



**TENNESSEE BOARD OF ARCHITECTURAL AND ENGINEERING EXAMINERS
500 JAMES ROBERTSON PARKWAY
NASHVILLE, TENNESSEE 37243
615.741.3600**

**Board Meeting Minutes for December 12, 2019
First Floor Conference Room 1-A
Davy Crockett Tower**

Tennessee Board of Architectural and Engineering Examiners met on December 12, 2019, in the first floor conference room of Davy Crockett Tower in Nashville, Tennessee. Mr. Parker called the meeting to order at 9:00am and the following business was transacted:

BOARD MEMBERS PRESENT: Susan Ballard, Ricky Bursi, Blair Parker, Rick Thompson, Brian Tibbs, Frank Wagster, Kathy Ware, Stephen King, Alton Hethcoat

Robert Campbell, Jr., was present telephonically.

BOARD MEMBERS ABSENT: Ben Brychta

STAFF MEMBERS PRESENT: Jennifer Peck, Stuart Huffman, Wanda Phillips, Wanda Garner

ROLL CALL / AGENDA

Mr. Parker provided the notice of meeting and Ms. Garner called roll.

Guests were acknowledged.

Ms. Ballard-Gribble asked that the CIDQ Meeting Report be added to the agenda.

Motion was made by Ms. Ballard-Gribble and seconded hold meeting according to *Robert's Rules of Order*. The motion carried unanimously.

MINUTES

Motion was made by Mr. Wagster and seconded to approve the October 4, 2019 minutes. The motion carried unanimously.

Motion was made by Mr. Tibbs and seconded to approve the November 26, 2019 minutes. The motion carried unanimously.

PROFESSIONAL SOCIETY REPORTS

Kasey Anderson, Tennessee Society of Professional Engineers/American Council of Engineering Companies of Tennessee (TSPE/ACEC-TN) provided a brief summary of the general activities of TSPE/ACEC-TN. She reported that

- Meeting are being held across the State regarding risk management
- A Qualifications-Based Selection (QBS) coalition is being formed.

Nathan Ridley from the TN chapter of the American Society of Landscape Architects (ASLA-TN) provided a brief summary of the general activities of ASLA-TN including:

Don Baltimore from Tennessee Interior Design through Education and Advocacy (TN IDEA) reported that, because the term of Ms. Ballard-Gribble is ending June 30, 2020, names have been submitted from which Governor Lee will choose a replacement.

LEGAL REPORT (attached)

Break 11:15-11:30am

DIRECTOR'S REPORT

Definitions Decisions

Ms. Peck deferred to the Rules Committee report.

E-Mail Reminder Update

Reminders were emailed to registrants whose expired licenses are in the grace period.

Financial Data

Financial data was presented for informational purposes.

The Grants Committee, through Ms. Ballard-Gribble, moved to accept the amended request from Lipscomb University. The motion carried unanimously.

2020 Proposed Travel

Motion was made by Ms. Ballard-Gribble to approve Ms. Peck to attend the CIDQ Meeting.

Motion was made by Mr. Thompson and seconded to approve travel for the architect members of the Board to attend the March NCARB Region 3 and the NCARB Annual meeting in June. The motion carried unanimously.

COMMITTEE REPORTS

Definitions Committee

The Definitions Committee, through Ms. Ware, reported the following:

- the Engineers are still revising the Definitions of Engineering;
- Landscape Architect definitions are awaiting clearance from Legal;
- Registered Interior Designers' definitions have been submitted;
- Architects are awaiting decisions being finalized by the National Council of Architectural Registration Boards (NCARB).

Outreach Committee

Outreach Committee, through Mr. King, reported that the Committee will meet in February.

Engineering Committee

The Engineer Committee, through Mr. Hethcoat, reported that it reviewed applications and discussed the following:

- Technology degrees;
- Decoupling;
- The acceptance of Master's Degree in engineer when the undergraduate degree is in a subject other than engineering;
- International degrees.

Laws and Rules

The Laws and Rules Committee, through Mr. Thompson, reported that Legal will continue to move forward with Rule 0120-05. There will also be a discussion of the latest information regarding trends in accepting engineering technology degrees, masters' degrees, internationally earned degrees, and decoupling.

CIDQ Report

Ms. Ballard-Gribble reported on the latest in CIDQ information.

ADJOURNMENT

There being no other business, Mr. Parker adjourned the meeting at 12:07 pm.



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CONFIDENTIAL - ATTORNEY WORK PRODUCT

TO: Tennessee Board of Architectural and Engineering Examiners
FROM: Stuart Huffman, Associate General Counsel
DATE: December 12, 2019
SUBJECT: December 2019 Legal Report

1. 2019073421 (SH)

First Licensed: 01/25/2002

Expiration: 09/30/2021

Type of License: Professional Engineer

History (5 yrs.): None.

Entity # 366385

Respondent self-reported that he had practiced on an expired license. Respondent's license expired on February 28, 2018. Respondent explains that he had not knowingly practiced on the expired license. When he learned of the expiration he immediately arranged for a licensed engineer to assume charge and make revisions to the plans Respondent stamped during the expired period.

Respondent lists five (5) projects that he stamped while his license was expired. Two are right-of-way plans for certain road interchanges and highways. Three are construction plans for a trucking company and two State Routes.

Respondent has since applied and been approved for licensure on August 30, 2019.

Reviewed by Board member: Stephen King

Mitigating Factors: Self-reported;

Aggravating Factors:

Recommendation: Authorize a civil penalty in the amount of \$500 for practicing on an expired license and pass the Laws and Rules Exam to be settled informally by Consent Order with authority to proceed to a contested case proceeding if the Respondent does not agree to the informal settlement.

Board Decision: Authorize a civil penalty in the amount of \$2,500 (\$500 for 5 violations) and require Respondent to take and pass the Laws and Rules exam.

2. 2019070601 (SH)

First Licensed: N/A

Expiration: N/A

Type of License: Professional Engineer

History (5 yrs.): N/A

Entity # 1314577

Complainant was in the process of reviewing a project that was being coordinated by Respondent. During review of the second revision of the drawings, Complainant noticed that an engineer seal had become nearly illegible. Complainant noticed the seal was dated 4-20-19. Complainant looked back at the first revision of site plan, and also noticed the engineer's seal was dated 4-20-19. The 1st revision was dated 6-24-19 and the 2nd revision was dated 7-13-19. Complainant also noticed that all revisions were made by hand on drawings that were originally created in CAD. Complainant reached out to the engineer that had stamped the original plans to see if he had made the revisions by hand, and he stated that he had not. The engineer stated he was shocked that it had been resubmitted after his original submittal, since he was in the process of working on revisions to the original. Complainant later met with Respondent and during that meeting Respondent admitted to making the revisions to the drawings. Respondent is not a registrant.

Reviewed by Board member: Ricky Bursi

Mitigating Factors:

Aggravating Factors: Revised twice; No response received from Respondent.

Recommendation: Authorize a civil penalty of \$3,000 which comprises of \$1,000 each for the two unauthorized revisions to the plans by a non-registrant Respondent and for not submitting a response to the Board.

Board Decision: Authorize a civil penalty of \$5,000.

3. 2019078691 (SH)

First Licensed: N/A

Expiration: N/A

Type of License: Engineering Firm

History (5 yrs.): None.

Entity # 380168

The Complainant took occupancy of his home sometime around the end of March 2015. The house began to experience settlement issues at a number of locations. The Respondent was not the Engineer of Record (EOR), but responded to a request from the homebuilder to provide an inspection of the home and evaluate the possible warranty issue approximately 3 years after construction of the home. The Respondent assigned the inspection to a PE from his office (not an SE), who visited the home site on March 30, 2018. The Engineer for the Respondent prepared a Report based on “limited visual condition survey of the interior floors, as well as limited observations of the framing within the crawlspace.” The Report provided conclusions as to the cause of the failures as well as recommendations for repair and remedies of the failures.

The Respondent responded to a second request from the homebuilder in August 2018 to provide a follow-up inspection of the home to evaluate the repairs recommended by the Respondent’s firm following their first site inspection. The Respondent assigned the inspection to a different PE from his office (also, an SE), who visited the home site on August 24, 2018. The Report noted deficiencies that were not adequately addressed from the recommendations of the Respondent’s first report, with additional repair instructions. Again, the Respondent appears not to have had the actual plans for the framing and foundation requirements established by the EOR.

The Respondent responded to a third request from the homebuilder in September 2018 to provide a follow-up inspection of the home to evaluate the repairs recommended by the Respondent’s firm following their second site inspection. This time, the Respondent’s owner visited the site on September 25, 2018 and was provided (apparently for the first time) a copy of the EOR’s structural framing plans. According to the Site Visit Memorandum prepared by the Respondent’s owner (which was sealed with the inappropriate date), upon review of the EOR’s structural framing plans, the Respondent noted that the home, as constructed, had an added optional loft (with bedroom) at the second floor level as well as an accompanying set of stairs. He also discovered that as a part of the option for including a loft, the EOR had designed a different framing plan that was not picked up by the framer, the builder, or the home inspector. There were joists and LVL material and a critical support beam missing from the construction. The Respondent’s report also included recommendations for modifications to aid in the compliance with the EOR’s original structural framing recommendations.

The Respondent's owner made a final site visit on October 4, 2018, to inspect the work performed by the structural rehabilitation firm hired by the homebuilder to ensure they met the intent of the recommendations made by the Respondent. The final assessment was that, in Respondent's professional opinion, the house was, at that time, structurally sound.

The Complainant has not engaged the services of his own licensed professional to review the work performed, nor noted that there is any continued damage following the final structural rehabilitation work performed in October 2018. Without any evidence that the recommendations made by the Respondent have resulted in continued failure, it appears that the final recommendation made by the Respondent has, in fact, solved the issue.

Reviewed by Board member: Alton Hethcoat

Mitigating Factors: Issue has been resolved

Aggravating Factors: Failure to obtain the EOR's framing plans for the first inspection.

Recommendation: Issue a Letter of Caution to the Respondent advising that an Engineer has a duty and responsibility to obtain all information prior to performing an inspection on a project.

Board Decision: Close without action.

4. 2019077261 (SH)

First Licensed: 07/09/1998

Expiration: 04/30/2021

Type of License: Professional Engineer

History (5 yrs.): 2017 – One complaint closed with revocation of Respondent's license after self-reporting felony conviction.

Entity # 361141

An anonymous complaint was received questioning the licensure of Respondent after Respondent had pled guilty of a felony for hacking into his former employee's computer system in 2017. There are no allegations of wrongful conduct or performance issues associated with this complaint.

On August 15, 2017, Respondent executed a Consent Order with this Board allowing the voluntary revocation of his professional engineering license. On January 1, 2019, Respondent reapplied for a professional engineering license in accordance with the Board's rules and regulations. On April 3, 2019, Respondent met with the Engineer Committee of the Board, explained the circumstances related to the guilty plea, sentencing, and restitution. Thereafter, the Engineer Committee unanimously recommended to the Board that Respondent be reinstated. As a result, on April 4, 2019, this Board unanimously agreed to reinstate Respondent's license.

Reviewed by Board member: None

Mitigating Factors: No allegations; Board has previously reinstated registrant.

Aggravating Factors:

Recommendation: The Board has previously heard and decided this matter. Close.

Board Decision: **Approved.**

5. 2019082701 (SH)

First Licensed: 01/16/2001

Expiration: 01/31/2019

Type of License: Professional Engineer

History (5 yrs.): None.

Entity # 360200

Respondent self-reported of practicing on an expired license. Respondent stated work was performed on two projects after the license expired on January 31, 2019. Respondent has submitted the application for renewal on August 27, 2019. Respondent is an employee of an electrical cooperative and therefore exempt.

Reviewed by Board member: Stephen King

Mitigating Factors: Self-reported; Co-op employee; Exempt

Aggravating Factors:

Recommendation: Close.

Board Decision: **Approved.**

6. **2019078821 (SH)**

First Licensed: 02/05/2015

Expiration: 02/28/2021

Type of License: Professional Engineer

History (5 yrs.): None.

Entity # 376097

Respondent failed to comply with a PDH Audit in a timely manner. Respondent states the email notices went to a former employer's email in which Respondent left just prior to the audit notice being sent. Respondent did receive the complaint notice at the street address on file on 9/23/2019. The PDH audit notice was also sent to the same street address. Respondent admits it is his responsibility to update the Board. Respondent submitted the requested PDH Audit materials on 10/08/2019 and is compliant.

Reviewed by Board member: Stephen King

Mitigating Factors: Compliant during PDH audit period; Non-response was not willful.

Aggravating Factors: Failure to notify the Board change of employment and contact

Recommendation: Letter of Caution concerning the importance of notifying the Board of any change in contact information and pass the Laws and Rules Exam.

Board Decision: **Approved.**

7. **2019076941 (SH)**

First Licensed: 06/30/2010

Expiration: 07/31/2020

Type of License: Professional Engineer

History (5 yrs.): None.

Entity # 380618

The Complainant hired contractors to construct a warehouse building. Complainant alleges the trusses were not properly stored and were exposed to moisture for an extended period of time of 3 months. According to Complainant, when the trusses were installed they were bowing and the contractor altered the trusses by nailing 2x6s in order to decrease the bow. Complainant alleges the alterations and extended exposure has caused the warehouse to be structurally compromised. Complainant further alleges the staples were coming out, mold in the building, screws ripping out of the eaves, gutters ripping loose, and doors not operating properly.

Complainant is a named Defendant in a current civil lawsuit. As part of Complainant's defense, Complainant has sued the truss company as a third-party Defendant. Respondent was retained by the truss company to provide expert testimony and consulting services for the lawsuit. Respondent provided an Affidavit in the litigation identifying opinions reached as part of the

engineering investigation. The scope of the assignment as requested was to evaluate the trusses in the current as-built condition as of the date the trusses were inspected to determine if the trusses were structurally compromised. Respondent's report concluded the trusses were not structurally compromised, the storage of the trusses had no adverse effect, the bowing were localized to the bracing itself, and water stains on the trusses were due to past or current leaks from the roof after installation.

Respondent states that all other allegations made by Complainant involving storage of the trusses, staples, mold, screws ripping, and gutters coming loose were beyond the scope of the assignment or not associated with the trusses themselves.

After a preliminary review, it is recommended to wait until the civil litigation has been resolved before a formal and detailed review is made.

Reviewed by Board member: Alton Hethcoat

Mitigating Factors:

Aggravating Factors:

Recommendation: Place in Litigation Monitoring.

Board Decision: Approved.

8. 2019080371 (SH)

First Licensed: 12/20/1994

Expiration: N/A

Type of License: Engineering Firm

History (5 yrs.): None.

Entity # 386776

Complainant and neighbor have been involved in a property boundary dispute for years. The neighbor hired a contractor who worked with Respondent to build a gravel drive next to the Complainant's drive. Complainant alleges the contractor and Respondent breached their property with heavy equipment while constructing the gravel drive, damaging Complainant's property. The basis of the complaint is directed towards the contractor. The Respondent was hired to supply services in facilitating the property acquisition including drawings stamped by a licensed surveyor. The Court has rendered an opinion concerning the damages to Complainant's property. The Court has also decided access disputes between the parties. There is no evidence that Respondent caused the damage to property or endangered the health, safety or welfare of the public.

Reviewed by Board member: Alton Hethcoat

Mitigating Factors:

Aggravating Factors:

Recommendation: Close.

Board Decision: Approved.

9. 2019085421 (SH)

First Licensed: 01/04/2008

Expiration: 01/31/2018

Type of License: Professional Engineer

History (5 yrs.): None.

Entity # 358689

Respondent self-reported work performed on numerous projects while on an expired license. Respondent's license expired on January 31, 2018 and Respondent did not realize it was expired until September 17, 2019. Respondent remained employed with the current employee performing work that did not require a license, such as drafting, paperwork, and working under the direction of a licensed engineer. Between January 31, 2018 and September 17, 2019, Respondent performed work on thirty four (34) projects which included design and layout,

grading, drainage, water, and sewer. Respondent also states that a majority of the work received a secondary review by a licensed engineer with employer. Respondent has applied for renewal on October 16, 2019.

Reviewed by Board member: Ricky Bursi

Mitigating Factors: Self-reported

Aggravating Factors:

Recommendation: Authorize a civil penalty in the amount of \$500 for practicing on an expired license and pass the Laws and Rules Exam to be settled informally by Consent Order with authority to proceed to a contested case proceeding if the Respondent does not agree to the informal settlement.

Board Decision: Authorize a civil penalty in the amount of \$17,000 (\$500 for each of the 34 violations) and require Respondent to take and pass the Laws and Rules exam.

10. 2019082301 (SH)

First Licensed: N/A

Expiration: N/A

Type of License: Interior Designer

History (5 yrs.): N/A

Entity # 1321899

Complainant hired Respondent to design a garage and bathroom/closet addition and paid Respondent \$8,125.00 for time and completed drawings. After several plans (and revisions) Complainant alleges that it was apparent that the roofing and structural aspect of the project was beyond Respondent's experience and knowledge. Complainant's contractor allegedly advised Complainant's to hire an architect as the contractor believed the Respondent did not have the competency for this project. Complainant's hired an architect with 40 plus years of experience. This architect requested "as built" drawings from Respondent however Respondent requested the architect to sign a waiver for release. Complainant felt Respondent should have released the drawings since they had already paid for them. It was the opinion of the architect that the drawings were completely unusable.

Respondent states they were the only designer on this project and Complainant was fully aware that Respondent was not an architect. Towards the end of the schematic design phase Complainant walked Respondent out into the backyard and instructed on how the roof was to be drawn. Respondent informed Complainant that the suggestion was not an industry standard detail to create a large flat rubber membrane at the top of an existing pitched roof in order to maintain the same existing aesthetic from the ground view. Respondent felt it would be

problematic and if Complainant wanted to pursue that idea further it would be better for the parties to end the relationship.

Respondent received an email from an architect requesting the drawings. Respondent requested the architect to sign a waiver due to sharing CAD files which are industry standard. Respondent believes the letter that was received from the architect claiming that the drawings were unusable was retaliation and anger for signing the waiver. Respondent claims to have never issued a set of drawings that did not get approved for building permits. The drawings were also reviewed by a licensed architect and licensed contractor and deemed 100% constructible.

The proof does not support the competency allegations that rise to the threat of the public health, safety, and welfare. Further, the project was on a residential home, less than 3 stories in height, and less than 5,000 square feet in total gross area. As such, the project is exempt.

Reviewed by Board member: Brian Tibbs

Mitigating Factors: Project exempt

Aggravating Factors:

Recommendation: Close.

Board Decision: Approved.

11. 2019089381 (SH)

First Licensed: 08/20/2001

Expiration: 08/31/2017

Type of License: Professional Engineer

History (5 yrs.): None.

Entity # 363429

Respondent has been licensed in Tennessee since 2001, working in private firms until 2011 when employed by a City Street Department. Respondent self-reported that licensure had expired in 2017 and that notification should have been received by the City Accountant that pays the renewal fee. Respondent is unaware of what caused the administrative error but has submitted reapplication and provided PDH compliance. Respondent's duties include managing a team of field personnel maintaining street signs, pavement markings, traffic signals and street lights. Respondent states that no designs of any construction plans or stamp to certify any reports, documents or plans has been performed after expiration. Respondent's reapplication is currently in process as of 8/30/2019.

Reviewed by Board member: Alton Hethcoat

Mitigating Factors: Self-Reported; Did not seal or perform design work

Aggravating Factors:

Recommendation: Letter of Caution concerning renewal of license and pass the Laws and Rules Exam.

Board Decision: Approved.

INFORMAL CONFERENCE

12. 2019023531

First Licensed: 01/01/1993

Expiration: 10/31/2021

Type of License: Professional Engineer

History (5 yrs.): None.

Entity #354655

Complaint was filed against the Respondent by the State Fire Marshall's Office for allegedly practicing outside of area of competence related to sealing plans and drawings for a church. The Respondent provided a response and stated he has considerable experience with similar projects.

The Respondent has experience in design and shift support for nuclear power plants for 20 years and it was routine for the Respondent to interpret and revise structural, electrical, mechanical and HVAC drawings. The Respondent has been a structural engineer of record for shopping center upgrades, large apartment buildings and various other projects. The Respondent stated that the drawings that were sealed for this project were for building exterior elevations, basic floor and equipment plans, electrical panels and legend drawings. The Respondent is familiar with design output and an electrical contractor has looked over the distribution drawings. After review, the contractor has found the drawings acceptable for construction and a local engineering firm is satisfied by the level of detail. The Respondent stated the original drawings were mistakenly submitted without a seal and the project manager sent the wrong files. The project manager stated they would resubmit the correct set of drawings.

This complaint was reviewed by Board Member Stephen King. Also, an informal conference was conducted by Board Member King with the Respondent.

Mitigating Factors: No prior disciplinary action during a period of licensure in excess of 35 years.

Informal conference with Board member was held.

Aggravating Factors:

Recommendation: Letter of Caution about practicing outside area of competence and experience.

Board Decision: Defer to December meeting.

New Recommendation: Letter of Caution

New Board Decision: Letter of Caution and pass Laws and Rules exam.