



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

**Board Meeting Minutes for February 4, 2021
Telephonic Meeting**

Tennessee Board of Architectural and Engineering Examiners met on February 4th, 2021 Telephonic Meeting. Director Michael Schulz called the meeting to order at 9:03 am and the following business was transacted:

BOARD MEMBERS PRESENT: Ricky Bursi, Stephen King, Alton Hethcoat, Robert Campbell, Blair Parker, Frank Wagster, Brian Tibbs, Rob Barrick, Melanie Doss, Ben Brychta

BOARD MEMBERS ABSENT: Rick Thompson

STAFF MEMBERS PRESENT: Michael Schulz, Maria Bush, Wanda Phillips, Morgan Calles, Stuart Huffman

ROLL CALL / AGENDA

Brian Tibbs called the meeting to order. Michael Schulz called roll.

Guests were acknowledged.

STATEMENT OF NECESSITY

Read by Maria Bush

Announcements

Rob Barrick Introduction:

He has been with Smith Sackman Reed for 47 years. Since 1974 he has been a mechanical engineer, served as a chief executive officer, Senior Principle of Smith Sackman Reed, and now board chairman.

Agenda

Michael Schulz would like to remove De-Coupling and Technology Degree from old business and just have definitions in this section.

Frank Wagster made a motion to approve the amended agenda. Ben Brychta second this motion. The motion was carried by roll call vote.

Minutes

Alton Hethcoat needing to amend the minutes. Under the committee reports, the fourth line down it refers to ETAC and it should have been EAC.

Robert Campbell made a motion to approve the minutes from the December 3rd, 2020. Frank Wagster second this motion. The motion was carried by roll call vote.

PROFESSIONAL SOCIETY REPORTS

Nathan Ridley from the TN chapter of the American Society of Landscape Architects (ASLA-TN) reported that our legislative returned to regular sessions on Monday, February 8th, and will receive Governor Lee's state of the state budget address which was started on January 12th. The filing deadline for legislation is Thursday, February 11th close of business. The building access to the Cordell Hull Building which is the state legislative office as well as the state capitol is limited. The national convention for landscape architects is going to be in Nashville from November 19th to the 22nd of this year. Blair Parker added for ASLA the executive director changed and the transition has been smooth. Aaron Thorpe is the new executive director.

Ashley Cates Executive director of the American Institute of Architects (AIA TN) reported that kicking off the programs differently this year, with it being virtual. We are reimagining our down the hill to do a speak-up series, kind of an advocacy education program, and several key team meetings with legislators. Due to the time constraints, the odd scheduling, and trying to get people to attend via zoom, we're going to kind of choose quality over quantity this year. In addition, to speak up, we are going to host a disaster training program in June and our planning committee to be on June 3rd and June 4th, which will be virtual. Our Architecture conference will be at the end of August, virtual as well. We will also have a new series focusing on diversity, equity inclusion, and justice, which will be hosted at the beginning of October. Rolling out the next session of the PE exam review. I believe it starts the week of February 8th and is 10-week sessions on each section.

ECEC has put some studies together on the engineering industry and its impact on society. The second phase was released today and this one is the impact on the engineering industry's economic contribution.

Kasey Anderson, Tennessee Society of Professional Engineers/American Council of Engineering Companies of Tennessee (TSPE/ACEC-TN) reported that we are celebrating engineer's week from February 21st to the 27th with lots of virtual activities going on around the state. There were several virtual and in-person activities for this week. We plan to conduct a senior principal forum with 75 senior principals from firms around the state. We will continue to have chapter meetings across the state that are being held virtually, with good attendance. For NSPE members we unrolled 15 free PDHS that is done all online. NSPE hired someone to do ethics and other duties as well. She is an ethics expert that we will be able to use in house.

Don Baltimore from Tennessee Interior Design through Education and Advocacy (TN IDEA) reported that most meetings are being held virtually. We will be monitoring legislation and voicing our opinion if necessary.

LEGAL REPORT (attached)

DIRECTOR'S REPORT

Financial Information

November 2020 reviewed by board members separately.

Barrick Committee Assignment

Brian Tibbs will assign these vacancies and will get with Michael Schulz to help determine the assignments.

Michael Schulz advised due to Rob Barrack's profession he added him to the engineers committee because he is an engineer and attended the meeting on February 3rd, 2021.

Emailed Letters (December)

A letter was sent out in December right before Christmas due to a system mishap, which we have received several communications about due to this letter. At this

moment we do not know how many people received this letter. The letter stated that congratulations you have passed the PE exam.

Certificates

Michael Schulz stated that there would be no change to the wall certificates, due to the discussion from the last meeting with the majority wanting the wall certificates to stay the same.

COMMITTEE REPORTS

Landscape Architects

Blair Parker announced that the language of the rules and laws are different for each of our professions. In landscape architecture, the way our laws and rules are written provides very little discretion for the committee or the board to review applicants that may have extenuating circumstances. The committee decided they will work directly with Maria bush and Michael Schulz to work on a plan to attack these. Looking at the current statute, if it requires us to put something together and come back together in our next committee meeting possibly in April. This way we can discuss what recommendations we have come up with.

Interior Design

Melanie Doss announced the meeting yesterday was canceled because we did not meet quorum. This will be rescheduled in the near future. We currently have a vacancy on this committee and would like to fill this as soon as possible. Melanie Doss would like to nominate Alton Hethcoat. Alton Hethcoat agreed if the board and chairman would be okay with this.

Maria Bush from legal advised she is going to meet with Michael Schulz and go over the whole issue with the voting rights. With there being three members on the interior design committee, and with Alton Hethcoat being an associate member does not have voting privileges. This might cause issues if there was ever a vote and the two other board members do not agree on it, then this would end up in a tie situation.

Engineer Committee

Stephen King advised that the engineer committee has been asked to develop a path to licensure for four-year technology degrees. We have been discussing this. We also had an additional meeting on January 20th, 2021 where we invited two deans from schools in Tennessee. These two schools have both EAC degrees and ETAC degrees. We had another faculty member from a technology school who

spoke, and we took information from them as well. We had another meeting yesterday, February 3rd, 2021, and discussed this topic and we are leaning toward a recommendation that we're going to continue to discuss and will bring it back to the board once we are ready. We received several applications, some correspondence from a codes official that asked a registrant to write a letter certifying the individual questioned whether he was allowed to stamp such a letter. The conclusion was that the committee felt like there was no prohibition for that but there were some problems with this, and Maria Bush is going to respond to the individual concerning the potential solution. We also discussed in addition to the technology degree, we have three other similar items. One being decoupling, which could be a potential law change. Two being a pathway to licensure for individuals who do not have an undergraduate degree in engineering but have a master's degree in engineering. Finally, the pathway of licensure for foreign degrees. The solution for the four-year technology degree could be just a rule change and the other three are most likely going to be a law change.

We are planning another committee meeting in March and one more before the April board meeting.

OLD BUSINESS

Definitions

Melanie Doss asked if the board would release all the definitions at the same time when they are all ready, or if each committee can release their own definitions if they are not ready. Robert Campbell advised he remembered legal was needing to review them and make any edits, then the professional societies were going to review them as well. Frank Wagster advised; the hold was from the architects. From his understanding, they were all going to be presented at the same time. The hold up from the architects is due to NCARB is reworking the definition of a profession of architecture. Their update was supposed to be done last June, but due to the pandemic, they have put this off. I believe they should have something ready here in the next couple of months. I hope I can give an update at the April Board meeting. Blair Parker advised the landscape architects are pretty set on their definition. They are in the process of having it reviewed one final time.

Maria Bush provided an update on the PDH rules. The new PDH rules went into effect on January 26th or the 27th. This will phase out the carryover hours beginning in 2023. The notifications that are required by statute have been sent out with a chart of the changes and the looks for each discipline. Ricky Bursi advised this would make good material for the newsletter.

NEW BUSINESS

None

ADJOURNMENT

There being no other business, Ben Brychta moved for adjournment the meeting at 10:51 am.



STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
OFFICE OF LEGAL COUNSEL
500 JAMES ROBERTSON PARKWAY
NASHVILLE, TENNESSEE 37243
TELEPHONE (615) 741-3072 FACSIMILE (615) 741-4000

CONFIDENTIAL - ATTORNEY WORK PRODUCT

TO: Tennessee Board of Architectural and Engineering Examiners
FROM: Stuart Huffman, Associate General Counsel
DATE: February 4, 2021
SUBJECT: February 2021 Legal Report

1. **2020084201 (SH)**
First Licensed: N/A (Unlicensed)
Expiration: N/A
Type of License: Engineering Firm
History (5 yrs.): None.
Entity #2031823

Complainant hired Respondent to conduct a structural review of a slab/wall that was necessary for a building inspection. Respondent was paid \$400 to take pictures and provide a signed and sealed inspection report. Respondent continued to promise delivery of the letter/report numerous times but failed to deliver when promised. Complainant waited one month for a one sentence report. Respondent offered a full refund however the funds have not been received by Complainant. Respondent is registered as a home inspector however is using the term "engineering" in the business name, email, and website.

Reviewed by Board member: Stephen King

Mitigating Factors: Registered as a home inspector

Aggravating Factors: No registration; using appellation "engineering" without registration

Recommendation: Authorize a civil penalty of \$1,000 for improperly using appellations and demand that appellations be removed from name, documentation, website, etc. Also, refer complaint to Home Inspector Licensing Program.

Board Decision: CONCUR.

2. **2020095701 (SH)**
First Licensed: 06/17/2004
Expiration: N/A
Type of License: Engineering Firm
History (5 yrs.): None.
Entity #378280

Complainant purchased a house and the Respondent was the civil engineer of record for the development. Complainant alleges that the civil engineer is responsible for site review to verify compliance, by the contractor, with its drawings of record, however Respondent failed to do so causing deficiencies with Complainant's property. Respondent failed to deliver 6" of topsoil; a sandy clay material is present. No seed and straw cover has been placed due to the lack of topsoil. The civil notes state the contractor is maintain the ground cover until at least 70% has taken root. Complainant's rear terrace consists of sandy clay, aggregate rock, construction material and debris, and the slope is not consistent with the grade drawings. These inconsistencies pose severe safety issues.

Respondent argues that Complainant states that "It is the responsibility of the civil engineer on the project to review the site to verify that the site is in compliance with his drawings of record." Respondent states it had no site construction inspection or project certification responsibilities for this project and were not contracted by the owner/developer to perform these duties.

Complainant rebuts that on Respondent's own civil grading drawings it states: "*The contractor shall locate and stake the layout of the site in the field for inspection by Engineer. The contractor shall check the grades and final dimension on the ground and report any discrepancies to the Engineer immediately for a decision.*" Complainant argues that the Respondent, based on its contract with developer, did have the responsibility of project certification in their scope of work and failed.

There is no evidence that the Complainant has issue with the design of the engineer. The engineer has no contractual duty or authority to demand performance by the contractor/developer. The notes that Complainant points out are standard general notes and in no way bind the engineer in this matter. The engineer is only bound by the contractual obligations described in the contract with the contractor/developer. These obligations do not pertain to material or grading.

Reviewed by Board member: Ricky Bursi

Mitigating Factors: No contractual duty; No fault found

Aggravating Factors:

Recommendation: Close

Board Decision: CONCUR.

REPRESENTATIONS

3. **2019061821 (SBB)**
First Licensed: N/A (Unlicensed)
Expiration: N/A
Type of License: Architectural Firm

History (5 yrs.): N/A
Entity # 1309398

Complainant is an Oklahoma architect that was going to recommend a local architect firm for his cousin in Nashville. When Complainant looked up the firm it was discovered that this firm is not licensed in Tennessee.

Respondent is an architect firm based in Houston, Texas. Respondent submitted its Secretary of State filing showing the parent company of Respondent as doing business in Tennessee. The Tennessee architect license is under the individual owner of the parent company who is located in their Houston, Texas office.

There is no evidence that the Nashville office is licensed.

Mitigating Factors: Principal of firm is a licensed architect in Tennessee.
Inadvertent/unaware the firm needed to fill out a firm registration.
There has been no architectural practice/business conducted in Tennessee.
Immediately submitted and obtained firm registration when contacted by our office.

Aggravating Factors:

Recommendation: Close.

Board Decision: Send letter of caution to Respondent and require the Principal Architect to pass the laws and rules exam.

New Information: The Board issued a Letter of Warning on October 4, 2019 as well as instructed Respondent to pass the Laws and Rules Exam. The Letter of Warning and Exam was sent to Respondent on October 16, 2019. On or about January 23, 2020, the Board reached out to Respondent requesting to take the Exam and return it as soon as possible. Unfortunately, Respondent failed the Exam. The Board has requested Respondent to retake the Exam numerous times with no response; last requests were on September 9, 2020 and November 10, 2020.

New Recommendation: Authorize a civil penalty of \$2,000 for failure to respond to the Board and pass the Laws and Rules Exam.

New Board Decision: Authorize a civil penalty of \$2,000 for failure to respond to the Board and pass the Laws and Rules Exam. If the Respondent fails to respond within 30 days, pursue a formal hearing for possible suspension, revocation, and/or other penalties.

4. **2018084241**
First Licensed: 10/23/1990
Expiration: 01/31/2023
Type of License: Professional Architect
History (5 yrs.): N/A
Entity #8036

Reviewer: Frank Wagster

The Complainant (codes official) filed a complaint alleging the Respondent submitted plans for a restaurant to the Building and Codes Department of the relevant city, but the plans were not up to code. Specifically, the plans showed seating for more than 50 occupants, but the Respondent labeled the plans as Group B business occupancy (occupant load of less than 50 persons) because of divider walls (three, 42-inch high walls, with two 4 ft. wide openings) separating two (2) dining areas in the restaurant (showing an occupancy of 41 persons on one side of the divider, and an occupancy of 44 on the other). The Complainant indicated the Respondent was advised of this issue, but he received resistance from the Respondent who has refused to provide a sealed set of construction documents. In addition, the Complainant also advised that there have been many ongoing arguments over the years with the Respondent trying to undermine the codes and disregarding the safety of the public.

In response to these allegations, the Respondent disputed the Complainant's claim that the plans weren't up to code and indicated that per the December 2015 version of the Tennessee Reference Manual for Building Official and Design Professionals, the occupancy classification as defined by the 1985 Edition of the Standard Building Code as it pertains to seal exemptions, a restaurant with less than 100 occupants shall be classified as a Business Occupancy.

Based on the nature of the allegations and response, the complaint, response, and accompanying documents were sent to Frank Wagster for review, who noted the Respondent appears to be in violation of Rules 0120-02-.02 [Proper Conduct of Practice], 0120-02-.03 [Service in Areas of Competence], and 0120-02-.07 [Misconduct]. Mr. Wagster also noted the following references pertinent to the complaint:

1. 2012 International Building Code (2012 IBC), Section 303.3 – Assembly Group A-2. “Assembly uses intended for food and drink consumption” (including restaurants).
2. 2012 IBC, Section 303.1.1., “A building or tenant space used for assembly purposes with an occupant load of less than 50 persons shall be classified as a Group B (Business) occupancy.
3. Page 2 of the Tennessee Board of Architectural and Engineering Examiners “Reference Manual for Building Officials and Design Professionals” provides: “Assembly Occupancies (A) is defined as follows: “buildings or structures, or any portion thereof, for the gathering of persons for purposes such as civic, social, or religious functions or for recreation, food or drink consumption, or awaiting transportation, having a capacity of 50 or more persons. A registered design professional is required to prepare plans and specifications for this type of Occupancy regardless of the size of the facility.” (Emphasis added).

Mr. Wagster found that per the 2012 IBC Section 303.3, the proper occupancy type for the building/restaurant submitted was Assembly, Group A-2. Given this, the proper plans for the restaurant must include a full set of construction documents, including civil, architectural, structural, HVAC, plumbing, fire protection and electrical drawings and specifications. Mr. Wagster also found that the Respondent's attempts to undermine the requirements of the building codes in effect and the law show a lack of concern for the safety of the public.

Mitigating Factors: None.

Aggravating Factors: Undermining codes and law.

Recommendation: Authorize formal hearing. Authorize a civil penalty in the amount of \$3,000.00. Respondent is also to take and pass the laws and rules examination.

Board Decision: Approved.

New Information: After a review of the file and information provided by Respondent, the competency and misconduct disciplinary actions are not an issue since the Respondent did subsequently provide stamped plans.

Respondent's drawing that was submitted, included a "Dining Area" with occupancy of less than 46, separated by three 42" dividers, and an area labeled as "Dining/Serving" area with 40 occupants. Each area had a separate egress/ingress. Respondent believed that these two separate "spaces" that were each less than 50 occupants and less than 750 sq. ft., classified it as B -Business. The total sq. footage of the building was less than 5,000 sq. ft., so based on these terms, the drawing was not stamped by Respondent. Complainant questioned the Use/Occupancy classification, stating that 42" walls do not count as fire rated walls, and pursuant to IBC 2012, the building should be classified as A-2 Assembly since full occupancy is over 50 occupants. Complainant then asked for proper stamped plans. Respondent then argued that under the IBC 1985 and TN Reference Manual for Building Officials & Design Professionals (Revised Dec. 2015), restaurants under 100 occupants shall be classified as Business Occupancy. Respondent further argued that under IBC 2012 – Section 102.2 – Other Laws, it states provisions of this code shall not be deemed to nullify any provisions of local, state, or federal law. TCA 62-2-102(b) states, structures classified as business less than 3 stories in height and less than 5,000 sq. ft. did not require sealed drawings.

Even though there was a disagreement as to the occupancy classification, the issue is moot because Respondent provided a full stamped set of construction plans that were required by codes for permitting and construction. Drawings were also sealed by a licensed Engineer. The building was constructed and has been occupied for over a year with no issues or discrepancies.

Respondent should have known the proper occupancy classification. Instead of arguing with city codes, proper stamped plans should have been submitted the first time and this matter would have most likely been avoided. Respondent should recognize the primary obligation is to protect the safety, health, and welfare of the public when performing his duties. It seems this issue is more of a personal matter between an individual at city codes and Respondent.

New Recommendation: Authorize a civil penalty of \$750 for failure of proper conduct of practice and pass the Laws and Rules Exam.

New Board Decision: **CONCUR.**