



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

**Board Meeting Minutes for February 6th, 2020
First Floor Conference Room 1-B
Davy Crockett Tower**

Tennessee Board of Architectural and Engineering Examiners met on February 6th, 2020 in the first-floor conference room of Davy Crockett Tower in Nashville, Tennessee. Mr. Parker called the meeting to order at 8:00 a.m. and the following business was transacted:

BOARD MEMBERS PRESENT: Susan Ballard-Gribble, Ricky Bursi, Blair Parker, Frank Wagster, Kathy Ware, Stephen King, Alton Hethcoat, Ben Brychta, Robert Campbell

Brian Tibbs was present telephonically.

BOARD MEMBERS ABSENT: Rick Thompson

STAFF MEMBERS PRESENT: Jennifer Peck, Stuart Huffman, Maria Bush, Wanda Phillips, Morgan Calles

ROLL CALL / AGENDA

Mr. Parker provided the notice of meeting and Jennifer Peck called roll.

Guests were acknowledged.

Board introduced themselves to new public board member, Mr. Brychta; with the staff introducing as well.

Ms. Kathy Ware requested the engineer definition be added to the agenda.

MINUTES

Motion was made by Mr. Wagster and seconded to approve the December 12, 2019 minutes. The motion carried unanimously.

PROFESSIONAL SOCIETY REPORTS

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

- Sent out the definition 7.0 to everyone with no feedback yet, which she states is a good thing.
- Governor announced new engineering building at TN Tech
- Fund stem building at university of Memphis
- Future workforce 100 new middle school stem programs by 2022

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

- Day on the hill on April 1st, 200
- Annual Meeting on May 28 & 29 2020 in Knoxville
- National meeting in 2021 will be in Nashville

Ashley Cates Executive Director of the American Institute of Architects (AIA) Reported that, the rule making procedures will be held on February 26th, 2020.

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

LEGAL REPORT (attached)

Break 9:46am to 956am

Break 1:00pm to 1:15pm

DIRECTOR'S REPORT

Definitions Decisions

- Revised Grant for ETSU (East TN State University). This grant did not get any takers and has since revised the grant. Instead of being a fellowship this

will be a workshop. Ms. Ballard-Gribble accepted the motion and Mr. Campbell seconded the motion.

- Requesting to see if we should continue to keep the policy of sending letters of caution when certain disciplinary actions are taken in another jurisdiction. Mr. Parker requests a Letter of Caution, Letter of Instructions, and Letter of Warning be sent out for them to review as well before next meeting.
- Ms. Peck and Ms. Bush will be going to Washington DC conference for their new members and attorney conference for NCARB.

- Active Licenses in Tennessee:
 1. Architects: 3,651
 2. Architect Firms: 1,983
 3. Engineers: 13,839
 4. Engineer Firms: 4,888
 5. Interior Designers: 319
 6. Land Architects: 393
 7. Land Architects: 187

COMMITTEE REPORTS

Definitions Committee

The Definitions Committee, through Mr. Hethcoat, reported the following:

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

Engineering Committee

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

- Technology degrees;
- Decoupling;
- The acceptance of Master's Degree in engineer when the undergraduate degree is in a subject other than engineering;
- International degrees.
- Carryover hours
- Purpose statement was made by Ms. Ware.

Laws and Rules

The Laws and Rules Committee, through Robert Campbell, calendar year renewal put a change to the year on 2023. Rule hearing in June. Will have the option to stay the way they are or go to a calendar renewal.

Committee Change

Make an option to make motion to make in effect as of February 6th, 2020.

Ms. Ballard-Gribble makes a motion to accept list presented by the Chair to make Alton Helthcoat Chair the grants to hire committee. Seconded by Mr. Wagster.

ADJOURNMENT

There being no other business, Mr. Parker adjourned the meeting at 2:00pm.



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CONFIDENTIAL - ATTORNEY WORK PRODUCT

TO: Tennessee Board of Architectural and Engineering Examiners

FROM: Stuart Huffman, Associate General Counsel

DATE: February 6, 2020

SUBJECT: February 2020 Legal Report

1. **2019091011 (SH)**
First Licensed: 01/01/1993
Expiration: 10/31/2021
Type of License: Professional Engineer
History (5 yrs.): 2019 – One complaint opened for allegedly practicing outside area of competence.
Entity # 354655

Respondent was hired to inspect the structural integrity of the foundation of a residential building as a contingency for the sale of the house. Respondent's report states a few additional measures that may be taken to extend the life of the foundation, but overall, in his opinion, the home is safe for occupancy and all issues are considered long term liabilities. Complainant alleges roughly a month and a half after purchasing walls were showing cracks in all directions. Separation has been noted in and around the fireplace, walls, ceilings, baseboards, floorboards, doors, and even the tile shower. Additionally, the floors have begun to stain and buckle-as if experiencing water damage-and the doors are sticking (the dead bolt is no longer functional), as well as the ceiling experiencing signs of water damage and nails coming out of the walls/ceilings/etc. The house has visibly shifted and the cracks in the foundation have grown considerably. Complainant had a foundation repair company come out and look and they noted some inadequacies in the home's foundation.

As stated before, the Respondent was hired by the selling agent and asked to evaluate the understructure relative to a specific concern identified by the home inspection. The house was built in 1920 and renovated in 1955. Respondent performed an independent structural inspection within the crawl space and found recent modifications and reinforcements. A Structural report was prepared finding that the original foundation support piers had leaned over the years, the central floor support girder beam was twisted, and the perimeter foundation wall had moved due to impacts from adverse

drainage over the years. The Respondent's report describes the foundation issues as "ongoing and long-term liabilities". No professional conduct or competency issues were found.

Reviewed by Board member: Stephen King

Mitigating Factors: No competency issues found

Aggravating Factors:

Recommendation: Close.

Board Decision: CONCUR

2. **2019094691 (SH)**
First Licensed: N/A (Unlicensed)
Expiration: N/A
Type of License: Professional Engineer
History (5 yrs.): N/A
Entity # 1328279

A Board complaint was opened alleging Respondent is using the term "Professional Engineer" and practicing engineering without proper licensure. Respondent is "designing" systems to prevent or remediate a number of airborne constituents that can cause health issues for residents of individual homes. In the literature, the term "engineer" or "engineering" is not in the name of the Company, instead, the term "Industrial Hygienists" is used. Industrial Hygienists do have the training to identify and treat airborne constituents that may cause harm to the public and an engineering license is not necessary to perform those services. However, Respondent's bio is featured on the website and uses the designation of "Professional Engineer". Respondent does have a Kentucky engineering license. In 2010, Respondent was penalized for holding out as a Professional Engineer on an expired license. Respondent was denied Tennessee licensure in 1994.

Reviewed by Board member: Alton Hethcoat

Mitigating Factors: No need for licensure for Industrial Hygienists

Aggravating Factors: Using the designation of "Professional Engineer" without licensure

Recommendation: Authorize a civil penalty of \$1,000 and demand Respondent to remove any reference of a "Professional Engineer" from the bio.

Board Decision: CONCUR

3. **2019094331 (SH)**
First Licensed: 01/13/2003
Expiration: 01/31/2021
Type of License: Professional Engineer
History (5 yrs.): None.
Entity # 367446

Complainant is a municipal Building Inspector/Plans Review Examiner. A Licensed Contractor submitted a set of drawings. Included in the drawings were 2 sheets that were copies of the original

set of plans from the Builder that had been stamped by Respondent. Respondent is not the original designer and the drawings weren't his original works.

The two drawings in question were prepared by the Respondent. Respondent was given house drawings that were purchased by the owner/client. Respondent prepared drawings for a specific house with some differences to the original. Respondent re-calculated all loads and load paths and confirmed the design or re-design of all the items that were shown in the drawings. He removed all items from the drawing that he didn't re-calculate, confirm or re-design. When Respondent stamped the sheet, he took full responsibility for everything on the sheet.

Although not a violation, Respondent did not identify the project title such as the house address. The Builder used Respondent's drawings for another house without the Respondent's knowledge. The Respondent should have identified the two drawings with a specific house address. This practice may have discouraged the use of drawings for other projects without the knowledge and consent of the registrant.

Reviewed by Board member: Ricky Bursi

Mitigating Factors: No violation(s) found

Aggravating Factors: Failure to identify the project

Recommendation: Send Letter of Caution to Respondent concerning identifying specific projects on drawings.

Board Decision: Send Letter of Instruction concerning identifying specific projects on drawings. Open a complaint against the contractor stated in the complaint for unauthorized use of drawings.

4. 2019076541 (SH)

First Licensed: N/A

Expiration: N/A

Type of License: N/A

History (5 yrs.): N/A

Entity # 899602

Complainant alleges Respondent, a licensed Alarm Systems Contractor, was paid by a local shop owner that submitted several fire alarm shop drawings to the City with an unauthorized seal placed on the drawing without the prior knowledge or approval of the principal Architect. The Engineer on this project also complained that their title block with signed seal was used without authorization. The shop owner was unable to submit proper fire alarm system drawings to receive final approval of the project. The shop owner terminated the contract with Respondent and demanded reimbursement of the \$3,000 deposit. The shop owner hired another company in order to get the plans approved.

Respondent denies using an Engineer's seal and did not draft any of the drawings. He used a local Engineer to provide the drawings. Respondent states the NICET fire alarm company in North Carolina allegedly admitted to reusing the seal on their drawings. Respondent is licensed in Tennessee to perform Fire, Burglar, and CCTV work.

Contact was made with the NICET fire alarm company which stated they used the Engineer's drawing showing locations for the fire alarm devices designed by the Electrical Engineer. The company then created shop drawings showing how each device interconnects with each other which included voltage drop calculations, devices proposed, as well as head end to be approved by local AHJ before commencing work per NFPA 72. This company denies altering any device changes or reusing the Engineer's seal. This NICET company worked with the shop owner and did not know the Respondent. They also deny using any Architect or Engineer seal without authorization.

Legal is waiting on copies of all plans from Complainant as the scanned files are too large to email.

Reviewed by Board member: Ricky Bursi

Mitigating Factors:

Aggravating Factors:

Recommendation: Place in monitoring status in order to review further.

Board Decision: CONCUR

5. 2019075211 (SH)

First Licensed: 09/19/1988

Expiration: 12/31/2019

Type of License: Professional Engineer

History (5 yrs.): None.

Entity # 353011

The complaint alleges various types of improper practice from the registrant who performed engineering services for a local municipality for some period of time. These services included – water line extensions, sewer extensions, pump stations and various projects at the water and wastewater plant. The complaint included audio recordings of a city council meeting. In these audio recordings the improper practices mentioned were as follows:

1. Grit chamber for sewer plant installed in water plant; chamber itself not needed, chamber was for sewer plant and not water plant.
2. Water pumps installed at intake were water cooled instead of oil; pumps were for potable water not raw water.
3. At the Sewer plant, the Parschall flume was the wrong size and the lines clogged at clarifier before pumps installed (per plant operator).
4. Allegations that issues should have been known by the Respondent.
5. Grants for other projects seem to be made for unnecessary projects. There are allegations that engineering services for SRF loan wasn't approved by SRF however this may have been a contract entered into by both parties.
6. The city is in need of other projects but the Respondent's estimate was very high in contrast to actual or other estimates from Engineers. The Mayor read the fees and compared to Rural Development scale the estimates were 2 to 3 times higher.

Reviewed by Board member: Robert Campbell

Mitigating Factors: Some flaws or issues were equipment related; Contract issue between city and Respondent.

Aggravating Factors: Some flaws or issues seem to be engineer design and oversight; possible incompetence.

Recommendation: Place in monitoring status and have an Engineer versed in water/sewer treatment to determine whether there are incompetency issues.

Board Decision:

- 6. 2019090011 (SH)**
First Licensed: 01/01/1993
Expiration: 12/31/2019
Type of License: Professional Architect
History (5 yrs.): None.
Entity # 3356

Complainant hired Respondent on 9/21/2017 to redesign and renovate an existing three story wood frame apartment complex building. The existing building contained 10 three bedroom units. Complainant requested to divide the 10 units into one and two bedroom units making a total of 20 units in the building. Complainant alleges the Respondent stated the project would take 3-4 months to complete the architectural drawings. After 16 months and \$20,000 paid to the Respondent, Complainant alleges the Respondent has failed to communicate and the drawings were 90% completed. Complainant decided to hire another architect and general contractor for this project and requested all drawings from Respondent. Complainant further alleges Respondent failed to fully pay the contractor, engineering firm, and electrical engineer from the funds paid as contracted. The project was completed at the end of 2019 however Complainant states that due to the 19 month delay she has incurred over \$668,000 in financial damage.

Respondent states he was contacted by the general contractor, who he had worked with before, and asked to provide a proposal to commence services on 9/19/2017. Respondent estimated an initial fee of \$10,000 to cover cost of field measurements, investigation, and schematic design. Respondent met with Complainant and contractor on 9/21/2017 and was paid the initial fee. Respondent found the existing building to be in poor condition and the investigation was impeded due to the units being occupied. Respondent communicated regularly with the contractor regarding the design and development throughout 2018. Respondent states he never entered into a contract with Complainant nor promised architectural drawings within 3-4 months or any specific period of time. A 3-4 month period would have been aggressive and unrealistic based on the conditions of the existing building. Respondent states in May 2018, he met with Complainant and a bank representative to evaluate the financial viability of the project. Respondent agrees that the drawings were about 90% completed. Respondent requested an additional \$20,000 payment based on the time invested; the retaining of engineers to complete mechanical, plumbing and electrical design; and completing the architectural drawings.

Respondent also states there was no agreement to pay the contractor and the engineers as contracted because there was no contract between Complainant and Respondent. Further, there was no account of the Complainant that Respondent was holding funds of the Complainant to pay the engineers.

Reviewed by Board member: Brian Tibbs

Mitigating Factors: No professional negligence found

Aggravating Factors:

Recommendation: Close.

Board Decision: CONCUR

7. 2019094791 (SH)

First Licensed: 12/16/1992

Expiration: 09/30/2020

Type of License: Professional Engineer

History (5 yrs.): None.

Entity # 355809

The Complainant is a municipal Building Inspector. Complainant received a set of building plans to review and approve for issuance of a Building Permit. The builder submitted the drawings that showed the architectural drawings. Respondent wrote a letter stating he engineered, reviewed and approved the work of the licensed Architects.

Respondent states he was hired by the Architect to provide structural design information on seven wall sections in the design of a house. Respondent reviewed six of the wall sections drawn by the Architect, marking them with the necessary structural information. The Architect transferred Respondent's comments and submitted the corrected wall sections again for review. The seventh wall section was drawn by Respondent and included on the Architect's sheet. The Architect signed, sealed and submitted the drawings. Respondent agreed to list the structural wall sections that were engineered, reviewed and provided design information for on Respondent's letterhead and signed and sealed the letter.

Because the Respondent prepared and placed the seventh wall section on the drawing, Respondent should have stamped this drawing. Instead, the Architect placed the Respondent's drawing on his sealed and submitted drawing.

Reviewed by Board member: Stephen King

Mitigating Factors: Drawings were reviewed and provided with information only

Aggravating Factors: Respondent did not stamp his one drawing

Recommendation: Authorize a civil penalty of \$500 for failure to properly seal design documents and pass the Laws and Rules Exam.

Board Decision: Issue a Letter of Caution to both the Engineer and Architect regarding stamping rules and require them to take and pass the Laws and Rules Exam.

8. 2019101981 (SH)

First Licensed: 01/30/1981

Expiration: 03/31/2020

Type of License: Professional Engineer

History (5 yrs.): None.

Entity # 353683

Complainant alleges Respondent is incompetent. Respondent came to Complainant's house to assess cracks in cement floors and prepared a report stating "*No structural repairs are required*". Respondent subsequently inspected the house a month later and prepared a report that was contradictory to the first report stating "*Structural damage at the great room could affect future habitability at the interior if not corrected. Foundation repairs under the great room are therefore recommended.*" Further noting, "*Poor drainage next to the great room foundation could reduce the bearing capacity of the supporting dirt under the great room and cause additional foundation settlement. Drainage repairs in this area is therefore recommended.*" In a report that was offered two days later, the language was revised to state "*Low bearing capacity of supporting soils under the foundation has caused foundation settlement to occur. Additional foundation settlement could occur if the bearing capacity is not increased. Foundation repairs are therefore recommended. Poor drainage next to the great room foundation appears to have exacerbated the poor bearing capacity of supporting soils. Drainage repairs in this area are therefore recommended.*" Complainant alleges that no changes were made to the house in the time period between the first report and second.

Respondent states the buyer's agent requested an assessment of cracks in the scored concrete floors located in an inside Great Room only. Respondent alleges Complainant stated the cracks had not changed in 6 years and made no mention of an appraisal's report or requirements listed therein. An appraisal report, subsequently given to Respondent by the lender, noted settlement cracks in numerous locations including outside areas as well as inside. The appraisal report further required the opinion of a structural expert to make a determination if the settlement is normal for a 20 year old house. The subsequent inspection was made due to the appraisal report and Respondent found serious structural issues and made recommendations in his report. Respondent denies to being incompetent.

A review prompted an informal conference call with Respondent between Mr. Hethcoat and Respondent. Respondent stated he has been in the industry for 40 years with emphasis in structural engineering. Respondent admitted to not performing due diligence on the first inspection based on the information given to him by the Complainant. He was told that the cracks had not changed in 6 years and he could not see any apparent cracks, gaps, or other foundation issues in the great room. This led Respondent to believe the foundation was secure. Respondent performed a visual inspection of the cracks in the great room only as requested by the buyer's agent. After the lender received the report, the appraisal report was sent to Respondent. Respondent realized that there were more serious structural issues involved and made a subsequent inspection. Respondent made a more detailed analysis of the structural issues; such as cracks, misaligned windows, gaps in wood trim, cracks in bricked structures, and determined the foundation was in need of stabilization due to poorly compacted dirt causing low bearing capacity.

Respondent alleges Complainant lied to him about the cracks not changing in 6 years and felt rushed

to perform the first inspection. Respondent admitted that he should have performed his due diligence at the first inspection and included all relevant and pertinent information in the first report instead of relying on Complainant's word. In reliance, Respondent was reckless by making excessive errors and omissions regarding certain building failures.

Reviewed by Board member: Alton Hethcoat

Mitigating Factors: Admits failure in due diligence; corrected the report at no charge. Respondent has performed numerous (over 100) other similar inspections with no known complaints.

Aggravating Factors: Respondent admitted that he was rushed, was not thorough in his evaluation and did not perform due diligence at first inspection. As a result of his lack of due diligence, Respondent provided an initial erroneous conclusion that likely would have resulted in continued degradation and loss of property value.

Recommendation: Authorize a civil penalty of \$1,000 and pass the Laws and Rules Exam.

Board Decision: Authorize a civil penalty of \$1,000, issue a Letter of Caution, and require Respondent to pass the Laws and Rules Exam.

REPRESENTATIONS

9. 2017059421 (SBB)

First Licensed: 01/01/1993

Expiration: 12/31/2019

Type of License: Professional Architect

History (5 yrs.): None.

Entity # 7058

A Tennessee state agency entered into a contract with the Respondent and other parties for the construction of a building. The contract was funded by a federal grant and other state funds. The contractor hired the Respondent architect and Respondent's firm. The Respondent architect hired a structural engineer as a consultant for the structural design of the building. After construction began, there were complaints filed with the Office of the Comptroller's office concerning the original bidding process on the project. An audit was conducted by the Comptroller's Office and errors were identified in the bidding process. There was also an audit conducted by the agency itself because they received federal grant monies and there were discrepancies in the funds used for the construction of the building. Thereafter, the agency decided to suspend the grant payments and cancelled the grant with the contractor and the project was halted. The matter was turned over to the federal agency's Office of Inspector General for investigation. At this point, the project was closed-out and the Complainant indicated the partially constructed structure was weatherized. The state agency did later contract with another engineering firm to develop a plan to weatherize the project and possibly complete the project. This structural engineer noted there were deficiencies in the structural design of the partially completed project and certain floor beams should have been pressure treated. There were also concerns with the design and the engineering firm opined that the building could not be completed as it stood and would require extensive retrofitting or a complete demolition

architect's firm. The architect hired this Respondent as the structural engineer to serve as a consultant for the structural design of the building. After construction began, there were complaints filed with the Office of the Comptroller's office concerning the bidding process on the project. An audit was conducted by the Comptroller's Office and there were errors identified in the bidding process. There was also another audit conducted by the agency itself because it was receiving the federal grant monies and there were discrepancies in funds used for construction of the building. Thereafter, the agency suspended the grant payments and cancelled the grant with the contractor. The matter was turned over to the federal agency, the Office of Inspector General, for an investigation. The project was closed-out and stated by the Complainant the partially constructed structure would be weatherized. The state agency contracted with another engineering firm to develop a plan to weatherize the project and possibly complete the project. This firm noted there were deficiencies in the structural design of the partially completed project and certain floor beams should have been pressure treated. There were also concerns with the design and this other engineering firm opined that the building could not be completed as it stood and would require extensive retrofitting or a complete demolition of the building would be required. A complaint was filed against the Respondent by the agency against both the original architect and this Respondent, the structural engineer on the project alleging malpractice because of various errors, etc. Following our review and evaluation of the complaint, we requested to meet with the Complainant to further discuss and get additional information and the Complainant refused to meet with our office. The Respondent submitted a lengthy response to the complaint and stated the Respondent stood behind all of the work performed and stated the review conducted by the engineering firm for weatherization of the project that was later retained by the state agency was not proper since the review was conducted after the project had been left exposed to the outside elements. Those involved in the construction/building had not properly weatherized the site when the construction had been halted and the integrity of the building had been compromised by the time the state agency's structural engineer was retained to evaluate and review the project. The Respondent also stated the state agency merely filed the complaint to recoup the funds related to the mismanagement of the grant. The Respondent explained that the agency had adequate oversight/quality control powers throughout the design and construction phase and never intervened during the entire process. The Respondent stated there were complaints about the some of the decisions made by the contractor and the state agency to conserve funds during the construction. In our review of this complaint, our office was instructed to retain outside engineering experts to review and opine on this complaint. Our office retained two outside engineering experts that reviewed this complaint extensively. The first expert reviewer emphasized there are never perfect sets of construction documents and the shop drawing review process is the last chance to correct minor deficiencies or clarifications prior to construction or installation, however, the expert report was sufficiently detailed. Both the experts found the use of pressure treated lumber was not careless or reckless and was proper. The second expert did a comprehensive and thorough review of the case. This expert reviewed all documents and an extensive amount of information and performed an in-depth analysis of the complaint. This expert provided an extensive and detailed report. Ultimately, both experts concluded the allegations contained in the complaint did not rise to the level of malpractice (excessive errors and omissions) contained in the Rules of Professional Conduct of the Tennessee State Board of Architectural and Engineering Examiners Chapter 0120-02.

Reviewed by Board Member: Stephen King

Mitigating Factors: Reviewed by two outside experts.

Aggravating Factors:

Recommendation: Close.

Board Decision: Authorize a civil penalty of \$1,000