



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

**Board Meeting Minutes for October 7, 2020
Telephonic Meeting**

Tennessee Board of Architectural and Engineering Examiners met on October 7th, 2020 Telephonic Meeting. Director Michael Schulz called the meeting to order at 8:00am and the following business was transacted:

BOARD MEMBERS PRESENT: Ricky Bursi, Blair Parker, Frank Wagster, Kathy Ware, Stephen King, Alton Hethcoat, Robert Campbell, Brian Tibbs, Rick Thompson, Melanie Doss, Ben Brychta

BOARD MEMBERS ABSENT:

STAFF MEMBERS PRESENT: Michael Schulz, Maria Bush, Wanda Phillips, Morgan Calles, Kara Evans

INTERIOR DESIGN COMMITTEE MEETING

Call To Order

Kathy Ware called the meeting to order at 8:07am. Roll call was called by Director Schulz.

STATEMENT OF NECESSITY

Read by Maria Bush

New Business

Melonie Doss introduced herself to the board. She has been in the profession for over 30 years in the Knoxville area.

Elect Chair

Frank Wagers nominates Melanie Doss as the new Chair for the Interior Design Committee. This was second by Kathy Ware. This was voted by roll call.

Adjournment

There being no other business, Mr. Wagster adjourned the meeting at 8:26am. This was second by Ms. Doss.

LANDSCAPE ARCHITECT COMMITTEE MEETING

Call To Order

Mr. Parker called the meeting to order at 8:30am. Roll call was called by Director Schulz.

New Business

Potential Law, Rule, and Policy Changes

Mr. Parker brought up an application that does not meet the Education qualification, but states from reviewing his application he is more than qualified to be a Landscape Architect in Tennessee. With, wanting to possibly change the Rule on the education with Maria Bush assistance. Mr. Parker is going to check with CLARB to see if they have an option to evaluate degrees. The members will come up with some possible language and possible vote on it in the next meeting.

ADJOURNMENT

There being no other business, Mr. Wagster adjourned the meeting at 8:46am. This was second by Mr. Campbell.

ARCHITECT COMMITTEE MEETING

Call To Order

Mr. Thompson called the meeting to order at 9:00am. Roll call was called by Director Schulz.

New Business

Applications and Audits for Review

Applicants wanting to see if they can use an old NCARB record to reapply in Tennessee. Mr. Tibbs is always wanting to see if they can bring this up at the next NCARB meeting.

Mr. Wagster made a motion for reapplications stating with verifiable NCARB record in our archives with the board, to go back 3 years or less without having NCARB transfer a new file. The board will still check with NCARB to verify they have an active NACRB. Mr. Tibbs seconds this motion. This was voted by roll call.

Potential Law, Rule, and Policy Changes

Currently waiting on NCARB for an update on the definition.

ADJOURNMENT

There being no other business, Mr. Wagster adjourned the meeting at 9:47am. No second made.

LAW AND RULES/POLICIES COMMITTEE MEETING

Call To Order

Mr. Thompson called the meeting to order at 9:47am. Roll call was called by Director Schulz.

New Business

Potential Law, Rule, and Policy Changes

Maria Bush advised the PDH/Education rule has received approval from the Governors office. It has been sent to the General Attorneys office. Once we receive the approval, we will make any final edits and send it to the Secretary of State for publication where it will sit for 90 days. After the 90 days Maria Bush will have to go in front of the Joint Government Operations Committee and answer any questions the legislator might have. Rule will become affective 90 days from the publication. With this we are looking at early January to become effective.

Waiting on NCARB for the Architects definition.

Engineer rule that was drafted last fall, will need to be voted on as a board tomorrow. We will then need to have a rule meeting hearing. This rule is about progressive experience that the board is looking at.

ADJOURNMENT

There being no other business, Mr. Thompson adjourned the meeting at 9:59am. This was second by Mr. Campbell.

ENGINEER COMMITTEE MEETING

Call To Order

Mr. Hethcoat called the meeting to order at 10:00am. Roll call was called by Director Schulz.

New Business

Applications and Audits for Review

Mr. Stephen Burke is a reapplication. He originally got his license under the master's degree law, because he does not have an undergraduate degree in Engineering. Ms. Ware feels that because he was license previous that he should be able to get his license back. Mr. Bursi reviewed the application and believes this should have been discussed as a board, due to the law is no longer in effect. Mr. Campbell does not feel like he should be licensed due to the law is no longer in effect. Maria Bush advised the board would have the desecration because he is a reapply.

Mr. Bursi made a motion to approve Mr. Burke reapplication. Ms. Ware seconded this motion. This was voted by roll call.

Applicant Interviews

Nothing discussed in this section

Engineering Interns-Out of State and Tennessee

Nothing discussed in this section

Potential Law, Rule, and Policy Changes

Maria Bush, we need to make it official for the rules progressive experience. The red line was sent out. Wanted to submit it to the full board meeting tomorrow for approval to set a rule making hearing. One edit will need to be done to remove due to it is redundant.

Ms. Ware made a motion that we submit this tomorrow for a full vote after the redundant information has been edited. Mr. Bursi second the motion. This was voted by roll call.

Sunshine Law

Mr. Hethcoat is wanting legal opinion about if the board members can consult with other board members to help aid with the review process. Per Maria it is not allowed for board members to discuss or talk to other board members about applications or aiding other help to others.

Other Business

Mr. Hethcoat is trying to see if there might be an option to add more Engineer Board Members to the A&E board.

Discussion of technology degrees and decoupling. With a possible rule change in the future with some terminology for these degrees. Mr. Campebl sent an email to the other board members on what they were assigned to work on.

Engineer Committee will vote on a new chair in December.

ADJOURNMENT

There being no other business, Mr. Bursi adjourned the meeting at 11:20am.
No Second

LUNCH BREAK

11:20AM-12:30PM

GRANTS TO HIGHER EDUCATION COMMITTEE MEETING

Call To Order

Mr. Hethcoat called the meeting to order at 12:30pm. Roll call was called by Director Schulz.

New Business

Christian Brothers: Need to revise their request to include \$5,000 in other fees that are not for interns.

UTC Department of Engineering: Need to revise their request to include \$5,000 in other fees that are not for a tutor.

Mr. Brychta made a motion to give Director Schulz the authorization to amend Christian Brother and UTC for their grant proposal and to send notification to have them fix their deposit information. Then director Schulz can then approve these amended documents. This was second by Ms. Moss. This was voted by roll call.

Mr. Hethcoat reviewing the Grant Distribution requests.

Mr. Wagster made a motion to award the grants once the sheet is amended in the total column. This was second by Ms. Doss. This was voted by roll call.

Review Grant Guidelines

Please move this to the next board meeting in December. This will be the day before the board meeting.

ADJOURNMENT

There being no other business, Mr. Wagster adjourned the meeting at 1:26pm.
There was no second.

FINANCE COMMITTEE MEETING

Call To Order

Mr. Brychta called the meeting to order at 2:00pm. Roll call was called by Director Schulz.

New Business

Review of Financial Data

Proposal to Increase Grants Appropriation

ADJOURNMENT

There being no other business, Mr. Wagster adjourned the meeting at 2:40pm. This was seconded by Mr..

OUTREACH COMMITTEE MEETING

Call To Order

Mr. Hethcoat called the meeting to order at 12:30pm. Roll call was called by Director Schulz.

New Business

Potential Law, Rule, and Policy Changes

Currently waiting on NCARB for an update on the definition.

ADJOURNMENT

There being no other business, Mr. Wagster adjourned the meeting at 9:47am. This was seconded by Mr..



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CONFIDENTIAL - ATTORNEY WORK PRODUCT

TO: Tennessee Board of Architectural and Engineering Examiners

FROM: Stuart Huffman, Associate General Counsel

DATE: October 8, 2020

SUBJECT: October 2020 Legal Report

- 1. 2020045111 William Edward Dillon (SH)
2020065171
First Licensed: N/A (Unlicensed)
Expiration: N/A
Type of License: Professional Architect
History (5 yrs.): N/A
Entity # 9703**

Respondent was hired to provide design a new building. Once plans were completed and agreed to, Customer discovered the plans were not stamped. Respondent would provide excuses as to the reason for no stamp. This caused delay in the project. Customer called the Architect Firm that Respondent represented to be the Project Manager. The Architect Firm stated they did not employ the Respondent and knew nothing of this project or plans. Complaints from the Architect Firm and Customer have been filed against Respondent for fraud. Complainants state Respondent fraudulently used drawings of the Architect without their knowledge and signed contracts representing himself as the project manager for the Architect. The Respondent has received over \$60,000 in fees from Customer. The civil engineers and structural engineers have not been paid by Respondent. Customer filed a police report for theft and fraud; there is pending litigation and criminal fraud charges. It is believed that Respondent is on the run but alleged to have moved to Atlanta, GA.

Reviewed by Board member: Brian Tibbs

Mitigating Factors:

Aggravating Factors:

Recommendation: Refer to District Attorney

Board Decision: CONCUR

2. **2020048701 Katherine Young Bell (SH)**
First Licensed: 04/19/2008
Expiration: 06/30/2022
Type of License: Professional Engineer
History (5 yrs.): None.
Entity # 367701

Respondent self-reported practicing on an expired license. The license expired on 4/30/2018. Respondent explains that they transitioned to new employment and missed the renewal statement since it was sent to the former employer. Respondent stamped one project during the expired time period on 4/24/2019. Respondent's license has been renewed on 6/19/2020.

Reviewed by Board member: Stephen King

Mitigating Factors: Self-reported; No history

Aggravating Factors: Stamped one project while expired

Recommendation: Authorize a civil penalty of \$500 for practicing on an expired license.

Board Decision: Authorize a civil penalty of \$500 for practicing on an expired license and require Respondent to take and pass the Laws and Rules Exam.

3. **2020048721 James Neff (SH)**
First Licensed: 01/25/2001
Expiration: 06/30/2022
Type of License: Professional Engineer
History (5 yrs.): None.
Entity # 371324

Respondent self-reported practicing on an expired license. The license expired on 2/28/2019. Respondent explains that they inadvertently updated their license tracking system to show the Tennessee license as being renewed. Respondent stamped three (3) land development projects during the expired time period. Respondent's license has been renewed on 6/18/2020.

Reviewed by Board member: Robert Campbell

Mitigating Factors: Self-reported; No history

Aggravating Factors: Stamped three projects while expired

Recommendation: Authorize a civil penalty of \$1,500 for practicing on an expired license.

Board Decision: Authorize a civil penalty of \$1,500 for practicing on an expired license and require Respondent to take and pass the Laws and Rules Exam.

4. **2020050191 Harry Parker (SH)**
First Licensed: N/A (Unlicensed)
Expiration: N/A
Type of License: Professional Engineer
History (5 yrs.): N/A
Entity # 2000772

Complainant purchased a house in 2018 under the stipulation that the foundation be inspected and approved by a license structural engineer. Respondent was allegedly hired by seller's agent to perform the inspection. Respondent provided a signed letter stating that the foundation was properly supported and secured. Respondent's letterhead shows Respondent to have a TN Contractor's license and a TN Engineer's license. Due to the shifting of the foundation recently, Complainant had another engineer firm inspect the foundation. This inspection revealed that the previous areas of concern were not safe and will require considerable repair. Further, the license numbers on Respondent's letterhead are not assigned to Respondent and falsified.

Respondent states they did not prepare or sign the inspection letter. He also states he does not know the Complainant or the seller's real estate agent and was not contacted by either to perform an inspection. Respondent was a trim carpenter before he became terminally ill but never presented himself as a licensed engineer. Complainant has been notified of the response from Respondent and is seeking local legal counsel regarding the fraud. Complainant believes seller may have a criminal history of fraud.

Reviewed by Board member: Alton Hethcoat

Mitigating Factors: Respondent has no knowledge of the letter; has no knowledge of Complainant; terminally ill

Aggravating Factors: Seller and real estate agent may have defrauded the Complainant and lender

Recommendation: Refer to the TN Real Estate Commission and District Attorney

Board Decision: CONCUR

5. 2020056571 Philip Shippey (SH)

First Licensed: Applicant (Unlicensed)

Expiration: N/A

Type of License: Professional Landscape Architect

History (5 yrs.): None.

Entity # 1317483

Respondent's offices are located in Tennessee and maintains a website that shows several services offered, including landscape architecture, and pictures of completed projects. Respondent is licensed in Georgia to practice landscape architecture therefore the business name and website contain the term "landscape architecture" to market to clients in Georgia. Respondent is also CLARB Certified Landscape Architect.

The projects shown in the website photos that Respondent worked on in Tennessee were small-scale (less than 5,000 square feet) residential and/or projects that Respondent installed personally as well as one pro-bono project. The only exception was a project which had an improved landscaped area of approximately 5,900 square feet. At that time of these projects, in February 2017, Respondent was doing business under another business name and did not use the appellation of "landscape architect" for marketing purposes. Instead, Respondent used the term "landscape designer" or "garden designer" during that time. A copy of a business card used in 2017 was provided and does not include the appellation landscape architect.

Respondent submitted a comity application to obtain a Landscape Architect license on September 6, 2019. Respondent states the CLARB requirements and the Tennessee license requirements are different and can be confusing. CLARB requires 3 years of experience working under a licensed LA to become CLARB certified. However, Tennessee requires 3 years of practical experience, satisfactory to the Board, in the field which no less than 2 years must be obtained in an office of a practicing registered LA and of which no more than 1 year of practical training and school may be concurrent. CLARB refused to credit Respondent's concurrent time as part of the 3 years of practical experience. Therefore, Respondent needed an additional 10 months of experience under the guidance of a registered landscape architect.

Respondent continues to maintain a business name with "landscape architecture" and website using "landscape architect" and claims to have an active registration in Tennessee. Respondent's comity application is in progress status.

Reviewed by Board member: Blair Parker

Mitigating Factors: Comity application in progress status

Aggravating Factors: Using appellation without being registered.

Recommendation: Authorize a civil penalty of \$500 for using the appellation without proper licensure and require Respondent to remove misleading information related to license status from their website.

Board Decision: CONCUR

6. **2020063011 Justin Bolender (SH)**
First Licensed: 06/09/2012
Expiration: 08/31/2022
Type of License: Professional Engineer
History (5 yrs.): None.
Entity # 387534

Respondent self-reported practicing on an expired license. The license expired on February 28, 2020. Respondent stamped four (4) land development projects during the expired time period. Respondent's license has been renewed.

Reviewed by Board member: Stephen King

Mitigating Factors: Self-reported; No history

Aggravating Factors: Stamped four projects while expired

Recommendation: Authorize a civil penalty of \$2,000 for practicing on an expired license.

Board Decision: Authorize a civil penalty of \$2,000 for practicing on an expired license and require Respondent to take and pass the Laws and Rules Exam.

REPRESENTATIONS

7. **2019094691 Barry Westbrook (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 several 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

New Information: At the request of the Respondent, an informal teleconference was held with Respondent and Board member, Kathy Ware. In this conversation the Respondent explained that he believed to be “grandfathered” in and could use the “Professional Engineer” designation without licensure. Respondent stated in a paper he wrote years ago, “In the 1970's, Kentucky was one of several rural states with a shortage of ABET accredited engineering universities accessible to students of limited financial means. The Engineering Technology Department of Western Kentucky University (WKU), in Bowling Green, appealed to rural students as a part of their marketing outreach to attend their program with the certainty they could achieve professional engineering licensure, just like those students attending the University of Kentucky and the University of Louisville. The path to licensure required an additional four years of practical experience before qualifying for the licensing examination. Most "farm kids" considered this a reasonable concession for the ability to one day become a licensed engineer with the same stature and privileges of their ABET-graduated colleagues.” After graduation in 1992, Respondent learned that even though he had earned the right to become licensed in Kentucky, the state of Tennessee considered non-ABET graduates unqualified to receive licensure.

The Board revised Rule 0120-01-.10 [Education and Experience Requirements-Engineer] in 2002 to allow for non-ABET graduates to be allowed to apply and be considered for licensure if certain factors are met. The current Rule was sent to Respondent for his review and consideration. However, it was determined that Respondent’s line of work and experience does not require him to obtain an Engineer’s license in Tennessee.

It should be known that Respondent immediately revised the designation of “Professional Engineer” to show licensure in Kentucky (KY) only on his website. It is reasonably believed that Respondent had no intention of misleading the public.

Further, Respondent was not notified of the complaint and feels that due process failed. After a review, it was determined that the lack of notification was not deliberate but a miscommunication in the complaint process. This issue has been addressed to avoid any lack of notifications in the future.

New Recommendation: Close.

New Board Decision: Move complaint to October legal report for further review.

New Information: There is no new information at this time. The previous website of Respondent used the appellation of Professional Engineer while Respondent was not registered in TN; only in KY. There is no evidence of public harm and Respondent does not practice engineering in TN.

New Recommendation: Discuss.

New Board Decision: **Issue a Letter of Warning**

8. 2019027861 Architectural and Engineering Design (Paul Ditrapani) (SBB)

First Licensed: Unlicensed

Type of License: Professional Architect

History (5 yrs.): None.

Entity #1289136

Respondent and Respondent firm engaged in providing services as an unlicensed architectural/engineer firm, architect and engineer. Complainant stated that the Respondent provided two estimates for proposed projects with the totals exceeding \$25,000. An investigation was conducted by the Department and the Respondent was non-cooperative, however, admitted to the Investigator that the Respondent was unlicensed.

This complaint was sent to the Investigations Division, Department of Commerce & Insurance for an investigation.

This complaint was reviewed by Board Member Brian Tibbs

Mitigating Factors:

Aggravating Factors: Respondent refused to cooperate with our investigation.

Recommendation: Authorize a civil penalty in the amount of \$1,000 for unlicensed practice for the individual and the firm by informal settlement by Consent Order and authorization to file a formal contested case proceeding against the Respondent.

Board Decision: DEFER TO OCTOBER MEETING/CEAST AND DESIST ORDER

New Information: Legal Counsel is unable to contact or locate the Respondent to send or serve any documents. The last address found for the Respondent is out of state in Louisiana. A Westlaw CLEAR search has been conducted and there are no updated addresses available. The last mailing by USPS certified mail return receipt requested was

sent to the last known address in June 2020 and it was returned to us as undeliverable. I am unable to serve the Respondent a Notice of Hearing and Charges and we cannot serve an out-of-state Respondent. Unable to proceed with a formal contested case proceeding against the Respondent.

New Recommendation: Close and Flag.

New Board Decision: CONCUR

9. **2020025791 Bae Systems (SH)**
First Licensed: N/A (Unlicensed)
Expiration: N/A
Type of License: Engineering Firm
History (5 yrs.): N/A
Entity # 1963936

Respondent is the prime contractor for operating and upgrading a Federal Army Facility site. An employee of Respondent stated to the Board that he and his co-workers were stamping plans that are submitted to TDEC for approval, however Respondent was not willing to provide a Firm Disclosure. Designs submitted to TDEC include Process, Mechanical, Electrical and Civil Drawings. The employee inquired whether he or his co-workers would be in violation if they were stamping plans without the Respondent having the Firm Disclosure on file. Tennessee law required all Firms offering services to the Tennessee public must have a Disclosure on file.

Respondent explains that they are the operating contractor for a Federal Army Facility. All buildings and equipment on the facility are the property of the United States Army. Respondent's primary purpose is to meet the U.S. Government's needs for explosives manufacturing. In support of that mission, Respondent employs engineers to assist the Army with facility maintenance and construction activities related to their production needs. Respondent argues that they are not offering services to the public and do not hold themselves out as an Architect or Engineering firm, therefore exempt from registration.

The opinion of the reviewer states, "If TDEC is requiring plans and specifications be submitted for approval and be sealed by a licensed professional, the discharge from that facility would either discharge into a "Water of the State" or into a private or public WWTP that would operate under a National Pollution Discharge Elimination System Permit (NPDES Permit). Any discharge requiring a NPDES Permit is subject to TDEC regulation, whether via some sort of alternative technology discharge mechanism, or simply discharging directly into a "Water of the State", post treatment. Either way, the discharge from that proposed facility would clearly impact the Public's Health, Safety and Welfare, and as a result, any design, plans and/or specifications should absolutely be performed by an appropriately licensed professional engineer. If that engineer is in the employ of a firm, then that firm is similarly performing services on a project that would clearly impact the Public's Health, Safety and Welfare, and therefore, should be subject to the firm disclosure requirements."

Respondent's employee admits they are preparing plans and/or specifications or engineering reports, etc. that are being submitted to TDEC for review and approval, thus they are practicing engineering in this State. Therefore, Respondent should provide a Firm Disclosure.

Reviewed by Board member: Alton Hethcoat

Mitigating Factors: No intent to harm public

Aggravating Factors: No Firm Disclosure; TDEC approval

Recommendation: Authorize a civil penalty of \$500.00 for each month that it became known Respondent did not have a Firm Disclosure on file, totaling \$2,500.00. If Respondent provides a Firm Disclosure within 30 days, then the penalty shall be withdrawn.

Board Decision: Authorize a civil penalty of \$1,000.00 for each month that it became known Respondent did not have a Firm Disclosure of file, totaling \$5,000.00, require Respondent to provide a Firm Disclosure form within 30 days and take and pass the Laws and Rules Exam.

New Information: The Respondent's attorney contacted Legal to discuss the Corporate Firm Disclosure requirement. Respondent mentioned the response made to the complaint and noticed that the Respondent referenced the alleged exemption in 62-2-103(3). As stated in T.C.A. 62-2-101, a person to be registered if using certain appellations or "practicing or offering to practice" engineering services in this State. The exemption in the referenced 62-2-103(3) says a person is exempt from registration if their employer is not in the practice of engineering services but renders services to their employer only and not the general public.

Respondent's attorney believes the incorrect statute was referenced citing T.C.A. 62-6-601 that refers to the requirements of filing a Firm Disclosure by corporations. Specifically, the statute states "Corporations, partnerships or firms offering engineering, architectural or landscape architectural service to the public shall file with the board, on a form prescribed by the board." There is no argument that Respondent is not an architectural or engineering firm and does not hold itself out to be, to the public. Respondent is adamant that it does not offer any services to the public. Respondent operates a federal government ammunition plant and employs licensed in-house engineers that perform services, only internally, for the company. Respondent understands this Board's concern that its operations may "affect" the public however TDEC is involved with its operations to ensure environmental and public safety.

Due to the strictly construed language of the Firm Disclosure statute, it is recommended to close this complaint as the Respondent is not offering engineering services directly to the public.

New Recommendation: Close.

New Board Decision: CONCUR