21 of today's board if we move to approve --

22 MS. GRAY: I don't think members that were  
23 not at the rulemaking hearing can participate. I'm not  
24 sure if we actually need every person, but right now I'm  
25 thinking we do.

1 (Simul taneous di scussi on.)

2 MR. TICKLE: I don't think you can do it  
3 without them being here. They need to be here. And I'm  
4 not so sure as to what Bill just said, that we might  
5 ought to -- I voted no to something.

6 MS. GRAY: You di d.

7 MR. SMITH: Sounds like you had a roll call  
8 vote if you know he voted no.

9 MR. CHAIRMAN: Let me ask you this: I know  
10 we had a roll call vote with the presence of the  
11 meeting.

12 MR. TICKLE: But we di dn' t do indi vi dual  
13 names.

14 MR. CHAIRMAN: Did that have to be separate  
15 and a compl etely di fferent part from the rul emaki ng  
16 heari ng?

17 MS. GRAY: From what I understand, correct.

18 MR. CHAIRMAN: What makes you understand  
19 that?

20 MS. GRAY: Okay, I don't have it in front of  
21 me, but on the document called rul emaki ng heari ng rul es  
22 that you file with the secretary of state, if you do not  
23 comply with that, they are automaticall y void upon  
24 fil ing. So if I'm wrong, then we have to go through the  
25 whol e rul emaki ng process agai n.

1 MS. DeBUSK: It looks like we had a motion of  
2 each individual rule.

3 MS. GRAY: That's not a roll call.

4 MS. DeBUSK: Because we didn't do the roll  
5 call.

6 MR. TICKLE: So there is no way to just say  
7 that you can go just through there and say, well, Ronnie  
8 said no, but Mark --

9 MS. GRAY: Well, I did. That's why I  
10 summarized it.

11 MR. TICKLE: -- said yes. And then that's  
12 the roll call, in our minutes who said yes and who said  
13 no. I know what you're saying. It sounds to me like a  
14 real technicality that we can get everything blown up.

15 MS. LAZENBY: But at the same time we had a  
16 rulemaking years ago and we didn't have a quorum.

17 MS. GRAY: That document was nonexistent.  
18 The document that I missed, the technicality that I  
19 missed, has not always been there.

20 MS. LAZENBY: Or wasn't in effect two years  
21 ago.

22 MS. GRAY: No, the secretary of state  
23 document did not look like that. It did not say heard  
24 -- I think it was Title IV, Section 5, you have to --

25 MR. MASON: I am not sure that I agree with

1 your legal interpretation that we have to go back and  
2 get whoever happened to be at a meeting to vote today.  
3 It seems to me that that would not meet any kind of a  
4 legal standard. But I think Carolyn raises an issue  
5 that could resolve the whole thing, is that if someone  
6 made a motion today to ratify the rulemaking as  
7 performed by the board at previous meetings, and we have  
8 a roll call vote on that, then that would meet the legal  
9 standard, and that everyone here could vote, if they  
10 feel comfortable doing that, including Reese or me.

11 But I don't think that the idea that, well,  
12 we didn't do a roll call vote so we have to reconstitute  
13 the board as it existed at that time, and there could be  
14 one board member that is not a board member anymore,  
15 then it's just not -- and I don't think a board can  
16 operate that way legally.

17 MR. HAYES: You can't vote on something you  
18 don't know what you're voting on. We'd have to go  
19 through the whole process again. You might disagree  
20 with some of the stuff that was brought forward.

21 MR. MASON: Well, I have read the rules, and  
22 I can certainly vote on whether I ratified them or not.

23 MS. GRAY: Well, what I'm having a problem  
24 with is in Title IV, Chapter 5, Section 222. In  
25 addition to other rulemaking requirements imposed by

1 law, each agency shall maintain the following written  
2 records on each rule adopted by such agency. A roll  
3 call vote on adoption by aye or no of each person  
4 voting. So that -- therein lies my problem. I need a  
5 roll call vote. Because I know who voted no. I have  
6 that summary from the transcript, but everyone else just  
7 did a simple aye.

8 MR. MASON: Well then, you can reconstitute  
9 the roll call.

10 MS. GRAY: But I don't have everybody here.  
11 I don't have each person voting here.

12 MR. MASON: No, but you know who voted how.  
13 You know who was at the meeting and you know who voted  
14 no. You can actually put the names with it. If  
15 everybody voted yes except somebody voted no, and you  
16 know who the no was, you can --

17 MS. GRAY: There could be a motion, I  
18 suppose, whether the board wants to do it today or wait  
19 until March when everybody is here.

20 MR. MASON: Will the rules not be in effect  
21 until March if we do that?

22 MS. GRAY: Correct. The rules will not be in  
23 effect until later than March just because the A.G.  
24 process could take a month or two.

25 MS. DeBUSK: There is one part we did a roll

1 call. We had a roll call.

2 MS. GRAY: I would either need -- I mean, I  
3 either needed a roll call vote on each individual rule  
4 or a roll call vote at the very end of the hearing  
5 saying, you know, we've done this --

6 MR. CHAIRMAN: Well, the way I've read it,  
7 what you've read, it's on each individual rule. But in  
8 the absence of that, we can't be guaranteed that come  
9 our March meeting we'll have all of the members present  
10 then. So at some point in time we, as a board, are  
11 going to have to work out a way that we get these rules  
12 ratified properly with a roll call vote.

13 MR. MASON: Here's my suggestion on it. I  
14 suggest that Jenny, since she knows how everybody voted,  
15 prepare a document that says how every board member  
16 present voted on every one of these votes. And that she  
17 present it to this board for approval as a true and  
18 accurate record of the vote on those rules. And then  
19 see if that won't be accepted. I move that.

20 MR. CHAIRMAN: I have a motion. Do I have a  
21 second?

22 MS. DeBUSK: Second.

23 MR. CHAIRMAN: A second. Is there any  
24 discussion on the motion?

25 MS. DeBUSK: The discussion, I don't know if

1 this is for the motion, but there are two that we did a  
2 roll call on so you can take those out. You don't have  
3 to worry about those because we did a roll call vote on  
4 them.

5 MR. CHAIRMAN: All in favor of the motion say  
6 aye. All opposed likewise. So moved.

7 (Motion carries.)

8 MR. HAYES: Did you all do a roll call on --

9 MS. DeBUSK: Well, on two we did. It's in  
10 the transcript. It was the masonry, the 100,000 or more  
11 being listed. We did an individual roll call on that  
12 one. And then the one right after that we did an  
13 individual roll call. And I know the reason I did  
14 individual roll call is because when I said aye, I  
15 didn't hear anyone speak up. One person, so I had one  
16 aye vote. So then I said we're doing a roll call, and  
17 then it passed people or whatever. I mean, it's in the  
18 record.

19 MR. TICKLE: I voted no.

20 MS. DeBUSK: You did. It's in here.

21 MR. TICKLE: I'm making myself clear again.

22 MS. DeBUSK: It's in here. You voted no.  
23 But we did a roll call on two. I don't know how many  
24 we're speaking about. What's on that e-mail, however  
25 many rules you want to clarify. There are six of them.

1 So two we did an individual roll call. So you can take  
2 those two off the table and reconstruct your four.

3 MS. GRAY: I'm looking at what part of the  
4 transcript...

5 MS. DeBUSK: Mr. Tickle voted yes with  
6 reservation on one of them.

7 MS. LAZENBY: That's after explaining to him  
8 that he couldn't change the --

9 (Simultaneous discussion.)

10 MS. GRAY: Yeah, I left it off here. I must  
11 have left it off.

12 MS. DeBUSK: And then there is another one we  
13 did right here.

14 MR. CHAIRMAN: Well, we've decided how we're  
15 going to dispense of this. Let's move on.

16 MS. GRAY: Adequate more details on the list  
17 and the summary. That's all that I was able to derive  
18 the transcript.

19 MR. MASON: I'll tell you what I will  
20 recommend, Mr. Chairman, that obviously in the future  
21 when there's rule votes, they're all going to be roll  
22 calls because now we know. I would think that any time  
23 that there is a division, there probably ought to be  
24 one. But, you know, there is a no on record or -- you  
25 know, if we're going to vote on the minutes, you know,

1 everybody says yes on that. We had one earlier today  
2 where there were a couple of us that had reservations,  
3 might have voted no. But we have a record now that  
4 shows that it carried by voice vote. It's probably best  
5 to have a roll call if there is a division on a subject  
6 at issue, just as a matter of the way you run the board  
7 meeting.

8 MS. LAZENBY: I think we usually do.

9 MR. CHAIRMAN: We do, yeah.

10 MR. TICKLE: Anybody can call for one at any  
11 time.

12 MR. CHAIRMAN: Is counsel ready to proceed  
13 with the legal report?

14 MS. GRAY: Yes. The residential sub-  
15 committee, commercial subcommittee did review the legal  
16 report in November but was unable to ratify by the board  
17 as a loss of a quorum. So at this time I would just  
18 like to go over the changes that were made to the  
19 residential portion of the legal report. Starting on  
20 No. 31, which is on Page 16 of your report. Was  
21 (inaudible) changed from a recommendation of letter of  
22 warning to a \$2,000 civil penalty, authorization of  
23 formal hearing. Number 34, which is on Page 18, was  
24 changed from the recommended \$1,000 civil penalty to a  
25 \$5,000 civil penalty with authorization for a formal

1 hearing. Number 36 was changed from a recommendation  
2 letter of warning to a \$5,000 civil penalty with  
3 authorization for a formal hearing. Number 43 -- strike  
4 that. Forty-three was fine, recommendation of letter of  
5 warning. Number 44 was changed from a recommended \$250  
6 civil penalty to a \$500 civil penalty with authorization  
7 of a formal hearing.

8 Keep going now to the commercial portion  
9 which is on Page 27. I'm sorry, the last item on the  
10 residential report, No. 49, I believe part of our report  
11 was just cut off in printing and that, just for the  
12 record, the recommendation was to be closed. And I  
13 don't think there is any (inaudible) from the  
14 subcommittee. It just did not get printed on there.

15 Number 1 on the commercial portion of the  
16 legal report, Mark had reviewed this and had asked for  
17 more information. That case is still in investigations  
18 right now. Item No. 2, it was a request to settle the  
19 case from a \$5,000 civil penalty, they requested to  
20 settle it for a \$2,000 civil penalty. Mark recommended  
21 that that be denied and that the initial \$5,000 civil  
22 penalty would be reinstated or (inaudible). And No. 4,  
23 it was changed from a \$1500 civil penalty to a \$1,000  
24 civil penalty with authorization for a formal hearing.

25 That is all for the legal report, but we also

1 conducted an informal conference, I and Mr. Whittington.  
2 And this respondent has I believe five separate  
3 complaints. Three were over the limit and I believe two  
4 were workmanship issues. And the recommended settlement  
5 (inaudible) we go through formal conference was payment  
6 of a \$2500 civil penalty and three years of probation.  
7 And I told Mr. Whittington the way I draft these consent  
8 orders for probation, if they agree to it, and what  
9 happens is if another complaint is filed, they will --  
10 the board reserves the right to discipline them or  
11 revoke their license without a formal hearing. And they  
12 agree to that, which is why we're allowed to do that.  
13 So in this case, again, the recommended settlement was  
14 the \$2500 civil penalty and three years of probation.  
15 And that happened in November. So I just wanted to get  
16 board approval on that. I don't know if you all want to  
17 discuss that now or I can go ahead and begin with the  
18 report.

19 MR. CHAIRMAN: I want to go to the January  
20 report and then we'll adopt the legal report in whole.

21 MS. GRAY: For the January residential  
22 portion annual report, No. 4 was marked for discussion  
23 and the recommendation of the subcommittee was to close  
24 that case. For No. 19, it was marked for discussion and  
25 the subcommittee recommended to close the case. Going

1 to No. 60, the subcommittee changed -- the \$6,000  
2 recommended civil penalty was changed to \$500. And No.  
3 61 was changed from the recommended \$500 civil penalty  
4 to a letter of warning. And No. 66 -- it's kind of hard  
5 to see this. It's on Page 28. Number 66, it was  
6 changed from the recommended close and flag back to what  
7 was previously authorized which was \$1,000 civil penalty  
8 and authorization for a formal hearing.

9 For the commercial portion of the report, the  
10 only change was made to Item No. 3, and that was marked  
11 for discussion and it was recommended a \$5,000 civil  
12 penalty and authorization for a formal hearing. And  
13 that's all I have for the legal report.

14 MR. SMITH: Move for approval of the November  
15 and January legal report.

16 MR. CHAIRMAN: Motion and a second to approve  
17 the November and January legal report.

18 MR. HAYES: Second.

19 MR. CHAIRMAN: Any questions?

20 (Motion carries.)

21 MS. GRAY: Mr. Chairman, I apologize, I have  
22 one other matter. This has been passed out to the board  
23 members, and it involves the formal hearing settlement  
24 proposals. We had two hearings set for tomorrow, and  
25 these are proposed settlements. If each member wants to

1 review that now and we can vote on whether you all  
2 approve of that.

3 MR. CHAIRMAN: Does everyone understand what  
4 is taking place there? Are there any questions? Do I  
5 have a motion?

6 MR. TICKLE: I move for approval for the  
7 settlement of these two scheduled formal hearings.

8 MR. HAYES: Second.

9 MR. CHAIRMAN: I have a motion and a second  
10 to approve the two formal hearing settlements. Any  
11 questions?

12 (Motion carries.)

13 MR. CHAIRMAN: That concludes our legal  
14 report.

15 MS. GRAY: The informal portion, I was just  
16 (inaudible) conference was not part of my legal report.  
17 I was just summarizing what happened in November at the  
18 informal conference and what it involved.

19 MR. CHAIRMAN: Is that not part of your legal  
20 report?

21 MS. GRAY: Well, I mean it's not in front of  
22 you all. It's not -- those were just my notes from the  
23 meeting that we had.

24 MS. LAZENBY: So it's not typed up.

25 MS. GRAY: Correct.

1 MR. CHAIRMAN: I understand that, but is it  
2 not part of the record, as you say, during the legal  
3 report.

4 MS. GRAY: I suppose it could be considered  
5 that.

6 MR. CHAIRMAN: Okay. We'll move along.  
7 Discussion of topics. Carolyn, if you want to discuss  
8 what is behind Tab No. 11 for us.

9 MS. LAZENBY: Yes. The state of Georgia has  
10 requested that if we would consider reciprocity with  
11 their state. We had sent them a letter a couple of  
12 times in the last -- I guess three years ago we started  
13 sending them a letter when they started their board  
14 again. And I think the association is behind it as  
15 well. And they want reciprocity with the state of  
16 Georgia. It would be the similar reciprocity that we  
17 have with Mississippi, Louisiana, North Carolina, South  
18 Carolina. And it's just the trade exam.

19 MR. SMITH: Do they have the same examination  
20 company that we do?

21 MS. LAZENBY: They do.

22 MR. SMITH: So it's the same or similar exam?

23 MS. LAZENBY: It's similar.

24 MR. SMITH: Do they have any financial  
25 responsibility forms in the state of Georgia?

1 MS. LAZENBY: I don't know, but we don't  
2 reciprocate that.

3 MR. SMITH: They still have to have --

4 MS. LAZENBY: Yes.

5 MR. TICKLE: And they have to take our B law?

6 MS. LAZENBY: Yes, this waives only the trade  
7 exam with us. If they have a license in Georgia, if  
8 they're currently (inaudible) licensed, then we would  
9 not require them to take the Tennessee trade exam.

10 MR. TICKLE: And that's vice versa?

11 MR. OWENS: If we went into Georgia?

12 MS. LAZENBY: Yes, if you go to Georgia.

13 MR. OWENS: I know at one time if you went  
14 into Georgia, you couldn't joint venture or -- I mean if  
15 you had an out-of-state license, you couldn't do a  
16 project in Georgia unless you joint ventured with a  
17 Georgia contractor no matter how small it was.

18 MS. LAZENBY: I don't know anything about  
19 that, but we're just talking about trade exam on --

20 MR. OWENS: I understand. I was wondering  
21 what was going to happen to that. Does that policy  
22 still exist or what?

23 MS. LAZENBY: I don't know.

24 MR. OWENS: Because I was (inaudible) once  
25 and I couldn't do anything in Georgia unless I joint

1 ventured with a Georgia contractor.

2 MS. LAZENBY: You mean a Georgia licensed  
3 contractor?

4 MR. OWENS: Yes, yes.

5 MS. LAZENBY: Well, that's sort of like it  
6 would be here. You have -- both people have got a  
7 Tennessee contractor's license.

8 MR. OWENS: But Georgia contractors could  
9 come into Memphis and do -- or into Tennessee and do  
10 work and wouldn't have to joint venture with anybody.

11 MS. LAZENBY: Oh, you're saying they had to  
12 joint venture?

13 MR. OWENS: If I went to Georgia I had.

14 MR. TICKLE: You wouldn't want have to now.  
15 If we approve this --

16 (Simultaneous discussion.)

17 MS. LAZENBY: They have continuing education.

18 MR. TICKLE: The law says no more than eight  
19 hours of continuing education to renew. And we allow  
20 zero. It's a lot more than eight.

21 MR. CHAIRMAN: That's always been a pet peeve  
22 of mine. I think we need in the State of Tennessee, but  
23 that's a different matter. But do I have a motion as to  
24 whether or not to accept the state of Georgia's offer to  
25 reciprocate trade portions of our licenses?

1 MR. TICKLE: I make a motion that we  
2 reciprocate with the state of Georgia.

3 MR. CHAIRMAN: We have a motion. Is there a  
4 second?

5 MS. DeBUSK: Second.

6 MR. CHAIRMAN: I have a motion and a second.  
7 Are there any questions or discussions? Does everyone  
8 understand what we're about to do?

9 (Motion carries.)

10 MR. CHAIRMAN: Carolyn, before we move on to  
11 the next item, I have a note on this, are we headed  
12 toward a national reciprocal agreement?

13 MS. LAZENBY: We're working on it. We do  
14 have a national exam, a national commercial exam, and  
15 they are in the process of drafting up a national  
16 residential exam because several states have asked for  
17 that. But the national exam, the states have not --  
18 they still have to vote to approve it. So we still have  
19 not got approval from the states like California and  
20 Oregon and things like that.

21 MR. MASON: How many states have licensing?

22 MS. LAZENBY: All I've got is 26 -- or 36.

23 MR. CHAIRMAN: Where are we on continuing  
24 education? Is anything being brought up about --

25 MS. LAZENBY: Not that we are.

1 MR. \_\_\_\_\_ : We're going to have  
2 legislation --

3 MR. CHAIRMAN: Is that for all --

4 MR. \_\_\_\_\_: All I'm looking at is  
5 commercial contracting, commercial interest (inaudible).

6 MR. CHAIRMAN: Next item on the agenda is the  
7 masonry bid.

8 MS. LAZENBY: Okay. I thought I had a  
9 summary in here but I may not. Okay, here it is. There  
10 was a bid -- let me get my ducks in a row. I'm not  
11 going to -- well, I think the parties have been  
12 identified, but anyway, a contract was let for a bid. I  
13 believe there were four bidders altogether. Three --  
14 but two of the bidders listed their masonry contractors  
15 on the outside of the bid envelope. One did not, but he  
16 produced evidence showing that it was less than a  
17 100,000. And then another one did not list it and his  
18 was over 100,000. And he was the low bidder, but he  
19 failed to list the masonry on the outside of the bid  
20 envelope. So since his masonry portion was over  
21 100,000, that required his bid to be thrown out, be  
22 rejected. And the owner requested to go ahead and award  
23 to the second low bidder whose masonry portion was less  
24 than 100,000. And I did have Mark and Jenny look at  
25 this. We gave them our informal opinion that it was our

1 opinion that, you know, they could award it to the  
2 second low bidder.

3 But the first low bidder felt it was unfair  
4 because he did not know about the new law. So his  
5 argument is since he was not notified of the new law,  
6 that he should not be required to follow it. And he  
7 felt like the state -- well, the owner had not give him  
8 ample notification that he was required to do this. But  
9 it was in the bid document that they were to follow all  
10 the state contractor licensing laws. It just did not  
11 specifically say you had to list masonry.

12 MR. SMITH: I didn't know they changed the  
13 speed limit down to 30 on the street, but I got  
14 (inaudible) anyway.

15 MS. LAZENBY: So I guess what I need to know,  
16 I guess a need a board opinion if you feel it is  
17 acceptable to go ahead and award the bid to the second  
18 low bidder or the first low bidder.

19 MR. OWENS: I have a question. If it's less  
20 than \$100,000, it doesn't have to be listed anywhere on  
21 that envelope?

22 MS. LAZENBY: No.

23 MR. TICKLE: (Inaudible.) Contractors all  
24 thought we bid on our ability on the masonry. And  
25 everybody is not being notified. I have not received a

1 letter in my office, an e-mail or anything, personally,  
2 that I am no longer able to do anything because we now  
3 have to take a masonry exam. Now, I'm willing to bet  
4 that the two gentlemen to the right of me and the  
5 gentleman down there, I bet none of these three received  
6 any letters saying that we have to have it. The only  
7 reason we know we have to have it is because we're on  
8 this board. Now, that's what I have to say.

9 MR. CHAIRMAN: I know it is posted on our  
10 contractor licensing board web site. Anyone can go on  
11 there and verify a license. The masonry law and exam  
12 requirements are posted; however, having said that, I do  
13 agree that a lot of people are not internet savvy. They  
14 do not find the internet useful. They do not get  
15 e-mails. Probably still a lot of people in this state  
16 that don't even get a fax. They are also the very same  
17 people that probably won't read a letter from the state.  
18 So it would cost thousands of dollars to e-mail one law  
19 change out to each and every individual holder of a  
20 license. When, as I said, when strict rules, licensing  
21 rules, any type of requirement that we are to abide by  
22 as a law is passed or changed, it's up to us as law-  
23 abiding citizens to find out that rule, unfortunately.  
24 It is not up to the agency to notify us of that rule  
25 change. And as much as I agree with what you just said,

1 I have to take the position that in the better interest  
2 of the state, I don't feel as though we can mail out a  
3 law change notice to every contractor in the state.

4 MR. HAYES: Have they been holding this job?

5 MS. LAZENBY: Yes.

6 MR. HAYES: Just out of curiosity, what is  
7 the dollar difference between bidder one and two? How  
8 much is that going to cost the state?

9 MS. LAZENBY: Like twenty thousand.

10 MS. GRAY: I thought it was three hundred.

11 MR. HAYES: Three hundred thousand?

12 MS. GRAY: Let me look. We're trying to keep  
13 this anonymous.

14 MS. LAZENBY: It was 140,000.

15 MR. MASON: And the masonry difference is  
16 19,000.

17 MR. \_\_\_\_\_: Mr. Chairman, this is one of the  
18 biggest fiascos that I've seen in my 30 years in the  
19 association and business. I have had more calls from  
20 this not only from contractors in the state of Tennessee  
21 but out of state, are not aware of a law change here in  
22 Tennessee. The American Institute of Architects is  
23 unaware that the law changed. I get calls. They're the  
24 ones drafting up the documents that were put out to bid.  
25 The state architects were not aware of the law change

1 until last summer. I haven't asked Carolyn, but I know  
2 that from my membership, we represent primary commercial  
3 contractors, and my general contractors, I've had one of  
4 them take the test and not the masonry contractors.

5 But I was in the Tri-cities area last year.  
6 They wanted me to, in that area, typically,  
7 historically, the price that they got from a masonry,  
8 from all of the masons, was way low. That typically the  
9 general contractor buys materials, and when they solicit  
10 bids from the masonry contractors, all they get is a,  
11 you know, put in place for a price. And so mode of  
12 operation for all masonry contractors had to change.  
13 They also didn't realize that they were going to have to  
14 have this license. You know, they never had a financial  
15 statement before because they haven't had to provide it.  
16 So this makes a huge impact in the commercial and  
17 residential construction in Tennessee. We oppose it.  
18 And as I recall, the house sponsor, he didn't care, he  
19 was pushing it anyway. And on one job in Cookeville,  
20 Tennessee, and it's impacted the whole State of  
21 Tennessee.

22 MR. HAYES: I'd like to ask Mr. Frank Harris  
23 has the membership of the home builders of the State of  
24 Tennessee been notified that if you are a general  
25 contractor, that you have to have a license over

1 \$100,000?

2 MR. \_\_\_\_\_ : They don't have to. They can.  
3 That's what I advised my members. Just last week one of  
4 the larger contractors up there didn't -- got to the  
5 January 1 deadline and he had been putting his own name  
6 on the bidding form prior to January 1. As of January  
7 1, he couldn't do it. Couldn't do it anymore. He had  
8 not taken the exam.

9 MS. LAZENBY: It's hard to get the word out.  
10 We have sent like a group e-mail, but contractors don't  
11 know that you have to sign up for the e-mails. So we  
12 did an automated e-mail and I thought we had sent it to  
13 --

14 MR. CHAIRMAN: Is it actually the board's  
15 responsibility to notify? Shouldn't it be the  
16 legislature and the state government that passes the  
17 law, shouldn't it be their responsibility? Shouldn't it  
18 be the representative from down in Middle Tennessee's  
19 responsibility to take out a TBA across the state. You  
20 know, there were so many people against that.

21 MR. HAYES: Last July (inaudible.)

22 MR. MASON: And he's right. It's probably  
23 good to notify people, but there are a lot of rule  
24 changes that there is just a list of six of them here.  
25 And is this board responsible for sending out a notice

1 to every contractor in the state every time there is a  
2 rule change, even a big one like this? Well, I don't  
3 think so.

4 MR. HAYES: Wasn't that a law, or a rule,  
5 that they put out a directory?

6 MS. LAZENBY: Yes, and then they changed it  
7 to make the -- or directory (inaudible). We are  
8 attempting to notify them because we thought it was such  
9 an important bill affecting the industry. And I think  
10 we just got the envelopes, what, about two weeks ago.  
11 We did order the envelopes to send out the notice.

12 MR. TICKLE: What is the possibility of  
13 getting that changed?

14 MR. HAYES: Is there a possibility of getting  
15 it changed a year after it passed? I have done that one  
16 time in my career, and I don't want to do it again. And  
17 it was over the masonry law. There was a masonry law  
18 that passed in 1988. And we went back in '89, and we  
19 were back to the senate sponsor at the time, and it was  
20 not pleasant.

21 MR. TICKLE: I know the sponsor was not real  
22 pleased with --

23 MR. \_\_\_\_\_: As we discussed earlier, if you  
24 have a general contractor that goes and gets the LMC on  
25 his license, he completely circumvents what the sponsor

1 wanted to have done anyway because he now can go out and  
2 shop the job. So in effect, he's created this little  
3 cottage industry of GC's now to go out and bid masonry  
4 work. It would take a real effort, and I say by this  
5 board, because we tried and it didn't work. You got a  
6 senate sponsor that was a Republican last year and a  
7 house sponsor that was a Democrat, and those type of  
8 marriages last year, that's about the only things that  
9 passed in the last session. You're going to have the  
10 same thing come up this year. The bill has already been  
11 introduced to change (inaudible.) You'll have exactly  
12 the same problem because it's been on the book for a  
13 year and back on the books.

14 MR. \_\_\_\_\_: Plus you're going to have the  
15 house sponsor last year not be very happy about it and  
16 fight it.

17 MR. MASON: The question before the board now  
18 is whether they should take the second bid. My opinion  
19 is, and what I've heard, is that the law pretty well  
20 requires that. And, hopefully, when the state lays out  
21 150,000 extra dollars, that the governor's legislative  
22 program will be adjusted. So my motion would be that  
23 they be -- I don't know how you want to word it --  
24 authorized or to accept the state's low bid because  
25 that's what the law seems to require.

1 MR. CHAIRMAN: I have a motion. Do I have a  
2 second?

3 MR. HAYES: Second.

4 THE COURT: Any discussion?

5 (Motion carries.)

6 MS. DeBUSK: You might do a roll call since  
7 you have some opposition.

8 MR. CHAIRMAN: So moved.

9 MS. DeBUSK: Is this when we need to do a  
10 roll call because we had some opposition?

11 MR. CHAIRMAN: I'm going to go ahead as  
12 chairman call a roll call vote starting with my left.  
13 Will you please state your name and your vote.

14 MR. TICKLE: Ronnie Tickle, no.

15 MR. SMITH: Reese Smith, no.

16 MR. CHAIRMAN: Keith Whittington -- I can't  
17 vote, can I?

18 MS. DeBUSK: You can break a tie. Cindi  
19 DeBusk, yes, because that's what the law says we have to  
20 do.

21 MR. OWENS: Ernest Owens, no.

22 MR. MASON: Bill Mason, yes.

23 MR. HAYES: Jerry Hayes, yes.

24 MR. CHAIRMAN: We have a tie, three to three.  
25 As chairman I vote no to break the tie.

1 MS. DeBUSK: But as a board we cannot vote to  
2 break our own law. I know it just happened, but we  
3 cannot vote to break our law.

4 MS. GRAY: This is a board opinion. And I  
5 would caution you. We could have this case in a  
6 complaint next week. And in any case, you're just  
7 giving your opinion. And the owner of this project is  
8 going to award, you know, regardless of your opinion or  
9 maybe not; I'm not sure. But you might consider that.

10 MS. DeBUSK: So we're giving our opinion to  
11 someone to go break the law?

12 MS. GRAY: When we have a formal complaint it  
13 might be.

14 MS. LAZENBY: At the same time I need to know  
15 how to answer. Because I usually answer these --

16 (Simultaneous discussion.)

17 MS. DeBUSK: This is going to come back on  
18 us.

19 MR. MASON: Since that motion failed then I  
20 would move that the board decline to make a  
21 recommendation to this request, and to invite the state  
22 to make their own interpretation of the law.

23 MR. CHAIRMAN: I have a motion and I have a  
24 second. Everyone understand the motion?

25 MS. DeBUSK: We're not going to make an

1 opi ni on?

2 MR. MASON: And invite them to make their own  
3 i nterpretati on.

4 MR. CHAIRMAN: Everyone understand the  
5 moti on? Starting with my left, we'll do a roll call  
6 vote again on this. State your name and your answer.

7 MR. TICKLE: Ronnie Tickle, and I'd like the  
8 state to make their own recommendati on.

9 MR. CHAIRMAN: Just yay or nay.

10 MR. TICKLE: Yay.

11 MR. SMITH: Reese Smith, yes.

12 MS. DeBUSK: Cindi DeBusk, yes.

13 MR. OWENS: Ernest Owens, yes.

14 MR. MASON: Bill Mason, yes.

15 MR. HAYES: Jerry Hayes, yes.

16 (Moti on carries.)

17 MR. CHAIRMAN: Moti on carried. Next item on  
18 the agenda, di sci pl i nary acti on.

19 MS. LAZENBY: Jenny, is this yours?

20 MR. CHAIRMAN: Thi rteen?

21 MS. LAZENBY: Yes.

22 MS. GRAY: Yes, it is. This is just an  
23 anonymous fact situati on requesting a board opi ni on of  
24 whether they would take di sci pl i nary acti on. I can read  
25 it out loud or you all are welcome to read it.

1 MR. HAYES: It's a residential subcommittee?

2 MS. GRAY: I did not give it to them. It's  
3 not a complaint. (Inaudible)

4 MR. CHAIRMAN: Has everybody had time to look  
5 it over? Everybody understand our contractor's laws as  
6 I have read them. Anybody have an opinion on them?

7 MR. HAYES: It looks like the owner knew what  
8 was going on when he started. The general contractor  
9 (inaudible). He became a supervisor. Didn't get paid  
10 \$100,000 as a fee and he was going to get a bonus when  
11 it was all said and done, more or less (inaudible.)

12 MR. SMITH: He became an employee of the  
13 owner, the owner and GC. It could be read that way.

14 MR. MASON: Do we know that the owner did ask  
15 to talk to our attorney? He says he did.

16 MS. GRAY: Yeah, he --

17 MR. MASON: Talk to his attorney?

18 MS. GRAY: I mean, yeah, I think there is no  
19 question that I was aware of what was going on.

20 MR. MASON: He says he talked to an attorney.  
21 And in his resuscitation when he, again, said because he  
22 did talk to the attorney. You do know that he talked to  
23 the attorney?

24 MS. GRAY: I mean, their representative.  
25 Both parties are involved in litigation.

1 MS. LAZENBY: The law says, you know, anybody  
2 that contacts the owner is a prime. So regardless, the  
3 owner couldn't act as his own --

4 MR. SMITH: The owner happens to be a  
5 licensed contractor, though, right?

6 MS. GRAY: No. I mean, in past cases, from  
7 what I've seen the board, the way they interpret this  
8 situation, that this would have been a way to circumvent  
9 your laws when he doesn't have the monetary.

10 MR. SMITH: Right.

11 MS. GRAY: And really the question I think in  
12 this case is -- you know, and I told her what I thought,  
13 which is you all usually do discipline based on these  
14 type of activities. And it could be possible to  
15 consider it unlicensed contracting because he went over  
16 his monetary limitation.

17 MR. CHAIRMAN: Is there a complaint filed  
18 with this?

19 MS. GRAY: No.

20 MR. CHAIRMAN: Why are we even discussing it?

21 MS. GRAY: Just the same as the last item on  
22 the agenda, that they requested the board --

23 MR. CHAIRMAN: I don't think we even need to  
24 go on record as a board voting on something like this  
25 until we have a complaint. That's my personal opinion.

1 MR. SMITH: And it's in chancery court.

2 MR. CHAIRMAN: Please state your name and  
3 identify yourself.

4 MS. GRAY: I caution against it in case there  
5 is a formal complaint filed in this situation,  
6 (inaudible, cell phone ringing), but I just wanted to  
7 put that out there.

8 MR. \_\_\_\_: Again, I'm not -- the item that  
9 you are currently on. I wanted to ask you to revisit  
10 the masonry bid. And the reason I wanted to ask you to  
11 revisit that --

12 MR. CHAIRMAN: Could you identify yourself.

13 MR. HUDDLESTON: I'm Tim Huddleston. I am  
14 vice president of (inaudible) Construction Company.

15 MR. CHAIRMAN: Okay, this has to do with the  
16 masonry. Let us finish the discussion on the matter at  
17 hand and then you can bring the masonry bid back up. Do  
18 we have any other discussion about this?

19 MR. TICKLE: I would like to ask a question.  
20 Well, no, not on this, but like this. I guess we'll do  
21 it under new business. We'll come back.

22 MR. CHAIRMAN: Okay.

23 MS. GRAY: Let me also caution against giving  
24 anything on the masonry issue, because it does appear  
25 that that could also become a formal complaint. I don't

1 know --

2 MR. CHAIRMAN: Does anybody on the board like  
3 to make an issue based upon the item that was brought  
4 before us? Any motions or anything like that?

5 (Simultaneous discussion.)

6 MR. CHAIRMAN: No motions on the matter. I  
7 will say that since I spoke with Mr. Huddleston, I will  
8 go ahead and let him speak.

9 MR. HUDDLESTON: Again, my name is Tim  
10 Huddleston. I am the vice president of WA Construction  
11 Company. For your information, I am the second bidder  
12 on the project. I was -- this was a rebid on the  
13 project. I was low bid in August. They rejected all  
14 bids and they did a rebid and the second bidder. The  
15 question is, and the issue that I would really like for  
16 you to address, would actually be a two-part vote. In  
17 other words, not a recommendation as to who to award it  
18 to, but a vote of did low bid No. 1 comply with the  
19 requirements of the law. That's the question. Did bid  
20 No. 2 comply with the requirements of the law. I'd ask  
21 you to revisit in that manner. Not a recommendation of  
22 how to award the project, but the engineer and the owner  
23 wants to understand the direction of the law.

24 MR. CHAIRMAN: I'm not so certain that we  
25 even understand the intent of the law. And I think that

1 that's probably more for the owner to clarify through an  
2 attorney and then that attorney can correspond with our  
3 board's attorney. But for the board to go on record to  
4 make recommendation like that, I feel like --

5 MR. HUDDLESTON: Again, not to make a  
6 recommendation, but this board makes decisions as to  
7 whether contractors are complying with the laws every  
8 time there is a complaint filed or you have a hearing.  
9 And that was my comment, was just, you know, the board  
10 make a ruling of Bidder 1 did comply or not comply with  
11 the law or Bidder No. 2 did or did not comply with the  
12 law; not to make a recommendation how to award the  
13 project. Again, these things come to your attention.

14 MR. SMITH: We need more information than  
15 just the executive summary.

16 MR. HAYES: I think we've gone on record the  
17 way we want to at this point.

18 MR. \_\_\_\_\_: Can I make a couple of comments,  
19 too, please?

20 MR. CHAIRMAN: State your name for the  
21 record, sir.

22 MR. \_\_\_\_\_: (Inaudible). If this bid  
23 twice, once in August and once in (inaudible). I would  
24 have thought that engineers and architects would have  
25 known it if the listing had occurred. If they weren't

1 in compliance on the first bid, surely they would have  
2 noted on the second bid because the law requiring the  
3 license wasn't in effect until January 1, just the  
4 listing part. And the second part of it is, this  
5 masonry issue is nothing different than an electrical  
6 (inaudible) HVAC right now. If the contractor bid a job  
7 today and didn't list the electrical on the outside of  
8 the bid envelope, a lot of people get rejected. It's no  
9 different than (inaudible).

10 MR. MASON: I think at this point we don't  
11 need to go beyond what we've already done.

12 MR. CHAIRMAN: I agree. We'll move along.  
13 The geologists, I fail to -- I've kind of read this  
14 over. I fail to understand what business the board's  
15 got.

16 MS. LAZENBY: I don't think they do, but it  
17 was submitted, a request that the board interpret --  
18 charged with interpreting the law. They wanted to know  
19 did you all interpret it as geologists being exempt,  
20 like engineers.

21 MR. CHAIRMAN: With removal and clean up?  
22 That's a different portion of the law. That has nothing  
23 to do with the description of their license. To me,  
24 this is another portion of the law, whether it's TDEC or  
25 the EPA rules that they have to follow. I don't think

1 we govern that part.

2 MS. GRAY: Well, I think -- and I don't know  
3 if there will be a law change in the future. Just from  
4 what I understood when I contacted the board attorney  
5 for the architects and engineers, and he just -- he  
6 stated that this law was written before the geologists'  
7 program was in effect. So possibly if someone decided  
8 to change this law, which our law which says that  
9 engineers do not have to be licensed if they are doing  
10 certain things, that they might go ahead and include  
11 geologists in that. But of course it's not there now.  
12 But the board could interpret that as exactly the same  
13 thing and we retain (inaudible), and they should be.  
14 And it was just a question that we had from the public.  
15 And all I knew to say was it does appear they're  
16 similar. They're performing similar activities. Those  
17 activities are listed out in the chapter definitions.  
18 Contractor does not include an engineer license and  
19 (inaudible) and according to this chapter and title who  
20 is doing these certain things. And apparently in this  
21 fact situation it is the geologist who is doing these  
22 specific things. The board can't change the law, but I  
23 suppose you could give an informal opinion that the law  
24 should be changed because --

25 MR. CHAIRMAN: Is this -- the words used in

1 this means to be contamination or is it meant to  
2 interpret in the process of doing their project? In  
3 other words, when I first tried to read this, I took it  
4 as though, all right, maybe they knocked some rocks down  
5 in a river where they're doing a survey or engineering  
6 proposal. If they clean that up, is that -- that's  
7 what, for whatever my weird reason, went through my  
8 mind.

9 MS. GRAY: It sounds like we may need more  
10 facts. I don't know the job description. And I thought  
11 they possibly might give a board member who is more  
12 familiar with the geologists.

13 MR. CHAIRMAN: Well, they're trying to  
14 separate this to where chemicals spills, oil spills,  
15 things of that can be included underneath this. We need  
16 to know that because I think -- if that's what they're  
17 trying to accomplish.

18 MS. GRAY: Either way we did not give a  
19 formal opinion. We'll let the board decide that.

20 MR. CHAIRMAN: Okay, Carolyn, legislation.

21 MS. LAZENBY: The only legislation right now,  
22 I thought there might be more by the time we had this  
23 meeting, but the only one bill I know of is the one for  
24 the geothermal that is coming up to be put back in the  
25 books. So I just wanted to make you all aware of that.

1                   There was one other -- I don't know -- it was  
2 sent to me but I don't know how it applies to us, but  
3 it's requiring commercial buildings to have an energy  
4 audit. But they did ask if I needed a physical note,  
5 but it was under another title, so 13.

6                   MR. TICKLE: Is that new construction?

7                   MR. \_\_\_\_\_ : Well, no, it's more for  
8 tenants where an owner now is saying that this building  
9 is green and energy efficient, and they want the audit  
10 to prove to the tenant that that is correct. They're  
11 just not going out to a warehouse and saying this is an  
12 energy efficient building. They want to make sure that  
13 that is correct and according to --

14                  MR. CHAIRMAN: To get their green  
15 certification, do they not already have to go through --

16                  MR. \_\_\_\_\_ : Yeah, but there are just so few  
17 of those right now. They're trying to get by the year  
18 2030 every building, every commercial building in the  
19 United States, off of fossil fuels. Talking about 19  
20 years.

21                  MR. CHAIRMAN: Anything else?

22                  MS. LAZENBY: That's it.

23                  MR. CHAIRMAN: I want to make sure that  
24 everybody knows to put down in your calendars,  
25 schedules, smart phones, March the 29th and 30th right

1 back here in Nashville will be our next meeting. If  
2 there is nothing else to come before the board --

3 MR. TICKLE: Can I ask off the record or on  
4 the record, whatever?

5 MR. CHAIRMAN: Did you have some new  
6 business, Ronnie?

7 MR. TICKLE: Yes, I've got new business.

8 MR. CHAIRMAN: Ronnie, if you have some new  
9 business, please bring it up.

10 MR. TICKLE: If a person, an individual,  
11 contracts a person to run his job and he is not a  
12 licensed contractor, and the job is 100,000, the guy  
13 just got paid \$100,000 to run the job, can you as an  
14 individual pay that guy to run the job for \$100,000 and  
15 him not have a contract license, or would you have to  
16 have a contract license to run the job?

17 MR. CHAIRMAN: Uh-huh.

18 MR. TICKLE: Regardless? Don't make any  
19 difference, if you are the job superintendent, employer  
20 or not, you have to have a contractor license to run the  
21 job?

22 MR. SMITH: That's not a general contractor?

23 MR. TICKLE: Not a general contractor.

24 MR. SMITH: It's an owner?

25 MR. TICKLE: That's right. The owner is

1 hiring somebody to run his job for him. He should be a  
2 construction manager and should have some type of  
3 license, correct?

4 MR. SMITH: Yeah, maybe even have a limit of  
5 whatever the job is that he is running.

6 MR. TICKLE: Okay.

7 MR. CHAIRMAN: Any other questions?

8 MR. TICKLE: No, that will do it.

9 MR. CHAIRMAN: I'll entertain a motion for  
10 adjournment.

11 MS. DeBUSK: Motion.

12 MR. HAYES: Second.

13 (Motion carries.)

14 (Whereupon, the meeting was adjourned.)

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I, CAROLE K. BRIGGS, do hereby certify that the foregoing, Pages 1 to and including 76, is a true and correct transcription of my stenographic notes, to the best of my ability, of the audio-recorded meeting of the Tennessee Board for Licensing Contractors, held at the Andrew Johnson Tower, Nashville, Tennessee, on the 25th day of January 2011.

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 25th day of March 2011.

\_\_\_\_\_  
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