



TENNESSEE BOARD OF ARCHITECTURAL AND ENGINEERING EXAMINERS
500 JAMES ROBERTSON PARKWAY
NASHVILLE, TENNESSEE 37243
615-741-3600

Board Meeting Minutes for February 15, 2018
First Floor Conference Room 1-A
Davy Crockett Tower

Tennessee Board of Architectural and Engineering Examiners met on February 15, 2018, in the first floor conference room of Davy Crockett Tower in Nashville, Tennessee. Mr. Wagster called the meeting to order at 9:00 a.m. and the following business was transacted:

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

BOARD MEMBERS ABSENT:

STAFF MEMBERS PRESENT: Roxana Gumucio, Liz Goldstein, Sara Page, Anthony Glandorf, Wanda Garner

ROLL CALL / MINUTES / AGENDA

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

Mr. Parker moved to accept Robert's Rules of Order as the standard of practice governing board business transactions and procedures during this year's meetings. Ms. Ballard seconded, and the motion carried by unanimous vote, with Mr. Campbell abstaining.

The Board opted to defer approval of the minutes from the December 7, 2017 meeting until they can review their recommended revisions and vote to adopt at that time once their requested edits are satisfied.

Mr. Bursi moved to approve the agenda with the amendment that the "Architecture & Engineer Definition Revisions Update" be removed and addressed at a later time in a joint Architect and Engineer Committee Meeting. The motion carried by unanimous vote.

ASSISTANT COMMISSIONER

Carter Lawrence appeared before the Board. Mr. Wagster recognized Assistant Commissioner Lawrence in order to discuss his report regarding a proposal with Executive Management and Fiscal to reduce the comity application fees, in addition to the testing and intern application fees already eliminated. At the last meeting, the Board requested that Accounting Director Bill Huddleston prepare an analysis which would broaden the scope of fee reduction beyond comity applications to include Tennessee applicants and current licensees. Commissioner Lawrence indicated that the requested analysis will be provided at

their April meeting. Ms. Ballard requested that fee reductions for educators and registrants over sixty-five (65) be included in the scope for consideration.

PROFESSIONAL SOCIETY REPORTS

Nathan Ridley from the TN chapter of the American Society of Landscape Architects (ASLA-TN) provided a brief summary of the general activities of this year's current legislative session.

Kasey Anderson, Tennessee Society of Professional Engineers/American Council of Engineering Companies of Tennessee (TSPE/ACEC-TN) deferred to Mr. Ridley's synopsis regarding the legislative climate and activity.

LEGAL

LEGAL CASE REPORT (presented by Sara Page)

1. 2017071171

First Licensed: 04/03/1995

Expiration: 04/30/2011

Type of License: Professional Engineer

History (5 yrs.): N/A

Respondent sealed a review letter for a fabricated machine part; however, Respondent's Professional Engineering registration expired in April 2011. The seal was placed on the letter on October 18, 2017. An investigation was conducted. Respondent admitted to sealing the letter. Respondent states his work does not require a seal, and only when asked for the letter did he find his seal and use it on the letter rather than explaining the lapse in active registration. Respondent was apologetic, and intends to renew his registration in case such an issue arises in the future. Respondent swore in an affidavit it was the only time the stamp had been used.

The scope of the work on this project was for the design, fabrication, and installation of two firewater tanks and two fire pump houses for a project in another state. The structural design was subcontracted to a licensed engineer in that state. Respondent did the layout of the fire pump equipment and piping based on provided specifications, and Respondent's company fabricated the equipment. Respondent's company is a licensed contractor in the other state, and that licensed entity installed the products.

Mitigating Factors: (1) Underlying work did not require Respondent to be registered, and seal only on letter.
(2) No history.
(3) Working to renew to prevent future issues.

Aggravating Factors: (1) Knew registration was expired.

Recommendation: Authorize a civil penalty in the amount of \$500 for utilizing an expired seal.

Board Decision: Authorize a civil penalty in the amount of \$500 for utilizing an expired seal and Respondent must take and pass the laws and rules examination.

2. 2017079581

First Licensed: 01/01/1993

Expiration: 10/31/2018

Type of License: Professional Engineer

History (5 yrs.): N/A

Complainant wanted a written report from Respondent after Respondent reviewed the supports of Complainant's porch. Respondent stated that the agreement was verbal, and he did a walk through and spoke with the contractor. Complainant states she believed the written report was agreed upon. Respondent states the report was only necessary after Complainant switched contractors. After receiving the complaint, Respondent produced a written report. This appears to be a contractual dispute regarding scope of services. No complaints were made regarding quality of work.

Mitigating Factors: (1) No claims of health, safety, welfare violations.
(2) Resolved and Complainant indicated she would withdraw complaint based on receiving report.
(3) No contract to show what services were agreed upon between the parties.

Aggravating Factors: (1) Emails indicate Complainant had to ask multiple times for a report, but there was a dispute between parties regarding whether that was required/included in fee.

Recommendation: Close.

Board Decision: Concur.

3. 2017080731

First Licensed: 12/17/2008

Expiration: 12/31/2018 (Inactive since 01/03/2015)

Type of License: Professional Engineer

History (5 yrs.): N/A

This complaint was generated due to Respondent receiving a civil penalty in Indiana for failing to timely submit proof of PDHs when requested. Respondent paid the penalty and provided proof quickly after Indiana issued a Consent Order. Additionally, Respondent indicated that his employer covered the penalty due to internal staff failing to properly delivery the notice of the PDH audit, which resulted in the delay. Respondent's license in Tennessee is inactive, and he is not subject to PDH requirements here during the same time period.

Mitigating Factors: (1) No harm to public.
(2) Quickly remedied.
(3) Merely missed deadline due to mishandled mail.
(4) No risk PDHs missing in Tennessee since license is inactive.

Aggravating Factors: None.

Recommendation: Close.

Board Decision: Close upon the issuance of a letter of caution.

4. 2017062461

First Licensed: N/A

Expiration: N/A

Type of License: N/A

History (5 yrs.): Previous complaint for same allegations voted closed as meritless by Board.

Complainant alleges Respondent is engaged in unlicensed activity. Respondent is an institute of a public university that engages in public service in the realms of business and industry. Respondent offers consulting, training, and connections to services across the state. Respondent was established by the Tennessee General Assembly and charged with the “provision of information, data and materials relating to the needs of industry.” Respondent states on its website, “Tennessee business and industry are assisted daily by [Respondent] engineering and professional staff in improving their economic competitiveness on a national and global level.” This sentence is what prompted Complainant to allege Respondent offers engineering services requiring registration.

Respondent responded to state the above history, and to indicate that Respondent has one full-time PE on staff and several part-time PEs help serve clients on temporary or project-based time periods. Respondent also works with engineering professors from all major state universities. Despite the availability of PEs, Respondent indicates the vast majority of its work does not require a PE since Respondent’s focus is on training in lean manufacturing; quality assessments or safety; and energy, environmental or performance assessments.

Ricky Bursi reviewed this complaint and concluded no violations appear to be occurring since Respondent does not perform design services or indicate it does so, and even if it did engage in that type of project, PEs registered in Tennessee are utilized.

Mitigating Factors: (1) Licensed PE on staff, and part-time advisors.

Aggravating Factors: None.

Recommendation: Close.

Board Decision: Concur.

5. 2017043151

First Licensed: 07/12/1986

Expiration: 12/31/2019

Type of License: Professional Engineer

History (5 yrs.): N/A

Respondent was hired to conduct an inspection of a residential footing/foundation. Complainant states that the home was built in November 2014, but the Respondent’s letter signing off on the foundation/footing was not received by the city until June 2015 after the project was complete. Complainant states that both Complainant and the building inspector had to ask multiple times to get Respondent to produce a letter. Ultimately, the home suffered damage that Complainant believed was related to the foundation. Complainant filed a complaint against Respondent as well as the contractor. Complainant alleges Respondent never actually visited the site since they did not see Respondent.

An investigation was conducted. The home damage seems to have been the result of the contractor’s poor workmanship rather than the foundation. In relation to Respondent’s inspection, Respondent claims he conducted the inspection on January 15, 2015, and the scope was to verify footing width, depth, reinforcing, and subgrade conditions. Respondent claims he did so and found no issues. Respondent produced only one page of notes related to the location of the home. No pictures or measurements were provided.

This complaint was reviewed by Robert Campbell. Ultimately, it is difficult to determine whether the inspection occurred since it is the homeowner’s word against Respondent’s. The lack of supporting documentation is concerning, and the letter itself is one paragraph in length. In conclusion, it may be best to ensure Respondent’s competency to confirm his ability to perform this work, but from a proof perspective, it may be difficult to pursue allegations the inspection did not occur, or that the letter was created to appease the inspector despite no actual review of the property.

Mitigating Factors: (1) Difficult to prove lack of inspection.

Aggravating Factors: (1) When requested, Respondent produced very little to no supporting working papers showing measurements or photographs.
(2) The delay in producing the report, and the report's lack of detail and brevity raises concerns to the thoroughness of the inspection.

Recommendation: Authorize an informal conference in order to determine the Respondent's competency regarding the relevant codes (2012 IRC). If the Board Member determines Respondent is competent, or no evidence exists of a violation, this matter shall be closed upon such a finding being expressed to legal counsel. If the Board Member determines a violation has occurred, this matter shall be brought to the next Board Meeting for discussion.

Board Decision: Concur.

6. 2018001461

First Licensed: 04/15/1990

Expiration: 01/31/2019

Type of License: Professional Architect

History (5 yrs.): N/A

Complainants allege Respondent's contracting company performed poor workmanship. They named Respondent as well. Respondent's former contracting company built the home in 2007. In 2016, he received a call from the homeowners asking he look at the house. Respondent arrived to find the façade of a porch torn off and construction/repairs underway. The homeowners alleged Respondent's company performed poor workmanship and should pay for the repairs. Respondent was never shown the damage, never provided with an estimate, and never given any information until repairs already began. Complainant attempted to sue Respondent, but the statute of limitations has lapsed. Complainant made similar allegations to Consumer Affairs one year ago, but the matter was closed. While Respondent states that the porches were built by a skilled subcontractor, and nothing has been provided to him to explain where the failure occurred, he did offer the homeowners a settlement to help with repair expenses to maintain a reputation in the neighborhood, since it was his company that constructed most of the lots. Respondent is active in the area still with a new licensed contracting company.

Unfortunately, Complainant made a very broad allegation of workmanship against a contractor/architect. No specifics were provided, and pictures provided show work and repair has already begun on one porch. Homeowner does claim issues are arising regarding second porch. This complaint is best left to the Contractor's Board. The Contractor's Board can issue formal inspections for workmanship, and they can pursue this action if issues are uncovered.

Mitigating Factors: (1) Difficult to prove errors related to architecture at this juncture.
(2) Eleven years have passed since construction on the home.

Aggravating Factors: None.

Recommendation: Refer this complaint to the Contractor's Board, and close and flag. Legal shall maintain communication with legal counsel for the Contractor's Board. If the inspection conducted reveals a possibility to design errors, this complaint may be reopened and reviewed by a member of the Board.

Board Decision: Concur.

RE-PRESENTATIONS

7. 2014004821

First Licensed: 06/11/2004

Expiration: 06/30/2014 (Reapplication in process)

Type of License: Professional Engineer

History (5 yrs.): N/A

PREVIOUS ENTRY FROM AUGUST:

This complaint was closed and flagged in 2015 due to Respondent's professional engineer registration expiring and the inability for legal to find Respondent. Respondent was also a licensed contractor. Respondent has reapplied for a license, which reactivated this case. The following is the entry previously brought before this Board in June 2014:

The complaint alleges that Respondent, a professional engineer, committed misconduct by copying a set of plans not prepared by Respondent and produced them as Respondent's own in potential violation of Tenn. Comp R. & Reg. 0120—02—.08(5)(a) [Seals] and failed to protect the safety, health and welfare of the public in potential violation of Tenn. Comp. R. & Reg. 0120—02—.02(1) [PROPER CONDUCT OF PRACTICE]. Further, a civil court of competent jurisdiction found that there was a consumer fraud violation pursuant to Tenn. Code Ann. § 47-18-109. Respondent did not respond to the complaint. Respondent's license expires on 6/30/14 and is currently in inactive status since 1/20/14.

As more detailed explanation, Respondent was paid \$10,000 to prepare plans for a 3,300 square foot mechanic's garage. In the civil suit against Respondent, the Court found Respondent did not produce the building plans requested, but rather copied earlier site plans and building plans and presented them as Respondent's own. The Court found that Respondent's deception was "committed deliberately, knowingly and willfully," taking advantage of the client's inexperience in engineering and "damages the reputation of other civil engineers and professionals, and the level of consumer confidence in those other professionals." Respondent was ordered to pay the client \$20,000 for the injury. As a result, the Board approved a one-year suspension of Respondent's registration.

Respondent never responded to the Consent Order or any mail from the Board. Multiple attempts were made to locate Respondent, but no one was able to find Respondent, so the matter was closed with the ability to reopen if Respondent was located. Respondent never served the one-year suspension. Now, Respondent seeks registration again.

Mitigating Factors: None.

Aggravating Factors: (1) Found to be in violation of the Tennessee Consumer Protection Act and ordered to pay double damages due to willful misconduct.

(2) Never responded to the Board's attempts to contact Respondent.

(3) Misconduct was directly related to Respondent's registration as an engineer.

Recommendation: Discussion.

Board Decision: Deny Reapplication and Close.

NEW INFORMATION/UPDATE:

After Respondent's application was denied at the August meeting due to the application lacking information, Respondent reapplied. Additionally, through counsel, Respondent submitted a written response to the underlying complaint that was closed and flagged. Respondent, through counsel, states that the person involved in the underlying judgment knew Respondent through church. The individual approached him for assistance in building a mechanic shop. Respondent informed individual he could not help, but he would help find him an architect. The individual asked to hire Respondent as the general contractor, since Respondent was also licensed in that capacity. An architect was hired and paid \$10,000 from the individual, to Respondent, to the architect. The architect produced a number of drawings, and the individual requested numerous changes. Prior to the final plans being approved, the architect committed suicide. Respondent then helped work on the drafts and discussed the need for a new architect with the individual. Respondent was never paid for any services despite agreement to do so.

At that point, according to Respondent, the individual found a cheaper general contractor and requested the \$10,000 back. Respondent stated that had gone to the architect, not him. That is when the individual sued Respondent for the \$10,000. Respondent filed a counter-claim in the action we have a judgment on for non-payment for services. Respondent states that the individual has a felony conviction for fraud, and after a year of litigation, Respondent chose not to appeal the decision despite not agreeing with the outcome. Respondent expressed that he would have appealed had he understood the impact on his PE license.

Mitigating Factors: None.

Aggravating Factors: (1) Found by a Court to be in violation of the Tennessee Consumer Protection Act and ordered to pay double damages due to willful misconduct.
(2) Misconduct was directly related to Respondent's registration as an engineer.

Recommendation: Discussion.

Board Decision: Deny reapplication & close.

8. 2016053951

First Licensed: 01/03/2008

Expiration: 01/31/2020

Type of License: Professional Engineer

History (5 yrs.): N/A

This complaint was sent by a competitor indicated Respondent had performed work outside her competency. Respondent had drafted architectural plans for a small two-story rental unit. This case was originally presented by Attorney Matthew Reddish, and the plans were reviewed by Rick Thompson. Mr. Thompson noted a number of deficiencies in the plans including a lack of guard rails on stairs. As a result, the Board assessed a civil penalty in the amount of \$6,000, representing \$750 for each architectural sheet Respondent sealed.

After Mr. Reddish left and this case was transferred to new legal counsel, Respondent obtained legal counsel and requested the ability to explain her competency to a Board Member. In the hopes of facilitating settlement and bringing clarity/background to this matter, legal counsel arranged for Respondent to meet with Mr. Brian Tibbs for questioning regarding competency in architecture.

At the informal conference, Respondent explained that she had designed two identical apartment buildings within the city limits, and that she did not have any complaints. Respondent provided a recommendation letter from the city building officials. The plans in question for this complaint were produced for a building in the county jurisdiction and therefore subject to review by the State Fire Marshall's Office. Respondent stated the requirements seemed much different and more restrictive than from the city. Respondent indicated she believed she was competent due to the two prior builds, and the ease with the city in having those plans approved.

Respondent has never worked under the direct supervision of an architect. Respondent stated the small student apartment work stemmed from small metal building design she had conducted. Respondent works with the same contractor with the same plans, and modifies them to the space as needed. Respondent did state that issues arising from construction on this project led to the necessity to add the plans. This included adding stairs that were not anticipated due to construction beginning at a different elevation without consulting Respondent.

The original plans submitted by Respondent show a number of comments and requests for revision from the State Fire Marshall's Office. After edits, the plans were eventually approved. Mr. Tibbs reviewed the plans after the informal conference, meaning two of our architect members have seen the full plans at this point.

Mitigating Factors: (1) Previous identical builds were approved and constructed within the city without incident.

Aggravating Factors: (1) Review by Board Members showed missing elements from essential code requirements such as ADA-compliant stairways.
(2) Original plans submitted required extensive revisions and had numerous comments from the State Fire Marshall's Office.

Recommendation: Discussion.

Board Decision: **Uphold previous discipline and request investigation into previous building plans.**

Legislative Updates: If passed, HB2260 and HB2471 would grant authority over the Qualifications Based Selection (QBS) process to the Board.

Staff Attorney, Elizabeth Goldstein summarized previous rule amendments by addressing the two (2) parts: 1- Architect Committee deciding against using the term "Architectural Intern" in favor of the use of "Architectural Associate" when referring to Pre-Licensure Titling, and 2- Engineer Committee deciding on a rule change which expands the cooperative credit to include progressive work experience as defined in the rules package. Mr. Campbell moved to approve the rules as amended and presented. Ms. Ware seconded, and the motion carried by unanimous roll call vote. Mr. Campbell moved to accept the Regulatory Flexibility Addendum as written. Mr. Thompson seconded, and the motion carried by unanimous roll call vote.

Mr. Campbell moved to approve the Engineer Applicant Reference Form updates with the redline edits provided by the Engineer Committee. Ms. Ware seconded, and the motion carried by unanimous vote.

DIRECTOR'S REPORT

Director Gumucio provided an update on the status of the newsletter. Other than final General Services approval, the newsletter has moved passed all of the other channels for eventual publishing.

National Council of Examiners for Engineering and Surveying (NCEES) Southern Zone interim meeting on April 19-21 in Charlottesville, Virginia. Mr. Campbell moved to authorize additional state funded travel to the NCEES Southern Zone meeting for both Associate Engineer Board Member Stephen King and Staff Attorney Elizabeth Goldstein. Ms. Ware seconded, and the motion carried by unanimous vote.

Director Gumucio provided a detailed accounting of budget revenue and expenditures, to include line item and trend analysis. She also provided a report of the overall health of the budget in her summary of Fiscal Year 2017. Regarding Legal Costbacks, Director Gumucio informed the Board that the Legal Division is now charging each program by the billable hour to be reflected in the Legal Costbacks portion itemized in expenditures.

Regarding the April 12th Board meeting, the Board discussed the joint meeting with the Tennessee Board of Examiners for Land Surveyors with their preference being to move the Architect Committee meeting to Wednesday afternoon, April 11th.

Administrative Complaint Report included a list of seven (7) complaints for which administration is requesting closure by Letters of Caution. Mr. Campbell moved to accept administration's recommendation and close these complaints. Mr. Thompson seconded, and the motion carried by unanimous vote.

Director Gumucio provided an update regarding processes for developing a random continuing education (CE) audit of five percent (5%) of all four (4) professions. The audit will be automatically extrapolated from the case management and license system.

ENGINEER COMMITTEE REPORT

The Engineer Committee, through Mr. Bursi, reported on topics discussed.

Mr. Bursi reported that comity applications and one continuing education application audit were reviewed. The committee received a legal opinion that indicates that Associate Engineer Board Members would be permitted to review applications, but the voting members would need to actually approve the applications under Associate Engineer Board Member review.

ARCHITECT COMMITTEE REPORT

The Architect Committee, through Mr. Thompson, reported on topics discussed.

Mr. Thompson reported that the committee reviewed three (3) applications and that there was no new or unfinished business to discuss.

NEW BUSINESS

Director Gumucio called for the annual election of officers per TCA 62-2-204(b) to fill the following roles: chair, vice chair and secretary. Mr. Thompson, Chair of the "Nominations" Committee informed the Board that they have now entered into the period to receive nominations and that the Chair position has historically rotated between the professions, with the Landscape Architects being next in line to receive consideration. A final vote regarding those nominations will be held at the June board meeting.

Susan Ballard provided a report regarding the Council for Interior Design Qualification (CIDQ) Annual Assembly of Delegates Meeting held on November 10-11, 2017 in Alexandria, VA. Ms. Ballard further noted that this year's annual conference will be held on November 9-10, 2018 in Nashville, TN.

Director Gumucio announced that Grant Alan Minchew has been recently appointed as the Public Member to the Board. There were no further updates regarding appointment for the current Associate Engineer vacancy.

At the last meeting, the Board voted to grant Emeritus status to Philip Lim. As a result, Mr. Lim was presented the certificate and thanked for his dedicated and faithful service.

ADJOURNMENT

There being no other new business, Mr. Wagster adjourned the meeting at 12:08 p.m.