

**S.C. Department of Labor, Licensing and Regulation
Contractors' Licensing Board Quarterly Meeting
110 Centerview Drive, Room 111, Columbia, S.C.**

Minutes of the January 20, 2005, Quarterly Board Meeting

BOARD MEMBERS PRESENT

Joe Chandler, Chairman
Frank Walker
Daniel B. Lehman
Mark Plyler
Kim Lineberger, Vice Chairman
Lewis Caswell
Wendy Nance

OTHERS PRESENT:

Rick Wilson, Esq., Board Advice Attorney
Geoffrey Bonham, Esq., Staff Attorney
Eddy Lane, Esq., Hearing Advice Attorney
Daniel Patterson, Esquire, Representing Mauldin Electric

BOARD STAFF PRESENT

Ron Galloway, Administrator
Joyce Thurber, Program Coordinator

OTHERS PRESENT:

Wade Mullins, Esquire
Ricky White
Stewart Mungo

Where action is recorded below, it is taken in each case on motion duly made, seconded and carried unanimously unless indicated otherwise.

Call to Order:

Chairman Joe Chandler called the meeting to order at 10:00 A.M.

Mr. Chandler announced that the meeting was being held in accordance with the Freedom of Information Act by notice sent to The State, The Charleston Post & Courier, The Greenville News, The Myrtle Beach Sun newspapers, and all other requesting persons, organizations, or news media. In addition, notice was posted on the bulletin boards located at both of the main entrances of the Kingstree Building where the board office is located.

Mr. Chandler reported that building board member Jim Tharp, of McCrory Construction, had resigned effective December 31, 2004. Mr. Tharp had conflicts in continuing to serve on the Contractors' Board because of appointments to other boards and conflicts with board meeting dates. A new building board member will be appointed by the Governor.

Election of Officers: Nominations were opened for the 2005 election of a board chairman. Joe Chandler was nominated again as board chairman. No other nominations were made.

Motion: Kim Lineberger moved to re-elect Joe Chandler as board chairman of the Contractors' Licensing Board. The motion was seconded and passed Therefore, Joe Chandler will continue to serve as chairman for the 2005 calendar year.

Nominations were opened for the 2005 election of a vice board chairman. Kim Lineberger was nominated as board vice chairman. No other nominations were made.

Motion: Wendi Nance moved to elect Kim Lineberger as vice chairman of the Contractors' Licensing Board. The motion was seconded and passed. Therefore, Kim Lineberger will serve as vice chairman for the 2005 calendar year.

Approval of Agenda:

The agenda was reviewed. Mr. Galloway added an item to the agenda under Administrator's Remarks: (4) Discussion for License Requirements for Residential Asphalt Paving.

Motion: Mark Plyler moved that the agenda be approved as amended. The motion was seconded and passed.

Approval of Minutes:

The board meeting minutes of October 21, 2004 were reviewed.

Motion: Wendi Nance moved that the board meeting minutes of October 21, 2004 be approved as printed. The motion was seconded and passed.

The minutes of the Special Telephone Conference Call Meeting of the Board on November 18, 2004 were reviewed.

Motion: Louis Caswell moved that the minutes of the Special Telephone Conference Call Meeting on November 18, 2004 be approved as printed. The motion was seconded and passed.

Public Comment:

Steward Mungo, licensed home builder, developer and board member of the S.C. Residential Builders Commission, appeared before the board to discuss his concerns regarding a needed educational or certification program for contractors on wetlands and environmental regulations. He is facing a possible stiff fine due to a water and sewer line subcontractor going over an easement; thus, violating the terms of a wetlands permit. Mr. Mungo pointed out that contractors are at great risk for wrong doing when they may not be aware of federal regulations involving wetlands, which are aggressively enforced by the Army Corp of Engineers. He asked the board to get actively involved in opening a dialogue with the Federal government, appropriate professional associations and other boards that might have licensees needing to become aware of wetlands and environmental regulations. Congressman Wilson backs the problem and can be contacted.

Mr. Galloway commented that an article would be placed in the upcoming board newsletter regarding this issue. He has also discussed the issue with the Army Corp of Engineers, who said they intend to address this problem in the near future. A website is available to review the requirements for wetlands permits at the Corp's web site, www.sac.usace.army.mil .

Chairman's Remarks:

(1) Discussion of Approval of Investigative Review Committee (IRC) Recommendations/Lynn Rogers

Mr. Chandler stated that since the Office of Investigation and Enforcement took over the preparation of the IRC reports, the names of the Respondents have not been listed. The board objects to this practice, because they want to take note of repetitive complaints in order to take further disciplinary action when patterns of violations and complaints are observed on the same Respondents. Mr. Chandler suggested that the issue be discussed with General Counsel, Lynn Rogers, prior to the next meeting.

Motion: Ms. Lineberger moved to go into Executive Session to receive legal advice from board counsel, Rick Wilson. The motion was seconded and passed.

Out of Executive Session, Ms. Nance made a motion, to approve only the Hearing Recommendation sections on the July 6, 2004, September 2, 2004, December 12, 2004, IRC Reports at this time, and delay formal approval of other sections of the reports until the issue of the IRC Report format can be addressed with Lynn Rogers. The motion was seconded and passed.

Administrator's Remarks:

(1) See above motion for December 12, 2004 IRC approval.

(2) Ethics Form:

Mr. Galloway reminded board members that the Ethics Form, previously sent to them, is due by April 15th or a \$100 fine can be assessed.

(3) Discussion of License Requirements for Exterior Siding and Discussion of the Regulation of Residential Asphalt Paving:

Mr. Galloway explained that prior to new legislation effective 4/1/99, in Chapter 11 of the Code of Laws, the "Non-structural" scope of work included inside and outside parts of a building as to painting, all types of siding and stucco work on the outside of the building. When the new statutes were written, that scope of work was rewritten as "Interior Renovation" and the exterior parts of the building were overlooked.

Joey Floyd, Esquire of Bruner, Powell, Robbins, Wall & Mullins in Columbia, South Carolina, had requested a clarification as to whether siding is regulated by the board. Mr. Wade Mullins, Esq., of that firm also was present to participate in the discussion. He was involved in a court case involving this same issue, and it was his contention that no license was required for siding because there was no provision of a specific classification for it.

Mr. Galloway pointed out that it states under the definition 40-11-20(8), "General Construction means the installation, replacement, or repair of a building, structure, highway, sewer, grading, asphalt or concrete paving, or improvement of any kind to real property." Rick Wilson stated that a formal distinction must be made between described items, excluding wood siding, which could affect the structural integrity of a building. Mr. Chandler stated, in his opinion, siding and outside painting/coatings and stucco should be regulated under the building classification. Mr. Lehman said it is not reasonable to require a siding contractor take a test to build an entire building. Mr. Galloway stated, for the record, that legislation to correct this situation under a "Non-structural" classification has been introduced for the last four years, but has not passed. Following further discussion, a motion was made.

Motion: Dan Lehman made a motion as stated. **It is the position of this Board that any type of exterior work involving painting, stucco and any type of exterior siding is not currently regulated by this board.**

The motion was seconded by Kim Lineberger. Joe Chandler voted in opposition to the motion, but it passed by a majority vote.

Asphalt Paving Discussion:

Mr. Galloway asked that the board give the staff some clarification on the issue of "who regulates asphalt and concrete paving on residential homes". The S. C. Residential Builders Commission have included concrete driveways under their jurisdiction in the last statute change. However, Mr. Galloway stated that for the last six years, no one has regulated residential asphalt paving. Under the current definition in 40-11-20(8), it states that 'General construction means the installation, replacement, or repair of a building, structure, highway, sewer, grading, asphalt or concrete paving, or improvement of any kind to real property'. Mr. Caswell pointed out that under 40-11-410 (2)(c) the Asphalt Paving scope of work is described. It states that asphalt paving 'includes...but not limited to...'. **Therefore, it is concluded that the board can regulate residential asphalt paving on residential homes under the statute, 40-11-410(2)(c) .**

Unfinished Business:

- (1) Approval of July 6th and September 2nd IRC Recommendations
[See above motion under Chairman's Remarks for action taken.]

New Business:

- (1) Discussion of Proposed Legislation for 2005

Bill H3303 – adds a classification for the installation alteration and repair of range hoods and systems which consist of components necessary to vent steam and smoke from residential and commercial ranges and stoves. The bill does not state where in the law, it will be placed. Mr. Galloway stated that this work has always been allowed under a HVAC or packaged equipment Mechanical Contractor. The Fire Marshal regulates the smoke detection and fire suppression of it. Most building officials has ordinances requiring some type of test for big equipment for restaurants and ductwork through the S.C. Municipal Association. Therefore, Mr. Galloway recommends opposition to this bill. After discussion, a motion was made.

Motion: Mr. Caswell moved that a recommendation be sent to the Directors' Office to oppose this bill on behalf of the board. The motion was seconded and passed.

Bill H3212 - Representative Ralph Davenport is the sponsor of a bill to take the Glass and Glazing classification out of the building definition scope of work. This would require anyone performing that work over \$5,000 per contract to be licensed in the Glass and Glazing classification. Following a discussion, a motion was made.

Motion: Mr. Caswell moved that a recommendation be sent to the Director's Office to support the bill. The motion was seconded and passed.

Bill S.84 – This is a bill that would change the time frames in the number of non-structural defects. The Association of General Contractors did not oppose it. Following a brief discussion, a motion was made.

Motion: Mr. Walker moved that a recommendation be sent to the Director's Office that the board had no position on Bill S.84.

There is legislation regarding the findings of the Fire Marshal's Task Force. Mr. Galloway, Mr. Chandler and Mr. Lehman attended one meeting of the Task Force. The legislation would combine twelve to twenty statutes. Mr. Lehman noted that there are some turf battles between the Fire Marshal's Office and county code enforcement officials over issues in the bill. Following a discussion, a motion was made.

Motion: Dan Lehman made a motion to have each board member review the bill. If they have any opposition to the bill, have them call him and he will get it addressed. If the board has no opposition to the bill, Mr. Galloway can pass that information on. The motion was seconded and passed.

Old Business: None

Vote on the Panel Hearing Officer Recommendations :

- (1) V02/03-224 White & White Printing Company, and Ricky L. White, Respondents. G-102366, vs Contractors' Licensing Board.

At the Final Order Hearing, the State was represented by Geoffrey Bonham, Esquire, assistant general counsel. The Respondent, Ricky L. White, appeared but was not represented by legal counsel.

In November of 2004, Mr. Bonham filed a Motion for a new hearing and asked that the Motion be taken up as a preliminary matter. The Respondent objected to the Motion. Then Mr. Bonham asked that the matter of the Motion be taken up at the next board meeting.

Motion: Mr. Walker made a motion for the board to go into Executive Session to get legal advise. The motion was seconded and passed.

Motion: Ms. Nance moved to come out of Executive Session. The motion was seconded and passed.

Chairman Chandler stated that the board overrules Mr. White's objection per advice of legal counsel, Rick Wilson. Mr. Bonham was asked to present the Motion.

The issues addressed in the Motion were (1) Mr. Hughes borrowed Rickey White's license; (2) Mr. McAlister should be disqualified as a hearing officer because he is the administrator of the S.C. Residential Builders Commission and ,as such, may be tainted; (3) and newly discovered evidence. Following discussion, a motion was made.

Motion: Mr. Lehman moved to deny the State's Motion for a new hearing. The board motion was seconded and passed.

Mr. Bonham then presented the Hearing officer's Report and Recommendation from the panel hearing held August 23, 2004. Charles McAlister served as the hearing officer and hearing advice counsel was Shirley Robinson, Esquire. The primary charge was a violation of the South Carolina Code of Laws 40-11-110(A)(9) (1976, as amended), aiding and abetting an unlicensed entity to evade the provisions of Chapter 11. The State was unable to proceed with its case due to the absence of its primary witness, an investigator with the Department of Labor, Licensing, and Regulation. Therefore being unable to establish the allegations of the complaint by the evidence, the Hearing Officer's Recommendation was that the case must be dismissed.

Motion: Mr. Walker moved to accept the Hearing Officer's Report and Recommendation. The motion was seconded and passed.

Ms. Nance asked to be excused at 1:00 PM to attend an important meeting related to her job. She was excused.

Vote on the Panel Hearing Officer Recommendation:

- (2) V03/04-144 and C02/03-77 Romona J. Cowin, Complainant vs 2 C, Inc. and David A. Culver, Owner and Qualifying Party, G-99876 and G-107772, Respondents.

At the Final Order Hearing, the State was represented by Geoffrey Bonham, Esquire, assistant general counsel. The Respondent did not appear and was not represented by legal counsel.

Mr. Bonham presented the Hearing Officer's Report and Recommendation from the panel hearing held July 26, 2004. Gary Wiggins served as hearing officer and Shirley Robinson, Esquire, was hearing advice counsel. The allegations were as follows:

(1) The State alleges that the Respondents omitted a material fact in their 2001 renewal License application for 2C, Inc., by failing to reveal that there were outstanding judgments, liens or claims filed against them or their business. Mr. Culver acknowledged that there were tax liens filed by the S.C. Department of Revenue totaling over \$14,000. The Mechanic's liens filed against Mr. Culver for \$37,441.00 were found to be dissolved prior to the date the Respondent filed his renewal application.

(2) Mr. Culver failed to list outstanding judgments, liens and claims against him or his business in a licensing application for Applied Abatement Concepts in which the Respondent was listed as the qualifying party. Only the liens filed September 11th and 13th, 2002 were not dissolved when the application was filed on 12/20/02. Further the Respondent falsely represented that he was a dual qualifier for both 2C, Inc. and Applied Abatement Concepts, both located as required in the same location. The Respondent testified that 2C, Inc. is operated out of his home and Applied Abatement Concepts is operated out of his brother's home. The hearing officer found that both entities did not engage in business from the same physical location as required to be a dual qualifier.

(3) In 2001, the Respondents contracted with Ramona Cowin to build a home at 1322 Pampas Circle Rock Hill, South Carolina. After hearing the testimony from Ms. Cowin, an investigator with the S.C. Department of Labor, licensing and Regulation, an engineer and a City of Rock Hill building inspector, it was apparent that the problems with the home resulted from the lot not being properly graded to accommodate the drain-off from the adjoining property. Mr. Culver testified that his partner on the project was responsible for grading the property. He further stated that he had made efforts to re-mediate the drainage problem, however, from the testimony of others describing the extensive flooding that occurred at the property, his efforts at remedying the problem were woefully inadequate.

Based on the evidence presented, the hearing officer recommended that the Respondents' general contractor's licenses G-99876 and G107772 and qualifying party certificate be revoked, and, that the Respondents' be required to pay a civil penalty of \$5,000.00. Following a discussion, a motion was made.

Motion: Mr. Walker moved to accept the Hearing Officer's Report and Recommendation. The motion was seconded and passed.

The next regularly scheduled board meeting will be held on Thursday, April 21, 2005, at 10:00 A.M. in Room 111 of the Synergy Office Park, Kingtree Building, 110 Centerview Drive, Columbia, South Carolina. There being no further business, the meeting was adjourned at 1:15 P.M.

Respectfully submitted,

Ronald E. Galloway, Administrator