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THE TENNESSEE BOARD FOR LICENSING CONTRACTORS

BOARD MEETING
MEMPHIS, TENNESSEE
MAY 24, 2011

ALPHA REPORTING CORPORATION
236 Adams Avenue
Memphis, TN 38103
901-523-8974
www.alphareporting.com

1 The board meeting of the Tennessee
2 Board For Licensing Contractors is taken on
3 this, the 24th day of May, 2011, beginning at
4 approximately 12:00 p.m. at the Hyatt Hotel,
5 7905 Giacosa Place, Memphis, Tennessee.

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A P P E A R A N C E S

THE BOARD:

Keith Whittington, Johnson City, Chair

Mark Brodd, Knoxville

Reese Smith, III, Franklin

Ronnie Tickle, Memphis

Jerry Hayes, Paris

Bill Mason, Greenbrier

Ernest Owens, Memphis

JENNY GRAY, ESQ.

MICHAEL DRIVER, ESQ.

Assistant General Counsel

500 James Robertson Parkway

Nashville, Tennessee 37243

(615) 253-7848

Nicole Canter, Paralegal

Carolyn Lazenby

Telise Roberts

COURT REPORTING FIRM:

ALPHA REPORTING CORPORATION

Marietta McElroy Hutsell, ACR

236 Adams Avenue

Memphis, Tennessee 38103

(901) 523-8974

www.alphareporting.com

1 MR. WHITTINGTON: I would like to call
2 the meeting for the May 24th Board of Licensing
3 Contractors for the State of Tennessee to
4 order. I would like to start with a role call
5 beginning with my left.

6 MR. HAYES: Jerry Hayes, Paris,
7 Tennessee.

8 MR. TICKLE: Ronnie Tickle, Memphis,
9 Tennessee.

10 MR. SMITH: Reese Smith, Franklin.

11 MR. WHITTINGTON: Keith Whittington,
12 Johnson City.

13 MR. BRODD: Mark Brodd, Knoxville.

14 MR. MASON: Bill Mason, Greenbrier.

15 MR. OWENS: Ernest Owens, Memphis.

16 MR. WHITTINGTON: I would like to say
17 that I appreciate everyone that made the trip
18 down to Memphis. It's a nice place, nice
19 weather. Hopefully we can get our meeting over
20 with early enough so that you can see a little
21 bit of Memphis before you have to head home.

22 Did everyone have a chance to
23 review the agenda? Are there any additions,
24 changes or corrections to the agenda? I will

1 make note of one, and that is Reese has a
2 licensed case that needs to be heard so we can
3 expedite that case on. It's a request to speak
4 to the Board by the applicant. We'll add that
5 right after the approval of the agenda.

6 I would like to entertain a motion,
7 then, if we approve the agenda as corrected.

8 MR. HAYES: Second.

9 MR. WHITTINGTON: Any questions or
10 discussions? All in favor vote by saying I.

11 THE BOARD: I

12 MR. WHITTINGTON: Opposed likewise.

13 Motion carries.

14 Reese, if you will go right ahead.

15 MR. SMITH: This is Mr. Ronnie Kelly.

16 You are right there. His company is RK Jr.
17 Contracting Services LLC. He meets all the
18 qualifications for the reviewed financial
19 statement, financial stability, and he has
20 passed the exam.

21 Mr. Kelly was convicted of a felony
22 in December of '05, and actually this says --
23 were there two counts in '05, Mr. Kelly?

24 MR. KELLY: Yes, sir, it was.

1 MR. SMITH: And he has served probation
2 and now is off probation. This is 2011.

3 He is currently going to court for
4 two conspiracy cases. Both cases are allegedly
5 accusing him and other people of conspiring to
6 sell.

7 And I want to bring this before the
8 Board in order for the Board to agree or
9 disagree on granting him a license at this
10 time. It would be for a BC 2315 21 and 31.
11 Because he passed the B Law test, those items do
12 not require a contractor's residential exam.

13 I told him I wasn't going to make
14 that decision on my own. And Mr. Kelly -- I
15 told him he could come and he could speak us and
16 tell us whatever was on his mind.

17 MR. KELLY: First of all, I would like
18 to apologize to the Board for being
19 underdressed. I'm a commercial driver. I have
20 a class ACDL. Due to the weather, I wasn't able
21 to properly dress for the week.

22 As far as the situation with the
23 conspiracy right now, this investigation is
24 ongoing. It isn't closed yet. It hasn't even

1 bounded over. It happened last year around
2 October, October of last year. And just for
3 right now, we haven't even went to court yet.
4 So I'm out on bond. My attorney is seeing what
5 he can do about this situation for me. The way
6 it's looking, it could go on for a year, maybe
7 two years. It's an ongoing investigation.

8 I am here today before the Board to
9 see if I can get my contractor's license. And I
10 know I made a lot of mistakes in the past, and I
11 just want to do the right thing. I really dream
12 of being a contractor. It's something I always
13 wanted to do. So I would greatly appreciate the
14 Board in taking into consideration to allow me
15 to get this license and follow my dreams and do
16 the right thing.

17 MR. SMITH: You can tell them you have
18 already spent quite a bit of --

19 MR. KELLY: Yeah. I took personal
20 loans with my own credit. I did fix my credit
21 last year. And I'm 24 years old, I'm still a
22 young man. I made a lot of bad choices, but
23 every choice in my life hasn't always been bad.
24 I graduate from University of Phoenix later this

1 year in the fall with a financial degree,
2 bachelor's. I used to play football at MTSU. I
3 had a knee injury. So I couldn't continue to
4 play football.

5 I just don't want the situation to
6 hinder me from moving on with my life and doing
7 what I want to do.

8 MR. TICKLE: What were your felonies?

9 MR. KELLY: Just marijuana.

10 MR. TICKLE: Possession?

11 MR. KELLY: Yes, sir.

12 MR. MASON: How long ago was the last
13 one?

14 MR. KELLY: It's around '04. And then
15 as far as court, they made that decision in '05.

16 MR. SMITH: You are off probation? You
17 are not on any type of probation?

18 MR. KELLY: No, sir.

19 MR. SMITH: Would this current charge
20 be a violation of the probation? Well, you are
21 not on probation.

22 MR. KELLY: No, I'm not on probation.
23 Like I said, it's allegedly. If you do research
24 on the case, it's like 50, 69 people from the

1 Davidson County area and surrounding counties.
2 It's a bunch of wiretaps, and they just rounded
3 up who they could.

4 They were basically -- due to my
5 record and my past and me hanging with the
6 people that's allegedly being charged with these
7 charges, I got rounded up in the mix of that. I
8 have a very expensive attorney that's doing
9 everything he can to take the situation off my
10 back and for me to move forward with my life.

11 MR. SMITH: Who is your attorney in
12 Nashville?

13 MR. KELLY: J. Martin -- James Martin.
14 He works over at Bobby Balance's office.

15 MR. TICKLE: What is your conspiracy
16 charge?

17 MR. KELLY: They conspired to have
18 marijuana brought from another state. I'm
19 really not all the way positive or on exactly
20 what was going on. I didn't have anything to do
21 with it.

22 But from what my lawyer is telling
23 me, it's a mixup as far as me and a friend of
24 mine was having a discussion over the phone, and

1 basically they brung me in on the case because a
2 case of this particular situation, there's not
3 enough room for error. So you have to bring
4 everybody in. Everybody has to go through the
5 court system, let the judge and the DA figure it
6 out.

7 MR. MASON: So it's another marijuana
8 charge?

9 MR. KELLY: Basically.

10 MR. MASON: Were you ever arrested or
11 charged with cocaine use?

12 MR. KELLY: Huh-huh.

13 MR. MASON: Methamphetamine?

14 MR. KELLY: No.

15 MR. MASON: Have you ever been charged
16 with a property crime?

17 MR. KELLY: No.

18 MR. MASON: Theft?

19 MR. KELLY: No.

20 MR. MASON: Shoplifting?

21 MR. KELLY: No, none of that. Just
22 marijuana and a DUI.

23 MR. MASON: All the charges you've had
24 in your past are for marijuana?

1 MR. KELLY: Yes, sir, unfortunately. I
2 did make those decisions. This last situation,
3 it taught me a valuable lesson, a very valuable
4 lesson. Actually I have been driving trucks now
5 for like two years, and I am still being
6 friendly. Through this situation, I learned
7 that even if you are not doing anything, you
8 should -- there's no association with anybody
9 that is. It cost me a lot of money and a lot of
10 time, and it's possibly cost me to move further
11 in my life with my contracting license.

12 MR. TICKLE: Are you drug tested on
13 your driving?

14 MR. KELLY: Yes.

15 MR. TICKLE: And who do you drive for?

16 MR. KELLY: I'm a freelance contractor
17 basically. What I do is, if they need somebody
18 to drive -- I have my own insurance, I have my
19 own truck -- I come in and move a load for you.

20 MR. TICKLE: Okay. And your earlier
21 convictions were on marijuana, and now that was
22 2005. You still have associated with some of
23 these people?

24 MR. KELLY: It never has been an

1 ongoing situation. I have no control over what
2 my peers do, but I do have control over whether
3 or not I see you or I'm dealing with you in some
4 sort of way, whether we are hanging out or
5 taking trips or just even having phone
6 discussions. And that's basically guilty by
7 association.

8 Due to my record and due to the
9 crowd that I was around, it's only right for the
10 detectives to assume that I was in on it also.
11 I'm not upset with anybody. It's my fault. I
12 really shouldn't have been around. I shouldn't
13 have been dealing with those types of people.

14 MR. WHITTINGTON: So are you telling
15 the Board that you really didn't have anything
16 to do with it?

17 MR. KELLY: I really didn't, no, sir.

18 MR. TICKLE: What license is he
19 applying for?

20 MR. SMITH: It's a BC 2315 21 and 31.
21 He gets his carpentry, dry wall, tile, roofing,
22 demolition. He can do some handyman work, stuff
23 like that.

24 MR. TICKLE: Those are --

1 MR. SMITH: BC.

2 MR. TICKLE: BC.

3 MR. SMITH: There's five. You can
4 grant five.

5 MR. WHITTINGTON: What's the monetary
6 limit?

7 MR. SMITH: Qualifies for 200.

8 What if you had a hundred thousand
9 dollar license?

10 MR. KELLY: I just need my license.

11 MR. SMITH: What if you got a 50,000
12 dollar license?

13 MR. KELLY: It will slow me down.

14 MR. SMITH: That's on any one job. You
15 can have five 50,000 dollar jobs.

16 MR. KELLY: I mean, I'd appreciate
17 anything the Board is willing to do for me.

18 MR. MASON: Do you have any jobs on
19 line now?

20 MR. KELLY: A lot.

21 MR. MASON: What's the most they're
22 going for?

23 MR. KELLY: I haven't placed any bids.
24 I haven't done that. But I'm interested in

1 these jobs, and if I get this license, I can
2 definitely get them.

3 I do have relationships with other
4 contractors. One relationship, I have a guy
5 named Jackson over at WT Boyce working out of
6 Brentwood. And that's -- immediately I'll start
7 working on that if I'm issued a license.

8 MR. MASON: So the financial is
9 qualified for 200,000?

10 MR. SMITH: Yes, sir.

11 You know, you can work under a
12 general contractor.

13 MR. KELLY: I can, but sometimes that
14 doesn't --

15 MR. SMITH: I just want to make you
16 aware of that.

17 MR. KELLY: Yes, sir.

18 MR. SMITH: If you were issued a
19 general, then --

20 Other than that, it's a complete
21 file. He's got a reviewed financial statement.
22 He started a new company, RK Jr. Contractors and
23 put about 20,000 dollars in it.

24 MR. TICKLE: Have you been doing this

1 kind of work?

2 MR. KELLY: Yes, I have been working
3 with my dad. He just does it on the side, but
4 I'm very familiar with it. My staff --
5 actually, the way I'm going to run things is I'm
6 going to have a general project manager for
7 general construction. And I did have a few
8 questions for you all today because I do have an
9 asbestos license, but I'm only licensed to be a
10 worker. And I also wanted to eventually start
11 just another phase of my company, as far as
12 environmental services, asbestos, lead and
13 mold. I have a lot of experience with that.
14 That's my area of expertise.

15 But as far as demolition, dry wail,
16 carpentry work, that's simple. I have done it,
17 but I don't have as much experience as I do in
18 asbestos.

19 MR. MASON: It seems to me that we
20 would want to have some kind of reservation
21 because there's a pending charge, and the
22 reservation, one option for the Board, would be
23 to approve him at a lower dollar limit and
24 invite him once that charge is resolved to apply

1 for --

2 MR. SMITH: That's where I was headed.
3 Of course it's a two-year license. So in two
4 years, he would be -- hopefully you will have
5 all your problems behind you.

6 Well, I'll do this, I'll make a
7 motion and y'all decide what you like.

8 My motion would be to approve him
9 for a one hundred thousand dollar license under
10 BC 2315 21 and 31.

11 MR. WHITTINGTON: We have a motion.
12 Does everyone understand the motion?

13 MR. MASON: Second.

14 MR. WHITTINGTON: Are there any
15 questions or discussions?

16 MR. SMITH: If you were to get these
17 charges dropped, exonerated or whatever, you
18 contact these people at the Board and we will
19 consider at our next regularly scheduled
20 meeting, not as a hardship -- we meet six times
21 a year -- we will consider going to two hundred
22 thousand at that time.

23 MR. KELLY: So basically you meet every
24 two months. So during that process, I can move

1 my limit up?

2 MR. SMITH: If these charges go away,
3 you can request that, and we would consider it
4 at our next available meeting.

5 MR. KELLY: I greatly appreciate that.

6 MR. SMITH: Well, we better vote on it
7 first.

8 MR. WHITTINGTON: Any other discussion
9 there? What do we do if the charges aren't
10 cleared and he's convicted?

11 MR. SMITH: That's another good point.

12 MR. WHITTINGTON: Is that something
13 worth discussing?

14 MR. MASON: We have a precedent on
15 conviction on a charge to remove from
16 revocation, which we could have counsel consider
17 at the time.

18 MR. SMITH: Would this be a felony
19 charge?

20 MR. KELLY: Yes.

21 MR. MASON: You understand that if you
22 are convicted, that we have the option to revoke
23 your license all together after due process?

24 MR. KELLY: Yes, sir.

1 MR. WHITTINGTON: I guess that's a
2 matter that we would take up after the
3 conviction?

4 MS. GRAY: Right. I mean, right now
5 denial would have to be based on improper
6 conduct or something like that if we were going
7 to go that route, just because he's not been
8 convicted yet and it appears he has kept his
9 CDL. So I recognize that and thought it might
10 make a difference, that he kept his commercial
11 license. They haven't revoked that, which I
12 don't know who would do that.

13 MR. WHITTINGTON: All in favor of the
14 motion say I.

15 THE BOARD: I.

16 MR. WHITTINGTON: Opposed likewise.
17 Motion carries. So moved. Congratulations.

18 MR. KELLY: Thank you.

19 MR. SMITH: Don't do anything until
20 Monday -- Tuesday.

21 MR. WHITTINGTON: Give the girls in
22 Nashville a few days to get your paperwork
23 online.

24 MR. SMITH: It should be on the

1 computer Monday or Tuesday.

2 MR. KELLY: Okay. Will I get something
3 in the mail or how does it work?

4 MR. SMITH: Yes, in about three weeks,
5 two work weeks, you will get your actual
6 certificate. But you will be legal when it hits
7 the computer.

8 MR. WHITTINGTON: Thank you very much.

9 MR. KELLY: I appreciate it. Thank
10 you.

11 MR. WHITTINGTON: The next item on the
12 agenda is behind Tab 1, and that's the hardship
13 approvals.

14 Entertaining a motion to approve
15 the hardships.

16 MR. TICKLE: Second.

17 MR. WHITTINGTON: Motion to second.

18 Any discussion? All in favor say I.

19 THE BOARD: I.

20 MR. WHITTINGTON: Opposed likewise. So
21 moved.

22 Next item behind the Item No. 2 is
23 March transcript. There were some changes made
24 from when it was e-mailed to you for your

1 review. I assume this transcript in our book
2 was revised. Entertaining a motion to approve.

3 MR. TICKLE: Motion.

4 MR. MASON: Second.

5 MR. WHITTINGTON: Motion to second.

6 Any discussion?

7 All in favor say I.

8 THE BOARD: I.

9 MR. WHITTINGTON: Opposed likewise.

10 Motion carries.

11 Behind Tab No. 3 will be the
12 interviewed candidates. Does anyone have
13 anything to bring up from your interviews this
14 morning?

15 Then I'll entertain a motion that we
16 approve all the interviewed and waived
17 applications.

18 MR. TICKLE: So moved.

19 MR. BRODD: Second.

20 MR. WHITTINGTON: Any discussion?

21 MR. BRODD: Keith, there was one I
22 talked to that did a home improvement that I
23 thought I needed to bring up. I did suggest we
24 approve their license. It's for Atkinson and

1 Associates. There is a complaint open and they
2 have agreed to a consent order of two thousand
3 dollars. And upon payment of that consent
4 order, I am recommending that we approve their
5 license.

6 MR. WHITTINGTON: Okay. Make that in
7 the form of an amendment to the motion.

8 MR. BRODD: I'm recommending
9 approval of Atkinson and Associates pending the
10 payment of a two thousand dollar consent order

11 MR. WHITTINGTON: Will you accept an
12 amended motion?

13 MR. TICKLE: Yes.

14 MR. WHITTINGTON: We have an amendment
15 to the motion, and the motion has been amended
16 and seconded. Is there any discussion on that?
17 All in favor say I.

18 THE BOARD: I.

19 MR. WHITTINGTON: Opposed likewise. So
20 moved.

21 Now we are into revisions. This is
22 the add classes, combinations, increases, behind
23 Tab 4, moat changes.

24 Any questions on the revisions? Motion

1 to approve?

2 MR. TICKLE: Motion.

3 MR. BRODD: Second.

4 MR. WHITTINGTON: Motion second. Any
5 discussion? All in favor say I.

6 THE BOARD: I.

7 MR. WHITTINGTON: Opposed likewise?

8 Motion carries.

9 The next tab behind Tab 5 would be
10 the home improvement applicants. Who did the
11 home improvement applicants?

12 MR. OWENS: I did three of them.

13 MS. LAZENBY: You had four and Mark had
14 the very first one.

15 MR. WHITTINGTON: One of you two guys
16 want to make a motion?

17 MR. OWENS: I had one that filed 6909
18 that was waiting on an original surety bond, and
19 once we got that, it would be approved. And
20 6857 was approved, and 6864 was approved.
21 That's all I have. I didn't have but three.

22 MR. WHITTINGTON: Mark, you said 6847,
23 you approved?

24 MR. BRODD: Yes.

1 MR. WHITTINGTON: 6900?

2 MR. OWENS: I had 6909. I only had
3 three.

4 MS. ROBERTS: I can tell you about
5 6900. It was a citation. They paid it. That
6 was the only issue.

7 MR. WHITTINGTON: That was an
8 applicant?

9 MS. ROBERTS: Yes, it was an
10 applicant.

11 MR. BRODD: I move approval for all
12 five home improvement applicants.

13 MR. TICKLE: Second.

14 MR. WHITTINGTON: Motion to second. Is
15 there any discussion? All in favor say I.

16 THE BOARD: I.

17 MR. WHITTINGTON: Opposed likewise.
18 Motion carries.

19 Behind Tab No. 6, this must be the
20 LLE applicants.

21 MR. MASON: I went over these. On
22 No. 44289, this applicant has been asked and
23 still has not submitted information about past
24 felony -- possible felony activity. So I'm

1 recommending that we deny pending not only an
2 affidavit on his felonies but an exam.

3 On No. 51282, I'm told that --
4 well, staff had already told him that this
5 individual needed to take an exam and probably
6 didn't need it in the first place. So that
7 person needs a new exam.

8 On No. 51797, this applicant had
9 very, very thin experience listed. And because
10 of that, I think an exam is warranted.

11 And then there was an addition to
12 this list, No. 54219, which was a reinstatement
13 with that exam, which I think should be
14 approved.

15 So with those four items as noted,
16 I would move that we approve with the four
17 exceptions or changes that I mentioned.

18 MR. WHITTINGTON: I have a motion. Do
19 I have a second?

20 MR. BRODD: Second.

21 MR. WHITTINGTON: Motion to second. Is
22 there any discussion? All in favor say I.

23 THE BOARD: I.

24 MR. WHITTINGTON: Opposed likewise.

1 Motion carries.

2 Behind Tab No. 7, the LLP
3 applicants.

4 MR. SMITH: I reviewed that one, and
5 especially considering our last appearance here,
6 I move for approval.

7 MR. WHITTINGTON: Motion. Do I have a
8 second?

9 MR. TICKLE: Second.

10 MR. WHITTINGTON: Any discussion? All
11 in favor say I.

12 THE BOARD: I.

13 MR. WHITTINGTON: Opposed likewise.
14 Then we'll move into the legal report.

15 MS. GRAY: The legal board for the May
16 2011 meeting was reviewed by both the
17 residential sub-committee and the commercial
18 sub-committee. And I am going to call out the
19 changes that are made.

20 No. 2 on the residential portion
21 was marked for discussion, and it was decided to
22 defer for civil resolution and basically keep
23 the complaint open until we find out what is
24 happening in civil litigation.

1 Not 15 recommended a 1,000 dollar
2 penalty and has been changed to a 250 dollar
3 penalty.

4 No. 17, it was recommended a 500
5 dollar civil penalty, and the sub-committee
6 recommended a closing flag instead.

7 No. 60 on the report, original
8 recommendation was 1,000 dollars, and the
9 sub-committee recommended a higher penalty of
10 5,000 dollars.

11 No. 69 on the residential portion,
12 the original recommendation was one thousand
13 dollars, and the sub-committee recommended a two
14 thousand dollar civil penalty.

15 No. 71, original recommendation was
16 five thousand dollars, and the sub-committee
17 recommended two thousand dollars.

18 No. 72, original recommendation was
19 five thousand dollars, and the sub-committee
20 recommended a one thousand dollar penalty.

21 And No. 86, this one was marked for
22 discussion, and the sub-committee recommended a
23 one thousand dollar penalty.

24 The commercial portion is near the

1 very end of the legal report. We have 88, I
2 believe, then the commercial portion starts.
3 And the only change on that was No. 5, and it
4 was recommended that -- I had recommended a one
5 thousand dollar penalty, and the sub-committee
6 recommended a letter of warning.

7 We do have an addendum to
8 the legal report, and basically this case has
9 been presented before. Our litigation attorney,
10 Michael Driver, has represented today with some
11 new information. It's my understanding that the
12 sub-committee recommended that the previously
13 authorized one thousand dollar civil penalty be
14 kept at that.

15 And I think further discussion
16 was that a home improvement license was needed
17 for that case. He can speak further on that if
18 you all need more information. And that's all
19 that I have for my legal report.

20 MR. WHITTINGTON: Motion to approve the
21 main legal report.

22 MR. MASON: Motion.

23 MR. WHITTINGTON: Second?

24 MR. BRODD: Second.

1 MR. WHITTINGTON: Any discussion?

2 MR. SMITH: Tell me again -- I didn't
3 remember us talking about reaffirming the
4 thousand dollar, Michael. I remember the home
5 improvement license. I'm trying to decide if
6 I'm happy with that.

7 MR. TICKLE: Where is that? I don't
8 see it. I was -- I was going to ask the
9 question like Reese just did.

10 MS. GRAY: I don't know if they were in
11 all the books or just maybe some.

12 MR. DRIVER: Six thousand dollars was
13 previously authorized.

14 MR. TICKLE: Something we had done
15 previously?

16 MR. DRIVER: That's correct.

17 MR. SMITH: How many units did he work
18 in? 40?

19 MR. TICKLE: 50 minus 14.

20 MR. DRIVER: It looks like 37. So
21 around 40 units. And that would be all. No
22 separate authorization was discussed, I don't
23 believe, in sub-committee. But you are free to
24 discuss that now.

1 MR. SMITH: Well, total contract was
2 about 250. I mean, the total --

3 MS. GRAY: But keep in mind, this is a
4 violation of the home improvement law, and
5 that's what's going to be decided by you all.
6 And each violation of unlicensed contracting
7 under that law is one thousand, as opposed to
8 five thousand under the general.

9 MR. SMITH: I would move that we would
10 raise that consent agreement from one thousand
11 to three thousand.

12 MR. WHITTINGTON: Do we have to do that
13 based on the per unit?

14 MR. DRIVER: You can make an offer to
15 settle, which is what you are making, based on
16 whatever you think is appropriate.

17 MR. SMITH: Has he accepted or has he
18 seen the one thousand dollar offer?

19 MR. DRIVER: I couldn't say off the top
20 of my head.

21 MS. GRAY: I think the argument from
22 the beginning was not necessarily a penalty
23 amount, as opposed to what license was needed.
24 He may know or the contractor may know about the

1 one thousand dollar offer before now, but I feel
2 like -- I don't know if that's fair because
3 there's been so much other discussion just about
4 whether a license was needed in the first
5 place.

6 MR. SMITH: You don't think what's
7 fair?

8 MS. GRAY: Raising it based on complete
9 awareness about the offer from the Board. I
10 think that from the getgo there was a lot of
11 discussion between me and the contractor and
12 Michael and the attorney about whether a license
13 was needed. That's all I was saying.

14 MR. TICKLE: I guess what we are asking
15 is, has he been told that it's just a thousand
16 dollars?

17 MR. DRIVER: Yes.

18 MR. SMITH: Then I don't know if I made
19 a motion.

20 MR. WHITTINGTON: No, you really
21 didn't.

22 MR. SMITH: Then that ends my
23 discussion.

24 MR. WHITTINGTON: We have a motion and

1 a second to approve the main legal report. Is
2 there any other discussion? All in favor say
3 I.

4 THE BOARD: I.

5 MR. WHITTINGTON: Approved likewise.
6 Motion carries.

7 We have a discussion on the summary
8 suspension.

9 MS. GRAY: Basically what I would like
10 for the Board to do today, basically because I
11 haven't given the contractor any notice, is
12 today based on what I tell you, if you agree or
13 not agree to hold a teleconference at some
14 point, maybe in the week or two after I give
15 proper notice, to have the actual deliberation
16 process of whether the license should be
17 suspended or not.

18 Today is just preliminary
19 information so that you all can vote to do that
20 in a week or two. The way we have done it
21 before -- and I don't know if everybody was
22 online with the teleconference that we did a few
23 months ago where we suspended a license, but
24 that's basically how we would do it again. We

1 are just sort of getting this step out of the
2 way, me telling you about the case.

3 This contractor has currently six
4 open complaints. He's a home improvement
5 contractor, and he also, I believe, has upwards
6 of 30 complaints with the Better Business
7 Bureau, from what I have seen. I haven't
8 reviewed those close enough to say that every
9 single one is a violation, but I would say that
10 several are.

11 In all six of the cases that I'm
12 presenting today, just for your information, the
13 main complaints are that they are taking more
14 than a third down, which is not allowed under
15 our statute, unless certain things are complied
16 with. And the contractor in this case has not
17 complied with those provisions. So he would not
18 be permitted to take the one third down.

19 And then he's either failing to
20 complete the work or having a really long
21 delay. I would say upwards of 90 days or more
22 on doing any work at all. I don't know if you
23 have these in their books, but out of the six
24 complaints, I have two complainants who said,

1 no, he's never come back, that's it. I have one
2 that I cannot find out right now whether it's
3 been done or not so that's up in the air. Then
4 I have one of the two contracts that were
5 actually performed. So the only violation of
6 those cases would be taking the one third down
7 and the possible long delay.

8 And then one contract where the
9 homeowner canceled and said, fine, I want my
10 money back if you are not going to come out to
11 my home. But they actually got a 30 percent
12 cancellation fee. So that's a nice little chunk
13 of change if you did that to several home
14 owners, which they may be doing that.

15 So I just wanted to make clear that
16 I only have six complaints. There is the taking
17 more than one third down on all six. So we had
18 that violation on all six. I don't know how
19 seriously the Board takes that violation. That
20 may be something you want to discuss today.

21 And then I do have sort of a mix of
22 results regarding completion of work. I have
23 seen companies before that are taking the money
24 and absconding with it and never hear back. In

1 this case, the contractor has responded to the
2 complaints and said that we are behind.

3 I don't know if he's had a complete
4 response for every case, but I know that that's
5 his main thing, that they took on too much work
6 and have not been able to catch up.

7 So in between now and the next week
8 or two that I would need to get the proper
9 notice, I may be able to find out more
10 information, but that's all I have today.

11 MR. WHITTINGTON: Are you asking us to
12 just be ready for a conference call?

13 MS. GRAY: Right. And I may need a
14 vote. If you all think it's important enough
15 just based on what I have said, I'd probably
16 need a vote that we are going to hold a
17 teleconference so that when we get back to
18 Nashville, we can put it on the website, me and
19 Carolyn can discuss when we put it on the
20 website, say we are doing it. So we don't need
21 any more Board action about -- we are not
22 agreeing -- voting on a summary suspension
23 today. We are just voting on holding that
24 emergency meeting for the purpose of

1 discussing -- determining at that time whether
2 to suspend or not.

3 MR. WHITTINGTON: We need a motion,
4 then. Does everyone understand what she's
5 asking? Can I get a motion?

6 MR. SMITH: So moved.

7 MR. TICKLE: Second.

8 MR. WHITTINGTON: Motion to second. Is
9 there any discussion? All in favor say I.

10 THE BOARD: I.

11 MR. WHITTINGTON: Opposed likewise.

12 Motion carries.

13 The next item up is litigation
14 cases in favor of contractor.

15 MS. LAZENBY: This was something -- I
16 don't know if you want to discuss it, but coming
17 up in the policy that any time a case that we
18 get a complaint and the case already went to
19 court and was in favor of the contractor, that
20 the Board could not open up the complaint.

21 That was something Keith had
22 discussed and we wanted to get full the Board to
23 see how you would look at the policy or if you
24 want to make it a case by case basis. I think

1 Jenny had talked to the sub-committee about it a
2 little bit, about the cases in litigation.

3 MS. GRAY: Yes. I hate to tie the
4 Board's hands with many policies. I know some
5 are important and some are more important than
6 others. So I can take it as the Board's
7 direction to me when I'm reviewing cases to
8 always let you all know that there is litigation
9 going on and any results I may know of and make
10 sure that that's part, at least, of your
11 determination. That was really my
12 recommendation, that we not tie your hands with
13 civil resolution one way or the other so we are
14 not going to even hear the case because just
15 from what I have seen, there are circumstances
16 where you might want to take a closer look
17 despite what the court may have found.

18 MR. WHITTINGTON: Just for the Board's
19 information, in just kind of reviewing a couple
20 of cases in probably the last meeting or
21 sometime between the last meeting, it just would
22 have appeared to me if a judge rules in favor of
23 a contractor and the homeowner still brings the
24 contractor before the Board with a complaint,

1 that it's kind of sour apples or something, that
2 they are trying to bring back and get some type
3 of revenge on the contractor.

4 I felt like, why do we need to put
5 that contractor through another round of
6 investigations? But after listen to our
7 attorneys, it would, in effect, if we set
8 policy, tie our hands to make a decision should
9 we need to.

10 And upon further looking at it, I
11 would have to agree. So I don't think we need
12 to make any other decisions, unless the Board
13 wants to make a decision.

14 The next item on the agenda is the
15 debris removal. If everyone would turn to Page
16 9, the tab in your books, I bring to your
17 attention an e-mail Carolyn sent out. And
18 there's some redacted parts in here so we won't
19 know exactly what we are discussing here.

20 But basically Carolyn received a tip
21 from a licensed contractor that says an RFP was
22 being awarded to an unlicensed contractor. And
23 it's a multimillion dollar contract. The major
24 part of the contract involves cutting the limbs,

1 tree removal, excavation, debris removal, and
2 there is a scope of services.

3 MS. GRAY: Mr. Chairman, I have notes
4 if they want to refer to the exact provisions
5 that the sub-committee had a problem or decided
6 license would be needed. I thought that might
7 make it easier for everybody to look. In the
8 scope of services, which is Exhibit A to the
9 contract, it looks like No. 5 -- I'm sorry,
10 No. 13, No. 11.

11 MR. SMITH: Has this been to a
12 sub-committee?

13 MS. GRAY: Yes, we have been discussing
14 it.

15 MR. SMITH: And they have a
16 recommendation?

17 MR. MASON: Yes, we do.

18 MS. GRAY: I was just going to point
19 out Items 11, 13, 21 and 22.

20 MR. WHITTINGTON: Does the
21 sub-committee have a recommendation?

22 MR. MASON: Well, the sub-committee
23 looked this over pretty carefully, and it's our
24 belief that there is certainly enough activity

1 associated with this RFP to make this -- a
2 license necessary.

3 MS. GRAY: I think we started with
4 No. 11 in the contract. It's on Page --

5 MR. MASON: 12 of 29.

6 MS. GRAY: Right. And so we looked at
7 that one first and considered whether that was
8 the term of snagging or not. Basically the
9 license classification that we were really
10 referring to is under heavy construction. It's
11 called clearing, grubbing, snagging, rip-rap.
12 No. 11 is not so much. I think No. 13 is where
13 we're really starting, removal of hazardous
14 stumping, and it was noted that they were doing
15 some back filling.

16 MR. SMITH: Mark, were you on the
17 sub-committee?

18 MR. BRODD: No.

19 MS. GRAY: I apologize. It may not
20 have been the complete sub-committee that
21 discussed it.

22 MR. SMITH: I think Mark heads up the
23 commercial sub-committee.

24 MS. GRAY: And I may have left him

1 out. We have two separate things.

2 Basically No. 13, the back filling,
3 removing the hazardous stumps, and No. 21, the
4 removal and hauling of storm deposited soils,
5 and No. 22 regarding the canal and waterway
6 debris removal. I think it was decided that
7 those areas of the work would either fall under
8 category 5 under heavy construction or letter D
9 under heavy construction, which I don't have a
10 book in front of me.

11 MR. MASON: Jenny has discussed this
12 with individual members of the Board. And the
13 individual members of the Board that you have
14 discussed this with have pretty much agreed with
15 the idea that a license should be required.

16 It removes stumps and filling stump
17 holes, and that wouldn't necessarily include
18 dirt moving and that kind of landscape work for
19 which a license was required. Total value of
20 this contract is how much?

21 MS. GRAY: I do not know off the top of
22 my head. It's multimillion. There is a
23 representative from the County here that has
24 requested to speak to the Board. But I will say

1 that he has notified me that -- I have notified
2 him of the portions of the contract we just
3 discussed, and he has stated that this is a
4 from, a disaster FEMA form RFP, as in they
5 drafted it quickly and led it and these
6 provision are not actually being performed by
7 that contractor and they plan on amending the
8 contract by five o'clock tomorrow and removing
9 those provisions.

10 MR. WHITTINGTON: Is he here?

11 MS. GRAY: He is here.

12 MR. WHITTINGTON: Do you want to come
13 up and speak to us please?

14 MR. BYRD: Thank you, Mr. Chairman. I
15 know you're on a tight time schedule and so I
16 will be brief.

17 MR. WHITTINGTON: Start by stating your
18 name for the record, please.

19 MR. BYRD: Joseph Byrd from the local
20 government, I guess. We are keeping it
21 anonymous. So from the local government.

22 Tornados come through the area, and
23 this is the first time the local government has
24 ever been through something where they are

1 trying to coordinate with FEMA. The most
2 important elements of being able to get what we
3 now know is about a three million dollar
4 contract. The most important part of being able
5 to make sure that you get FEMA reimbursement is
6 that you follow FEMA requirements.

7 So the RFP that was put together
8 was an RFP that came from suggestions and
9 recommendations from FEMA, which our RFP and
10 contract has been approved. Problematic with
11 that RFP was there were certain things that
12 weren't required for our particular situation.
13 Two of those situations, specifically, Ms. Gray
14 has mentioned to you; the canal section, we have
15 no canals. There's no canal issues there.

16 The second one is the soils, the
17 removal of soils. This would be typically in a
18 hurricane area where there's sand that's being
19 removed. We intended -- in fact, our monitor
20 contract -- you have to have two separate
21 contracts. You contract with a monitor and then
22 you contract with the actual debris removal.

23 Over 99 percent, 92 percent or 98
24 percent of this is actually the debris removal;

1 largely trucks coming by, picking up things only
2 off the right-of-way. There's no demolition.
3 They're just simply glorified garbage men is
4 what they really are that need large trucks.

5 There is no soil remediation that's
6 being done. The problem was a clerical error.
7 When we sent out the RFP, it was included in the
8 debris contract. We have already met with the
9 contractor, and we have both realized that in
10 the scope of services, that should have been
11 taken out, and indeed it should be.

12 On the element of No. 13 regarding
13 the hazardous stumps, FEMA requires the removal
14 of hazardous stumps that's in the debris, in the
15 right-of-way, that's storm debris eligible.
16 It's only if 50 percent more of the root ball
17 shows. We have calculations there's only 20
18 stumps.

19 The County is willing to take care
20 of any soil erosion through our road department,
21 supervised by our county engineer, and also our
22 storm water people. And of course, TDEC is
23 right there alongside of FEMA with us in this
24 matter.

1 We will, by five o'clock
2 tomorrow -- I have already spoken with the
3 decision-makers from the county side, as well as
4 from the contractor's. We will strike Items 21
5 and 22, and also 13 will be simply that they
6 will just be picking up with their grappling arm
7 any stumps or whatever and then hauling them
8 off.

9 And that's the essential part of
10 this contract. 98 percent of this is just any
11 construction -- any kind of debris, whether it's
12 C and D, whether it's vegetative, whether it's
13 white goods, is pushed to the right-of-way, and
14 they are making two sweeps just to get rid of
15 the storm debris.

16 There's no demolition. If there's
17 any demolition, it's on private property. Those
18 are contractors that are hired by the insurance,
19 and we agree, they need to be contracted.
20 That's not what this service is. This service
21 is simply to remove -- sophisticated garbage men
22 really is what they are.

23 If you have any questions for me, I
24 would be glad to answer any questions.

1 MR. TICKLE: It sounds like you are
2 going to give this contract to somebody out of
3 state. Do we not have people here in the state
4 of Tennessee that already has a license to do
5 that instead of us going out of state? I would
6 like to keep stuff here in the state of
7 Tennessee myself.

8 MR. BYRD: Absolutely. We issued the
9 RFP. We had 11 responses. Two of them were
10 from the state of Tennessee. One of them --
11 both of those were local. No one else across
12 the state of Tennessee responded, just those
13 two. One was very capable and able.
14 Unfortunately he was also quite a bit higher in
15 the cost analysis, which would not allowed us to
16 get FEMA reimbursement.

17 The other was not qualified. He
18 didn't have the right equipment. He didn't even
19 have enough equipment to take care of everything
20 that was done.

21 We went through -- in fact, we went
22 through a process where we have had various
23 people raising questions about our proposal. We
24 submitted everything to FEMA to make sure that

1 we followed the process under 44 CFR 13.36 to
2 the T, and we did that. They have actually --
3 something I have never seen FEMA do before or
4 heard of FEMA doing before is that they have
5 actually responded in newspaper articles saying
6 that we followed through.

7 And while we would love -- in fact,
8 I would just say to the Board as I have said to
9 the County Commission, the most expedient thing,
10 the most politically expedient thing would have
11 been for you to give it to a local contractor.
12 That gets you votes. Unfortunately they did the
13 courageous thing. They did what was the most
14 advantageous to the County.

15 And we would love that it was --
16 not only do we wish it was someone in the state
17 of Tennessee, we would have loved that it would
18 have been our local contractor that could have
19 helped us.

20 On the good side of the coin, we do
21 have 285 houses that were completely destroyed.
22 400 plus houses were damaged. So our
23 contractors in this area are going to be very
24 busy. It's just not debris removal. We have to

1 get this stuff out as quickly as we can so the
2 reconstruction can take place with all the
3 damage.

4 MR. MASON: When you did the RFP, did
5 you include this Exhibit A, scope of services,
6 with the RFP?

7 MR. BYRD: Yes.

8 MR. MASON: Now you want to amend it to
9 take out items that were in it?

10 MR. BYRD: It was understood when we
11 signed the contract that those parts were
12 supposed to be deleted anyway. But it was a
13 clerical error.

14 MR. MASON: Was it understood in
15 writing?

16 MR. BYRD: It will be by tomorrow at
17 five o'clock.

18 MR. MASON: By five o'clock tomorrow,
19 though. What I'm getting at is this: You put
20 out an RFP and you included the scope of
21 services. So whoever bid on it, if I were
22 bidding on it, it would include the whole scope
23 of services.

24 Now you have awarded a contract and

1 you want to amend it to fix problems that we
2 have found with it and yet it changes the RFP or
3 changes the scope of what these people were
4 bidding on.

5 So the earlier question about
6 Tennessee contractors who might have been able
7 to do it, their bid may have been different
8 because the scope of services now is different.

9 MR. BYRD: Respectfully, that's not
10 entirely true because, number one, in the RFP,
11 if you read through the whole RFP, you will see
12 that no amount of work is guaranteed. As a
13 matter of fact, FEMA requires us to have a
14 termination for convenience.

15 Please understand, we did not go
16 through a competitive bid process. We went
17 through a competitive proposal process. Most of
18 these contractors -- we also included some
19 things that had to do -- because this is our
20 first time going through a FEMA disaster, we
21 also included some things that were part of road
22 clearing that you could only get paid for in the
23 first 70 hours.

24 We realized that in our counting

1 the issues that were in our -- going through and
2 trying to weigh out each factor. And when our
3 monitor came on board, he explained to us, these
4 are the line items you need to focus upon. So
5 in truth, all the contractors were weighted, but
6 they knew -- in fact, to this day, I would say
7 only our monitor actually knows how many stumps
8 were there, would know if there was any soil,
9 would know if there were any canals. All of
10 them did it blindly.

11 None of them had the opportunity --
12 actually if you read through the RFP, they were
13 actually providing an amount in their proposal
14 that had to do with specific tasks. So that's
15 not the case. And I had presented to your
16 counsel the copy of the monitor's contract that
17 leaves out these sections because they are not
18 going to monitor those things because we don't
19 have them.

20 This isn't a matter of us -- we
21 found out what you had a problem with. No, this
22 is a matter of when it was brought to my
23 attention, I said, well, we don't have sand, we
24 don't have beaches in our community, we don't

1 have canals. We don't have those issues.

2 MR. MASON: So you are going to remove
3 Item 13, remove hazardous stumps all together,
4 from the RFP or are you going to modify it?

5 MR. BYRD: Well, 13 will be -- the
6 County will take over. That one will be
7 modified to say that the County will take care
8 of it. They are still going to remove what
9 is --

10 MR. MASON: So they are going to bring
11 in machinery and dig out stumps from out of the
12 ground?

13 MR. BYRD: No, sir, the County will do
14 that.

15 MR. MASON: The County will move it.
16 And all you are going to do is haul off the old
17 stump?

18 MR. BYRD: Yes, sir, that's correct.

19 MR. SMITH: Was the Tennessee
20 contractor licensed in the State of Tennessee?

21 MR. BYRD: Yes, sir. And I will say
22 that the contractor we're using is licensed in
23 Mississippi and Alabama. So there is
24 reciprocity. They have actually done diaster

1 relief here in Tennessee.

2 We did call to find out if
3 licensing was required. Our initial reading of
4 the statute and the rules did not lead us to
5 believe that a contractor's license was
6 required. There was no affront in any way
7 either by us or by the contractor thinking that
8 it was required, and we would not want that to
9 be the interpretation of the Board either.

10 MR. WHITTINGTON: Any other questions
11 by the board?

12 MR. SMITH: We have been asked to --

13 MR. TICKLE: What are we doing?

14 MR. WHITTINGTON: We are asked to
15 determine whether or not a license is actually
16 required to do this project.

17 MS. GRAY: This is not an open
18 complaint yet.

19 MR. TICKLE: A contractor here in the
20 state of Tennessee who is licensed, or possibly,
21 has said, look, we are fixing to hire somebody
22 to come do work here in the state of Tennessee
23 and he's not licensed. What are y'all going to
24 do about it? Is that the bottom line?

1 MS. LAZENBY: Yes.

2 MR. TICKLE: So it's our decision to
3 decide if a license is required before any work
4 is done? Is that correct, Mr. Chairman?

5 MS. GRAY: I think it's already been
6 led.

7 MR. TICKLE: My question is, why were
8 we even asked? If a contract has been led,
9 they're coming to us --

10 MS. GRAY: It happens all the time.

11 MR. TICKLE: Well, that's why it needs
12 to be stopped.

13 MS. GRAY: Well, the Board has declined
14 to give opinions before during a meeting, and
15 they certainly can do so now or they can give an
16 opinion when a complaint is open, then it would
17 make my job easier because I would already
18 know.

19 MR. MASON: So we are being asked to
20 decide whether or not a license is required for
21 this company to do this work for this Tennessee
22 municipality?

23 MS. GRAY: Really, that's why we are
24 not mentioning names.

1 MR. MASON: I understand. But that's
2 the question, should a license be required?

3 MS. GRAY: For this type of work.

4 I think it's going to come up
5 again.

6 MR. MASON: I'm not persuaded by the
7 idea that they are willing to revise their scope
8 of work and change the requested proposal. Now
9 the question has been asked. It seems to me
10 that that's a problem. It shows me sloppy
11 contracting and sloppy decision-making. And the
12 scope of what they are doing is pretty major,
13 and I'm not yet convinced that they don't need a
14 license.

15 That's the contention of their
16 counsel that come here today, but I think that
17 there are enough things going on with removal of
18 limbs and hauling away stumps and disturbance of
19 the property that is necessary with this that it
20 seems to me that a license ought to be
21 required.

22 MS. GRAY: May I just add, whether they
23 are going to amend the contract or not, the
24 Board could give an opinion that this contract

1 as written without amendments, in their opinion,
2 wouldn't require a license, but that you cannot
3 give an opinion on one that has not been put in
4 front of you that may or may not be amended.

5 MR. MASON: That's basically what I
6 just said. I just don't see how we can do that
7 on a promise of amendment.

8 MS. GRAY: Well, you could just give an
9 opinion about this contract or not.

10 MR. WHITTINGTON: Is there any other
11 discussion by the Board or is there a motion?

12 MR. OWENS: I have a question.

13 What type of license would be
14 required since a lot of this is overlapping?
15 Some of it may fall under demolition, some of it
16 may fall under railroad work. What kind of
17 license would we be asking?

18 MR. WHITTINGTON: That's what we are
19 trying to determine.

20 MR. MASON: In my opinion, it would be
21 a heavy construction, an HC, which includes
22 clearing, grubbing, snagging and rip-rap.
23 Clearing is what's going on here.

24 MR. BRODD: Clearing is a tree that's

1 standing.

2 MR. MASON: They are all stumps that
3 are living in the ground under the current thing
4 they have got here.

5 MR. WHITTINGTON: When I first heard
6 this, I had a tendency to agree with you. Now
7 that I've heard the other side of it, I am not
8 saying I completely agree with what he's saying
9 because I really feel like at some point in
10 time, there needs to be a license. I'm not so
11 sure that clearing gets it.

12 But it does, in my opinion, fall
13 underneath the category of heavy construction
14 because it involves dump trucks, it involves
15 machinery, such as probably backhoes or -- I
16 don't know about front end loaders. That's, I
17 think, the intent of the heavy construction
18 portion of the license. I don't know if we can
19 narrow it down to one specific category. It's a
20 broad touch.

21 Now, that's my opinion.

22 MR. SMITH: As this contract is
23 written, you would need a contractor's license,
24 I believe. But there's going to be a new

1 contract written. In fact, when they do this in
2 Nashville, it will probably solve plenty of it,
3 you would have to pull all your junk up to the
4 road and they'd drive one type of machinery and
5 grab it and put it in. I'm not sure that
6 requires a license.

7 MS. GRAY: That's what I understand
8 they are wanting.

9 MR. SMITH: A contractor's license?

10 MS. GRAY: Yes. They are having people
11 push it. They are going back so many feet
12 beyond --

13 MR. MASON: So a garbage hauling
14 company is not required to be licensed in this
15 state?

16 MS. GRAY: Not that I know of. There
17 may be a different license.

18 MR. MASON: A business license.

19 MS. GRAY: Well, this contract requires
20 a business license. I'm not sure about the
21 metro regulation. This is not a metro, this is
22 a different county.

23 MR. MASON: But that's the question,
24 isn't it? The contract that they are now

1 operating on did require a license. We have a
2 promise of -- do we make opinions -- issue
3 opinions on promise of a change in a contract or
4 on the contract we have ahead of us?

5 MR. SMITH: I think we would do it
6 subject to our legal approval, legal staff
7 approval.

8 MS. GRAY: I think that it might be
9 good for the Board to clarify that the contract
10 as written, in your opinion, would require a
11 license, if that's what you agree. That way if
12 people ever look back at this transcript when
13 the next storm comes, they might get an idea of
14 what the Board's opinion is on this.

15 But if you don't think that is a
16 good thing to do when we are in the middle of a
17 possible amendment process, then I can
18 understand that. I could always represent at
19 the next Board meeting what they do.

20 MR. WHITTINGTON: That takes too long.
21 I understand the community is in dire need to
22 get this done now. I think we need to do
23 something as a Board today, right now.

24 MR. MASON: Well, Keith you made a

1 comment a little while ago that you think the
2 intent of the heavy construction category was to
3 include this kind of work even with this
4 amendment. I think that's probably true. Do we
5 deal with intent?

6 MS. GRAY: I would recommend that it's
7 not necessarily fair to require a license if
8 there's no category that a person could readily
9 look at and determine if there was a license for
10 it. We have specialty licenses, and I have been
11 told by the director that we have one --

12 MS. LAZENBY: We do have specialties
13 like tree-trimming.

14 MS. GRAY: And my goal is -- my next
15 rule making will list all these specialties to
16 make it more fair. If I can't tell somebody
17 what license is required and everybody agree on
18 it, then I do think that's unfair.

19 MR. MASON: Well, I agree with whoever
20 just said that we should make it clear that
21 under the current contract, including the
22 standards of scope of services including the
23 RFP, that a license should be required, but that
24 if amendment is made that satisfies our legal

1 department, that the specific standards of our
2 law do not require a license, then that would be
3 an acceptable contract only under those
4 circumstances. Does that make sense?

5 MR. SMITH: Yes.

6 MR. MASON: I move that.

7 MR. WHITTINGTON: We have a motion. Do
8 I have a second?

9 MR. SMITH: I'll second.

10 MR. WHITTINGTON: Any discussion? All
11 in favor say I.

12 THE BOARD: I.

13 MR. WHITTINGTON: Opposed likewise?

14 MR. BRODD: Opposed.

15 MR. WHITTINGTON: I'm opposed.

16 It appears, though, the motion
17 carries. Let's do a roll call vote, then, just
18 to be sure, starting at my left.

19 MR. TICKLE: Can I ask a question
20 before we do that?

21 MR. WHITTINGTON: Yes.

22 MR. TICKLE: Can you read back his
23 motion?

24 MR. MASON: I will be glad to withdraw

1 it if you want to have more discussion.

2 MR. WHITTINGTON: No, I don't think we
3 need to withdraw it. Just restate the motion.

4 MR. MASON: Well, I would kind of like
5 to hear what the two oppositions are there.
6 Maybe I'll change my mind.

7 MR. TICKLE: I just didn't understand
8 the motion.

9 MR. MASON: I would like to hear from
10 Mark.

11 MR. BRODD: I would like to hear the
12 motion again. I didn't really understand it
13 either. I didn't want to support it if I didn't
14 know what I was voting for.

15 MR. MASON: The motion was that this
16 Board issued the opinion that the contractor
17 needed a license under the current contract and
18 requested proposal, which is before us, but that
19 our opinion will be that a license is not
20 required if amendments promised by the
21 representative here are made and satisfy counsel
22 that the legal standards are met, that a license
23 is not required. Maybe that's clear as mud.

24 MR. BRODD: So based on the contract

1 that has been submitted, you believe a license
2 is required?

3 MR. MASON: Yes.

4 MR. BRODD: But with amendments to this
5 contract, it may not be required?

6 MR. MASON: They may. They may not
7 require a license.

8 MR. TICKLE: And just for
9 clarification, the license they would get would
10 be a HC license, heavy construction, and No. 5.
11 How would they know what kind of license to
12 get?

13 MR. WHITTINGTON: That's not the
14 motion.

15 MR. TICKLE: I'm asking a question. If
16 we are going to say you need a license, what
17 license?

18 MR. MASON: I think that's fair.

19 MR. TICKLE: I don't have a problem
20 with the motion. I'm just wondering what we're
21 going to give them.

22 MR. MASON: My intention would have
23 been a HC, heavy construction license.

24 MR. TICKLE: That's what I would think

1 too.

2 MR. SMITH: It could be HRA too.

3 MR. WHITTINGTON: I think it would have
4 been both, HRA and an HC, because we are talking
5 about right-of-way. We are talking about the
6 use of equipment, and this was the reason for my
7 no vote, because we are talking about the use of
8 equipment to clear debris, remove it from the
9 right-of-way. And that was the purpose of my no
10 vote.

11 But having discussed it, I want it
12 to be made very clear that I'm not in favor of
13 imposing a burden on that local community by
14 costing them more money. I am concerned that we
15 set precedence in this meeting of allowing
16 unlicensed activity, and that is my whole
17 intention, is to make sure that we're not
18 allowing unlicensed activity in an area and open
19 the entire state up for unlicensed activity
20 through this decision.

21 I would like for that to be very
22 clear.

23 MR. BYRD: I understand.

24 MS. GRAY: So, Keith, is it your

1 statement that even as amended, you would still
2 think it would require a license, even with
3 those provisions that have been promised to be
4 removed? That is where your hang-up is, that
5 you still think a license would be required?

6 I have heard his motion and I'm
7 trying to make it clear. His motion, as
8 amended, would not require a license.

9 MR. WHITTINGTON: If you look at the
10 proposal and the amendments he's talking about,
11 it doesn't cover the equipment to be used. We
12 are talking about wheel loaders, forklifts, skid
13 loaders, farm tractors, an articulated loader, a
14 Cat dozier, several of them. And these are all
15 hourly prices. Track hoe with debris grapple,
16 track hoe with bucket and thumb, a rubber tire
17 excavator, rubber tire backhoe, knuckle booms
18 with debris grapple, 30-ton crane, 50-ton crane,
19 eight-hour minimum on a hundred ton crane. This
20 is a construction project in every way I look at
21 it.

22 MS. GRAY: Well, under the definition
23 of contract in the statute, my recommendation is
24 that the way to define this as needing a license

1 would be some type of improvement.

2 MR. WHITTINGTON: Well, wait just a
3 minute. Under heavy construction, you have a
4 category called rigging. If you are going to
5 set a crane up on a job, you are going to have
6 to have riggers there because that's the only
7 way you are going to use a crane, is if you use
8 a rigger.

9 Therefore, they have requested a
10 proposal for bids -- and welcome to chime in --

11 MR. BYRD: Mr. Chairman, I don't want
12 to impose anymore. You have been very kind.

13 Those were actually the things we
14 should have taken off. Those are only allowed
15 for the first 70 hours for road clearance. And
16 I understand that it's a multimillion dollar
17 contract, but please understand, with nine
18 deaths in our county and 285 homes destroyed and
19 400 homes that have been greatly demolished and
20 that many people, we were trying our best.

21 And I understand -- normally I
22 don't handle multimillion dollar contracts in
23 this form and fashion, but we have the suffering
24 of citizens of Tennessee at stake and we have

1 people who are homeless. And so we did go
2 through -- we followed the best we could with
3 TEMA and FEMA representatives, and most of that
4 equipment is all related to road clearance.
5 There's not a single crane out on the job.
6 There's nothing that requires that.

7 And in the contract that we have
8 e-mailed, it even shows none of that equipment
9 is included. Basically what you have are trucks
10 with grappling arms and you have some modified
11 front end loaders that just go through and pick
12 up and dump it. There's no cranes. All that
13 equipment is for road clearance.

14 MR. MASON: And all this is on public
15 property, isn't it, this work? No one is
16 homeless because the work that's being done on
17 this contract?

18 MR. BYRD: Yes, sir, that's incorrect.

19 MR. MASON: But you said this is all on
20 public property.

21 MR. BYRD: And I have photos if you
22 would like to see them. They can't even get to
23 their driveways because of the debris that's
24 been blown there. So, yes, we've got to get

1 this cleared up.

2 MR. MASON: If they can't get to their
3 driveways, then they're clearing public
4 roadways, as well as the front.

5 MR. BYRD: No, sir. FEMA doesn't allow
6 us to go to private property, only on a public
7 right-of-way.

8 MS. GRAY: May I suggest to the Board
9 that, without giving an opinion, that it's my
10 belief that just this discussion at the Board
11 meeting with the representative has done a lot
12 for the public in telling them when you need a
13 certain type of license for this type of work.
14 And whether you all give an opinion or not,
15 based on a contract that is probably going to be
16 amended or was let quickly and things were left
17 in that shouldn't have been left in, or whatever
18 you all want to decide, if you want to take that
19 into consideration, you don't necessarily have
20 to give a vote or make an opinion because the
21 discussion itself is informative.

22 MR. MASON: I would like to withdraw my
23 motion.

24 MR. SMITH: I'll withdraw.

1 MR. MASON: And Keith's discussion was
2 very helpful on the rigging and crane issues.
3 If we are going to do an opinion at all, it
4 ought to be that under the contract in front of
5 us right now, a license should have been
6 required, and not go beyond that.

7 I move that this Board issue an
8 opinion that the contract that has been
9 submitted to us today that is currently in
10 effect that a license should have been
11 required.

12 MR. TICKLE: Second.

13 MR. WHITTINGTON: Any discussion? All
14 in favor say I.

15 THE BOARD: I.

16 MR. WHITTINGTON: Opposed? Motion
17 carries.

18 Now, that was what was brought up.
19 That's all the discussion we have on that item.

20 MS. GRAY: And if a complaint is ever
21 filed --

22 MR. WHITTINGTON: That's beyond the
23 point.

24 Carolyn, legislation update?

1 MS. LAZENBY: We don't have any.

2 MR. WHITTINGTON: The next Board
3 meeting will be July the 26th and the 27th in
4 Nashville.

5 MS. LAZENBY: Oh, sorry. There was one
6 thing that was discussed with the commercial
7 sub-committee, the water treatment plant, the
8 bid protest.

9 MS. GRAY: I'm sorry, Mr. Chairman, for
10 leaving this off. I thought it was on the
11 agenda. I apologize.

12 This was a request for a Board
13 opinion about an electrical contract that was
14 let where the project is located in all the same
15 location, all the same RFP, but the argument is
16 that the work will be tracked separately and
17 that there -- one, I think is called
18 optimization, and one is called --

19 Do they have that in their
20 notebooks?

21 MS. ROBERTS: The commercial
22 sub-committee has copies. I have some.

23 MS. GRAY: Basically, this is highly
24 technical work. It's electrical, I can tell you

1 that. It's all in one location. It was all one
2 RFP. The general contractor who bid it was
3 properly licensed. The electrical subcontractor
4 that he used on the bid envelope, which we
5 cannot obtain a copy of, he said we want this
6 electrical subcontractor who has 140,000 dollar
7 limit.

8 Now, if you look at the project
9 separately, he's over his limit. That's 280.
10 I'm assuming that they were saying that each
11 project was worth -- the electrical
12 subcontractor was worth about 140,000.

13 So basically it appeared to me that
14 they were trying to skirt the law by trying to
15 give us some really technical provisions about
16 why they consider this contract separately,
17 which all I can remember without it in front of
18 me, is they were paid separately and that they
19 were meant to be separate, because they were two
20 different types of work. Like I said, it was
21 called optimization and disinfection.

22 So I think one of my first
23 questions was, could this, in all reality, been
24 awarded to two different people. Could it have

1 ever -- was it ever envisioned to be two
2 different projects or are they just trying to
3 skirt the law? And it appeared to me that only
4 one general contractor was ever going to be
5 awarded the job, and this stuff about using the
6 same electrical subcontractor on supposed two
7 different projects in order to -- and he's still
8 within his limitation, to me is not a good
9 argument.

10 Based on when we asked the question
11 was there ever going to be two generals, it
12 appeared that there was never going to be two
13 generals. It was always going to be one general
14 contractor on the project, on supposed two
15 separate projects.

16 I propose it was one project with
17 two scopes of work, if you want to say that.
18 But in the end, for all intents and purposes, it
19 appears that it was one project with a GC that
20 had the proper limit, but again, the electrical
21 sub did not appear to have it.

22 And I, again, cannot tell you what
23 the bid envelope said, but I don't think anybody
24 has ever said that people were submitting two

1 different subs, one for each project. It looks
2 like they were only proposing one sub for the
3 whole project.

4 I'm sorry, I can't get much more
5 explanatory than that because it's so technical,
6 the work.

7 MR. BRODD: The commercial
8 sub-committee reviewed this, and it's our
9 opinion that if the general contractor was --
10 electrical contractor on the envelope and the
11 cost of the electrical work exceeded his license
12 limit, then the bid should be rejected and both
13 the general contractor and the electrical
14 contractor not be allowed to rebid if the
15 project was to be rebid.

16 If he wanted to break the
17 electrical work into two, he should have listed
18 that out.

19 If the general contractor wanted to
20 separate the electrical work for the two
21 projects that were bid in combination, he should
22 have listed each electrical contract on the
23 envelope and identified what project that
24 electrical contractor was going to perform.

1 Since we don't have the envelopes,
2 we don't have all that information. If what we
3 think was there was just one electrical
4 contractor listed on the license, it created a
5 violation.

6 MR. WHITTINGTON: Do we need a motion
7 from the Board on that?

8 MS. GRAY: No, that's the same as the
9 last. If you to, we can.

10 MR. WHITTINGTON: Before we adjourn, I
11 just want to remind everyone the next board
12 meeting is in Nashville July the 26th and the
13 27th.

14 At this time, we will adjourn for
15 15 minutes to allow the formal hearing to set
16 up. Meeting adjourned.

17 (END OF PROCEEDINGS.)

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24

C E R T I F I C A T E

1 STATE OF TENNESSEE)
2)
3 COUNTY OF SHELBY)
4

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