

MINUTES
Contractors' Examining Board
Tuesday, September 25, 2007
9:30AM
Marathon Government Center
2798 Overseas Hwy., 2ND Floor, E.O.C. Rm., Marathon, Florida
William F. Kelly III, Chairman

Present for roll call at 9:45 a.m. were Gary Centonze, Steve R. Henson, Edward Werling, Joseph Vetric, Vice Chairman, William (Bill) Kelly III, Chairman, Joseph Paskalik, Building Official, Pedro Mercado, Assistant County Attorney, Nat Cassel, Assistant County Attorney, and Odalys Mayan, Coordinator.

Charles E. Miller, 2nd alternate, arrived at 10:15am and left at 12:30pm.

Not able to attend were Jonathan Barth, out sick, and Peggy Bankester, out-of-town attending to family affairs.

Not required to attend today's hearing was Frank Toppino, Alternate.

Counsel swore in all parties involved.

HEAR ANY PERSON WISHING TO COME BEFORE THE BOARD

9:46am

Glenn Hewlett addressed the board. Mr. Hewlett came before the board wanting to drop his State CUC057304 license and qualify a third company with his Monroe County Engineering I license. Mr. Hewlett now qualifies Keys Grading & Paving (ENG I 140A) and Marathon Seawalls and Docks, Inc (ENG I 268A).

Steve Henson recommended and asked for a few minutes to read the packet information passed out by Staff.

CENTONZE: Mr. Chairman, may I ask Mr. Hewlett a question.

KELLY: Go head.

CENTONZE: Mr. Hewlett, on Keys Grading and Paving what is your relation to Randy and Vivian Culmer.

HEWLETT: Keys Grading and Paving was started in 1975. I was an owner at the time, one of the owners, and I have been qualifying Keys Grading & Paving since 1975. As far as relations, there is none.

CENTONZE: You have no association with them at this point.

HEWLETT: Association, yes.

CENTONZE: Because you are qualifying the company.

HEWLETT: Yes.

CENTONZE: Are you a corporate officer?

HEWLETT: On Keys Grading & Paving, I think so. I am not positive.

HENSON: In my mind, you have to be hooked at the hip financially, legally to the company before I feel comfortable with you qualifying a company.

CENTONZE: The reason I'm saying that is because it says right here that since September 2007 he does not appear in corporate papers and he does not even know his position in that company.

HENSON: That can change.

HEWLETT: No, I have ownership in that company.

CENTONZE: Are you corporately tied to that company.

HENSON: He has shares apparently.

HEWLETT: I check jobs occasionally. Same as the Marathon & Seawalls, as far as, I do I want to put that, as far as being very, very close to them, I mean I talk to them all the time. That I do. One is a marine division the other is a land division. And there both the same ownership. I have been with Keys Grading & Paving since 1975.

CENTONZE: What happened in 1995? What changed on your annual reports in 1995?

HEWLETT: Oh, hell, I don't know what happened in 1995.

CENTONZE: Odalys, do you have a print out for this gentleman.

MAYAN: Yes, I gave it to him.

CENTONZE: If you look on the second page about the third paragraph down where it says that you were an officer of Keys Grading & Paving.

HEWLETT: That's right and then we sold.

CENTONZE: These is the couple you sold the business to?

HEWLETT: No, we sold to Bob Cayce. Bob Cayce sold to Randy and Vivian.

CENTONZE: But you still qualify?

HEWLETT: Yes, I have qualified that company for over thirty (30) years.

KELLY: Everyone has had some time to read? I am just a little confused as far as, my question comes to mind, God forbid, what happens away all these companies would be in jeopardy then. Is that true Pedro?

HENSON: They have what, legally ninety (90) days to get a new qualifier.

MERCADO: I would have to check the ordinance to see what the time limit is. I'm not sure on that.

KELLY: I believe that it is ninety (90) days as what happened with Earnie Rhodes when he passes away.

HENSON: Odalys?

MAYAN: If I may, in the case that a qualifier passes away they cannot get any new permits. They can continue to work on existing outstanding permits and get all of their inspections. For new permits, no, not until they get a new qualifier. And if I may, if everyone is finished, I would like to read page 2 (handout packet).

MAYAN: Mr. Hewlett's situation is similar to one that we had back in 2005 with Steve Henson and his county engineering I license that he registered with the State of Florida, and as a result, was "grandfathered" to a State certified license. Mr. Henson was denied being able to keep both his registered county license and his state certified underground utility license, which was obtained by means of registering a county license. When a county license is registered and later "grandfathered," the contractor automatically loses their County license, since they are not required to take the State exam like everyone else. From that point forward, the contractor must oblige by all State laws and must relinquish the registered license.

Having said that, when Mr. Hewlett grandfathered his engineering license number ENG I 140A, he lost all rights to the County license. More importantly, when he came before the board on March 30, 2004 requesting to qualify a second company with his County license, technically he no longer had the County license since he had grandfathered license number ENG I 140A.

Now, Mr. Hewlett has to decide which of the two licenses he wants to keep. If he wants to keep the State license, then he needs to relinquish his county licenses (ENG I 140A and ENG I 268A) and go to the State of Florida to qualify a second company. On the other hand, if Mr. Hewlett decides to relinquish his state certified license (CUC057304) then he can keep both of his Monroe County licenses (ENG I 140A and ENG I 268A). It is basically as it was with you (Henson).

HENSON: You nailed it. That's exactly where you are at. You cannot have both. My plan is to go back take the State CUC license, take that exam, get my own state license on my own unrelated to the engineering I that I took back in 1980. This is just me speaking to you as engineering I license holder, that engineering I will allow you to do more things. The only thing that the state license helps you with is if you go outside of Monroe County. Period.

MAYAN: And another thing, if Mr. Hewlett wants to keep his state license, that is fine. He can relinquish both of his County licenses and then if he still wants to qualify the Seawall & Dock then he would have to take the Marine Construction exam. and obtain a Small & Seawall Dock engineering license. Nevertheless, he would have to take the Marine Construction exam.

HENSON: Right.

MAYAN: And obtain a Small & Seawall Dock engineering license.

HENSON: Right.

MAYAN: Nevertheless, he would have to take the Marine Construction exam.

KELLY: Ok, my understanding is this then. If he takes the route of having it grandfathered, which means you do not have to take the exam, you just show you have the experience, the state would give you this license, but he could not be able to qualify these other two companies through Monroe County's board he would have to go to the States board.

MAYAN: That's correct, or he could take the Marine Construction exam and qualify Marathon Seawalls & Docks as a marine construction license, engineering license.

KELLY: So Glenn, what is it that you want to ask the Board to do for you.

HEWLETT: I want you to let me to drop my state license, keep my county license, and let me qualify the third company.

KELLY: Can we do that?

HENSON: Let me make a motion. I'm ready to make a motion on half of that. I make a motion that we allow Mr. Hewlett to drop his certified CUC license and reactivate his engineering I licenses, both of them, just like they did for me, except that I never lost mine. Motion second by Joseph Vetrick.

DISCUSSION: Mayan: Under discussion, should we wait until the state license is dissolved or null & void before we can – because he can still keep his state license and as long as he is not registered with us and we won't find out. Then he will have four licenses out there.

HENSON: You are not working out there in the State are you?

HEWLETT: No, Monroe County is enough for me.

PASKALIK: Mr. Chairman, it might be to our benefit to at least get a copy of the request for the dissolution of the state license in order for us to reactivate the Monroe County licenses.

HEWLETT: I've been paying for the county licenses right along.

KELLY: That is not the question Glenn. Monroe County, with the state license we do not what has been done with the state license. We want some documentation from you showing that you have dissolved that with the state and then we have it in our records.

MAYAN: I think we should bring it back in December. Or once all the paperwork has taken care.

HENSON: My motion stands, but that is not a bad idea. Make it **contingent** on showing that he has requested dissolution of the license. And once he does that, it is a done deal. Why bring it back, bother the board, and bother him again.

CENTONZE: Mr. Chairman, also under discussion, I don't have a problem supporting that but the other thing is that the gentleman is asking for qualifying a third company and I would like to see that back in September. To see what we have.

KELLY: Separate deal. We have to vote on the first on here. Ok, done with discussion.
Odalys – END OF DISCUSSION.

MAYAN: So, we are going to wait until the next board hearing –

KELLY: No, we are going to vote now.

HENSON: Vote now, and this vote is contingent on him showing proof that he has requested dissolution of that license.

HEWLETT: On the state license?

HENSON: State license – CUC.

HEWLETT: You just want a letter from me saying that I'm gong to drop it.

PASKALIK: No.

HENSON: You need to send an application that you are dropping it. Notice to the State that you are dropping it – send it return receipt too so you can get something back.

MAYAN: What about Keys Grading & Paving, Inc. Does he have to be on corporate papers?

HENSON: That is a different issue. Let's vote on this and get it over with.

MAYAN: Motion carried unanimously (Centonze, Henson, Werling, Vetric, Kelly).

HENSON: Second part, dealing with the third company; the only way I can support qualifying a third company is if you are on the corporate documents State of Florida as an officer, well, I mean, we need confirmation to Odalys. Because right now the state documents are showing that you are not a corporate officer. So we need to get that cleared up. Joe, I'm going to propose this, I've been thinking about this for seven years, alright, and I need your input. My concern evolves around who the Chief Operating Officer is. You know, the person who is out there that is in control over the construction practices. That's his job. What would you call it? Chief Operator Officer?

PASKALIK: I would call it the contractor. The individual that has been deemed competent.

HENSON: That is what he is. He is the qualifier. In our eyes, he is the guy. I understand that. But as far making him show up in corporate papers, as long as he is an officer and has at least 10% of the shares. That makes you comfortable.

PASKALIK: Well, it is not so much making me comfortable as making you comfortable.

HENSON: I understand. We know we have the line hooked to him legally. Anything goes wrong it's his fault, period. But in my mind I need to know that he is an active part of the corporation. Owning 10% shares, and I'm talking now out loud to the board, owning 10% of shares and a corporate officer. I'm ok with that. Glenn, you have a problem with that buddy.

HEWLETT: Anything you all want to do.

HENSON: That is the right answer.

VETRICK: Mr. Chairman, reading the last two/three paragraphs of the summary provided by Odalys, it looks to me that he may have already surrendered his state certificate.

HEWLETT: No, I still have it.

MAYAN: He surrendered his registered when he became his state certified.

HENSON: He surrendered his registered. That is why his engineering went away. My second motion to move things right along, my second motion is that we allow Mr. Hewlett to qualify a third company as long as he is an officer of the corporation and owns at least 10% of the stock in that corporation. Motion second by Mr. Werling. Motion carried unanimously.

MAYAN: When I'm I issuing this license, after our next hearing?

KELLY: No, as my understanding is when he can show you that he has relinquishing his license with the state, showing proof of that, is when it can be issued. I don't think he has to come before the board with that. Agreed?

HENSON: That is correct.

10:09am

5. Ronald William Loheide CGCA09571
BRV Construction Services, Inc.
NOTICE TO APPEAR
Code Enforcement Citation No.: CE07060055
6-66(10)(a) Working without benefit of a permit
Diane Link, Code Enforcement Inspector

Inspector Link presented case.

Motion by Steve Henson and second by Joseph Vetrick to find Mr. Loheide IN VIOLATION based on own testimony. Motion carried unanimously.

PENALTY:

Motion by Steve Henson and second by Joseph Vetrick recommending NO FURTHER ACTION to the State of Florida Construction Industry Licensing Board (CILB). Motion carried unanimously.

Charlie Miller arrived at meeting.

10:15am

- 8. Stephen Wolfe Menke CBC1250491
Williams Scotsman, Inc
 NOTICE TO APPEAR
Code Enforcement Citation No.: CE06080402
6-66(10)(a) Work without benefit of a permit
Kathleen Windsor, Code Enforcement Inspector

Inspector Windsor presented case.

Karl E. Pearson of Powell & Pearson, LLC, represented Mr. Menke. Mr. Menke was present. Also, present for Mr. Menke was Manny Costello for Williams Scotsman, Inc.

Motion by Bill Kelly and second by Steve Henson to find Mr. Menke IN VIOLATION based on testimony.

Roll call was taken with the following results:

- Centonze: Yes
- Henson: Yes
- Werling: Yes
- Vetrick: Yes
- Miller: No
- Kelly: Yes

5 – yes 1 – no
Motion carried.

PENALTY:

Motion by Bill Kelly and second by Steve Henson recommending NO FURTHER ACTION to the State of Florida Construction Industry Licensing Board (CILB). Motion carried unanimously.

11:00am

Jeffrey De Luca addressed the Board. Mr. Deluca came before the board seeking approval for an engineering II excavating & grading license. He is unable to reciprocate from West Palm Beach where he holds occupational licenses because West Palm Beach does not require an engineering (or any others) for excavating & grading only occupational licenses. The board informed Mr. De Luca that there should be no problem with approving his application.

11:15am

9. Charles E. Schafstall CGC004183
C & E Construction Company
NOTICE TO APPEAR
Code Enforcement Citation No.: CE07060080
6-66(10)(a) Work without benefit of a permit
Brian Corcoran, Code Enforcement Inspector

Mr. Vetrick recused himself from case since he has business relations with Mr. Schafstall. Inspector Corcoran presented case for Inspector Hattery no long with Monroe County.

Motion by Steve Henson and second by Bill Kelly to find Mr. Schafstall IN VIOLATION based on own admission. Motion carried unanimously.

PENALTY:

Motion by Steve Henson and second by Bill Kelly recommending NO FURTHER ACTION to the State of Florida Construction Industry Licensing Board (CILB). Motion carried unanimously.

11:35am

2. James Joseph Clare III CRC1327447
Paradise Way, LLC
NOTICE TO APPEAR
Code Enforcement Citation No.: CE07060034
6-66(10)(a) Work without benefit of a permit
Brian Corcoran, Code Enforcement Inspector

Inspector Corcoran presented case for Inspector Kerr no longer with Monroe County.

(11:38am Joseph Vetrick stepped out and returned at 11:42am)

Motion by Ed Werling and second by Bill Kelly to find Mr. Clare IN VIOLATION based on own testimony. Motion carried unanimously.

PENALTY:

Motion by Bill Kelly and second by Ed Werling recommending NO FURTHER ACTION to the State of Florida Construction Industry Licensing Board (CILB). Motion carried unanimously.

11:45am

7. Rebekah Mandelli-Watts SP 3292
Roger Luiz Mandelli
Roger Dodger, Inc.

NOTICE OF APPELLATE

Code Enforcement Citation No.: CE07020335
6-66(10)(a) Work without benefit of a permit
Brian Corcoran, Code Enforcement Inspector

Inspector Corcoran presented case.

Citation issued to Roger Luiz Mandelli but license holder is Rebekah Mandelli-Watts.

Motion by Charlie Miller and second by Steve Henson to DENY Rebekah Mandelli-Watts appeal based on own testimony. Motion carried unanimously.

PENALTY:

Motion by Bill Kelly to REDUCE the citation fine from \$500.00 to \$250.00. Friendly amendment by Steve Henson to lower the fine from \$250.00 to \$150.00.

Motion by Bill Kelly and second by Steve Henson to REDUCE fine to \$150.00 and must be paid within thirty-days. Motion carried unanimously.

Odalys Mayan: Would like to make a suggestion to the Board that when an appeal has been denied, that the Board makes it a part of their motion to include that the fine must be paid within thirty-days. If the defendant is a licensed county contractor, license will be suspended until fine is paid. On the other hand, if an unlicensed individual, we can inform them at that time that if fine is not paid within thirty-days that we will precede with lien against property. Of course, this will not apply to state contractors.

11:58am

1. Louis S. Caputo EC0000591
Caputo Electric, Inc.

NOTICE TO APPEAR

Code Enforcement Citation No.: CE07060081
6-66(10)(a) Work without benefit of a permit
Brian Corcoran, Code Enforcement Inspector

Inspector Corcoran presented case on behalf of Inspector Hattery no longer with Monroe County.

This case is a companion case with Item # 9 – Charles E. Schafstall

Motion by Bill Kelly and second by Joseph Vetrick to find Mr. Caputo NOT IN VIOLATION based on testimony.

Roll call was taken with the following results:

Centonze: No
Henson: No
Werling: No
Vetrick: Yes
Miller: No
Kelly: Yes

2 – yes 4 – no
Motion failed.

Motion by Steve Henson and second by Ed Werling to find Mr. Caputo IN VIOLATION based on testimony.

Roll call was taken with the following results:

Centonze: Yes
Henson: Yes
Werling: Yes
Vetrick: No
Miller: Yes
Kelly: No

4 – yes 2 – no
Motion carried.

PENALTY:

Motion by Charlie Miller and second by Ed Werling recommending NO FURTHER ACTION to the State of Florida Construction Industry Licensing Board (CILB). Motion carried unanimously.

12:15pm

4. Andrew J. Kobosko Jr.
NOTICE OF APPELLATE

Code Enforcement Citation No.: CE07050142
6-66(8)(a) Aiding & abetting
Diane Link, Code Enforcement Inspector

Inspector Link presented case.

Motion by Bill Kelly and second by Joseph Vetrick to DENY Mr. Kobosko appeal based on own testimony. Motion carried unanimously.
PENALTY:

Motion by Bill Kelly and Joseph Vetrick to REDUCE citation fine from \$500.00 to \$250.00 and must be paid within thirty-days.

Roll call was taken with the following results:

Centonze: No
Henson: Yes
Werling: Yes
Vetrick: Yes
Miller: No
Kelly: Yes

4 – yes 2 – no
Motion carried.

12:30pm

Lunch break.

2:00pm

Reconvened from lunch – Present for roll call were Gary Centonze, Steve R. Henson, Ed Werling, Joseph Vetrick, and Bill Kelly. **NOTE:** Charlie Miller did not return to meeting after lunch.

MAYAN: We have two deletions: Code Enforcement Inspector Windsor rescinded #3) Juan Ramon Dellanos, and # 10) Glenn Whitney opted to pay citation instead of coming before the board.

6. William B. Lyon – **NO SHOW**
NOTICE OF APPELLATE
Code Enforcement Citation No.: CE07040182
6-25 Unlicensed contractor
Diane Link, Code Enforcement Inspector

Mr. Lyon FAILED to appear before the board after being properly served by proof of Certified Mail Return Receipt received.

Inspector Link presented case.

Motion by Steve Henson and second by Joseph Vetrick to DENY Mr. Lyon's appeal for failing to appear before the Board after being properly served. Motion carried unanimously.

PENALTY:

Motion by Steve Henson and second by Joseph Vetrick to levy a \$100.00 Administrative fee for loss of Staff time additionally to the \$500.00 citation fee. Motion carried unanimously.

All cases were heard by Board.

2:08PM

JOSEPH PASKALIK

Joseph Paskalik presented to the Board the following changes to the Hurricane Damage Mitigation to take effect on October 1, 2007:

- 1) CHAPTER 2007-126 Council Substitute for House Bill No. 7057; and
- 2) Hurricane Mitigation Retrofits for existing site-built Single Family Residential structures built prior to the Florida Building Code (FBC) Code implementation March 1, 2002.

Mr. Paskalik also provided the Board with the Building Officials Association of Florida Guidelines for implementation of the Hurricane Damage Mitigation provisions of HB 7057.

He asked the members to help spread the word of the new changes since he too recently learned of the changes.

Secondly, Mr. Paskalik informed the Board that Bob Beck Upper Keys Plumbing/Mechanical Inspector retired August 2007. He took advantage of the County's "buy out program." And other than his position, which Paul Tugwell has requested to transfer to fill that position, and we will be replacing Paul's position here in the Middle and Lower Keys, other than that position, we are fully staffed. We have a fully staffed office in the Upper Keys and we are only missing one position in the Middle Keys that is Paul's position. And one of the last position's filled was the Plans Examiner in the Upper Keys and that was filled by a man called Clint Arsenault. He was a residential contractor in the Upper Keys for many years.

That is all for me.

WERLING: Joe, I have a question for you and this is hearsay. Is it true that all your overtime was cut in your department?

PASKALIK: We've been told that there is no overtime pay at this point. We do not know if there will be any in the near future due to the budget constraints. We have been for those people that

are not exempt we have been allowing them to accumulate comp time, and to use comp time, which is calculated the same as overtime would be, time and a half.

WERLING: Wouldn't that put you in the rear even further?

PASKALIK: Sure.

WERLING: I'm just saying as a taxpayer. It is not right.

PASKALIK: The one ray of sunshine at the end of the rainbow that I can see, and I've worked for this, is that the fact that the commission approved and we are instituting as of October 1st, a Building Department revenue account that is separate from Growth Management due to Florida Statutes that mandate that all building permit fees generated by permits be solely used for the enforcement of the Florida Building Code (FBC).

HENSON: Good, about time.

PASKALIK: The bad side of the equation is that we are in the red as of October 1st, but the good side of it is that when all is said and done, with all the revenues that we take in and with the possibility for us to increase the fees when I deemed it necessary, when we find that we are not able to pay for our fair share I can increase fees, and by doing so, if we have any unused revenue, at the end of, unexpected is the way it is put, unexpected un-use revenue at the end of the fiscal year it can be put into a fund balance account if I need it. Hopefully, at the end of next year there will be a fund balance and it will be solely used for the Building Department.

HENSON: They are going to do the same for Code Enforcement.

PASKALIK: We are working on fees and we have written a resolution, a fee resolution, to let me word this right, in a case of an after-the-fact permits giving an administrative fee to the building department for handling the permit and the majority of the fee for the after-the-fact permits that were generated through code enforcement action go to them – go to there department. We are trying to balance the revenues with those individuals that are generating the revenues.

2:26pm

NEXT CEB HEARING DATE

Board unanimously approved to move the next Contractors' Examining Board hearing scheduled for November 27, 2007 to Wednesday, December 12, 2007, same time and location.

RECIPROCITY AGREEMENT

Item # 1 Reciprocity agreement between Monroe County and Okeechobee County to be sign by William Kelly, Chair, and Joseph Paskalik, Building Official/Secretary of the Board.

MINUTES

5/22/2007: Not approved; only four of the seven members present at the 5/22 hearing were present at this hearing. Will be added to the December agenda

7/12/2007: Not approved; not all members present at the July hearing were present at today's hearing. Will be added to the December agenda.

2:32pm

PEDRO MERCADO

Pedro Mercado announced change in personnel staff. Nat Cassel will be taking over his position as the Board's legal counsel. Pedro will be here for the December 12 meeting with Nat Cassel. Unfortunately, the airport has become a full-time job.

Carl Lindback has appealed the Board's July 12, 2007 motion to suspend his permit-pulling privileges for six-months. Mr. Shillinger is working on this appeal. Last I heard he was doing a motion to dismiss the complaint because of the fact that Mr. Lindback had been notified and so was his attorney. I do not know exactly where we are with the status of the case. We are waiting on Judge Garcia's order. Even if proper service was not effective through the mail, he had actual notice. That should cover it.

HENSON: By phone?

MERCADO: By phone and by email.

2:36pm

REPORTS/CONCERNS FROM STAFF

Item # 9 Reciprocity – Staff seeking approval from Board to resume issuing licenses as done in the past with applicant's that may or may not have a license from the jurisdiction where the passed examination is reciprocal.

Motion by Steve Henson and second by Bill Kelly to continue to issue licenses to applicant that are seeking reciprocity with Monroe County from the City of Key West or any other municipality or county that the applicant has completed a written examination (equivalent or greater and score) that would be recognized by Monroe County.

Item # 10 Aluminum Specialty Contractors

At the July 12 CEB hearing, Chairman Bill Kelly instructed Staff to come up with an appropriate definition for ALUMINUM SPECIALTY CONTRACTORS.

At the September 25, 2007 hearing, Staff presented the following definition and recommendation to the Board for consideration and possible approval:

Below is a revised aluminum contractor definition:

ALUMINUM SPECIALTY CONTRACTOR: *Aluminum, vinyl and plastic specialty contractor* is qualified to fabricate, install, maintain, alter or extend aluminum, vinyl and plastic products such as metal, vinyl, or plastic sidings, awnings, ~~window frames~~, railings, screen and screen enclosures, vinyl panels, and canopies, including canopy

frames for canopies fabricated from materials other than aluminum, vinyl or plastic. Aluminum contractors are **prohibited** from installing any type of windows and/or doors.

ALUMINUM LICENSE CODING: Words ~~stricken~~ are deletions; words underlined are additions.

My suggestion would be that no aluminum specialty contractor should install any type of windows and/or doors as prohibited by the definition of the aluminum specialty contractor above. It is not possible to track which aluminum contractor will be allowed to continue to install windows and/or doors. Accordingly, by allowing all aluminum specialty contractors to install windows and/or doors prior to the decision date will allow all aluminum specialty contractors who never installed windows and/or doors to install them. According to the State of Florida Glass and Glazing Specialty Contractor Licensure Category FAQ, no person can perform glass and glazing work without a general, building, residential, or state certified specialty glass and glazing license or a county issued general, building, residential, or glass and glazing license. See enclosed Glass and Glazing Specialty Contractor Licensure Category FAQ.

*County licensed glass and glazing contractors are not allowed to register with DBPR according to the Glass and Glazing Specialty Contractor Licensure Category FAQ.

Motion by Steve Henson and second by Joseph Vetrick approving the new revised Aluminum Specialty Contractor definition where it now prohibits aluminum contractors' to install windows and/or doors.

MAYAN: Starting today or whenever the change of ordinance starts, no aluminum contractors will do windows or doors.

HENSON: They never should have.

MAYAN: But I know there was some miscommunication somewhere along the line.

HENSON: No grandfathering.

Changed approved unanimously by board.

2:43pm

QUALIFIER ONLY CONTRACTORS

Per Board's instructions at the May 2006 CEB hearing, I started keeping a log of all state certified contractors that are qualifiers of a company but that are not officers/members of the company that they qualify. Since then, I have recorded more than fifty (50) individuals that fit under this category. With the exception of a few, all carry workers compensation insurance.

Seeing that the State of Florida law is relaxed when it comes to qualifier and qualified businesses, is it still necessary to continue to log and monitor these individual's like in the past. Our computer system, Pentamation, will still be flagged with "QUALIFIER ONLY" and their folder's will also be marked, but do I still have to keep a database for these individual's?

HENSON: Pedro, why can't we restrict it - make it tougher. I thought if we were tougher we could do it.

MERCADO: Because we are basically pre-empted from doing so. I need to check at Ch. 489. Specifically, what is it that you had in mind?

HENSON: My thought is that if a state contractor is qualifying a company we want some kind of assurance that they have some kind of stake in that company. That they are officers, they have shares, that they have some control over the job. Not these figments of my imagination qualifier lives in Ohio with a state license running jobs in Marathon. I have a real problem with that and if there is any way that we can control that, I would like to do that.

MERCADO: What you are looking for is to impose a requirement that they have a certain –

HENSON: a financial or control stake in the company. Not from a corporate control but, in my mind, if they are part owner they've got a stake, they have a liability in that company. Way beyond this board. If they get sued, something goes wrong, they are going to be on the hook also. In my mind, they have to be an officer or they need to have at least 10% of the shares or they have to –

MERCADO: Let me just read this back to you to make sure that we are on the same page. What you would like me to review is to see if we can impose a requirement on state contractor that they certain financial ownership or some other stake in the company that they are qualifying.

HENSON: Correct, see what they say.

KELLY: One thing though, when Glenn Hewlett was here talking about his licenses. His licenses weren't, now he is not going to take the state he is going back to his Monroe County, and he has a stake in these companies and stuff. Steven what you are saying is that as long as he is part of that company as a shareholder or –

HENSON: Corporate officer

KELLY: Is it going to be a shareholder or a corporate officer.

HENSON: Both.

KELLY: I would think that a corporate officer would carry more weight than even a shareholder.

HENSON: I would make them both.

KELLY: Both

HENSON: Yeah, they have something to loose in shares and they have the liability that goes with being an officer, right Mr. Vetrick?

VETRICK: Yeah, I agree.

HENSON: Wouldn't that be the best way to get a hook in them. I mean, they can't be floating around in Ohio and wondering when the bomb is going to drop on them.

KELLY: Ok.

MAYAN: Also, going back to Mr. Hewlett since you just mention him, I'm still trying to get this around my head. He did present to us this 10% of the company for Keys Grading & Paving; however, since 2003 he hasn't been on corporate papers. So apparently, they just did this back in 2006 but never officially presented to the State of Florida.

HENSON: He needs to do that.

MAYAN: Ok. Because up until now he, since 2003 that Randy Culmer and Vivian Culmer took over the company, he came off in 2003 and they signed on, and he hasn't been on corporate papers except for this certificate since 2003.

HENSON: And we are telling him that he must because he is county licensed, we feel that he must be a corporate officer and have at least a 10% share – stake in the shares – own 10% shares of the corporation in order to be a qualifier.

MAYAN: Now, it does not say this in our Code. Should we put this in our Code so we have something to fall back when a qualifier, when I have a testy qualifier or a potential qualifier –

KELLY: Now, we cannot do this with the state of course and Pedro is going to look into it. But as far as for the county with like Mr. Hewlett's thing, which Steven has proposed here with having stock and being a corporate officer in a company that he is qualifying. Yes, I think that would –

MAYAN: No, I understand that but I don't think that there is anything out there in Monroe County Code.

HENSON: Pedro, would you recommend that we go ahead and do something. Draft something for the County Code that reflects that.

MERCADO: I'm sorry, I was looking at the State Statutes.

HENSON: That to qualify a company you have to be a corporate officer and own 10% of shares of that corporation. Is there a need to produce a formal Cod, a reg, that the building department and licensing can use so that it does not keep coming before us?

MERCADO: Yes.

MAYAN: It hasn't happened yet, but I know that it is bound to happen that I get one of these contractors.

HENSON: Maybe you can draft that for us.

MERCADO: You are jut talking about local licenses.

HENSON: Yes, local licenses, Monroe County. I know that we cannot affect the state but we can affect the County licenses.

VETRICK: How did we come up with 10%?

HENSON: Um, I just pulled it out of the air.

NOT AUDIBLE: What does the state use?

MAYAN: The State doesn't use anything. The 10% -

HENSON: They relaxed it. You can qualify 50 companies, they don't care.

MAYAN: And not be an officer. And the 10% is actually for workers' comp. Since January 2004, their laws changed that in order to be exempt from workers' comp you have to be a corporation or an LLC and you have to own at least 10% of the company.

HENSON: There you go; maybe that is where I heard it once.

CENTONZE: Odalys, correct me if I'm wrong, somewhere and Joe you remember, last year or so or the year before, didn't we stipulate that anybody that was going to qualify any other businesses, construction businesses, in Monroe County we want them to come before the Board. WE want to speak to them, and it was our responsibility to make certain that if they were going to qualify more than one business we wanted them to give us a good feeling that in fact they can supervise, regulate, inspect. And I remember myself talking about that and I think we said that it was the discretion of the Board and we all pretty much agreed at the time. I do not remember what month it was but we pretty much agreed.

HENSON: Yes, I remember.

CENTONZE: That if anybody wanted to qualify more than one business, that they were to come before this board and this board had the discretion to deny or allow such – unless they bring legal counsel and could enforce the issue.

MAYAN: I do not remember. But I know I do tell people that if they want to qualify a second company, that they have to fill out the paperwork and come before the board.

CENTONZE: Pedro, correct me if I'm wrong. Does Florida Statute 489 pertain to this? Are we allowed to be stricter? Florida Statute does say, when it comes to Codes, we are not allowed to be less lenient but allowed to be more will that is stringent this apply? Can we set our own rules, perimeters, or criteria for this, in Monroe County?

MERCADO: Are we talking about qualifiers again. That's actually what I'm looking at right now and with regards to state certified I do not believe so. Because the State Legislature has already spoken to this issue and within 489 we are prevented from imposing disciplinary actions on state certified contractors. I am looking through 489 now to see if there is any language that limits regulation; I believe there is. I believe we are not allowed to regulate state certified contractors.

CENTONZE: If someone wants to qualify more than one company, on County level, that we want them to – I think at that time was determined that we could allow them to come in front of the board, we could speak to them, a lot of items that we have had in the past before. We could explain to them or have them explained to us what they think their responsibilities are to stem any problems prior to them qualifying more than one company.

DECISION: Board would like Staff to continue to keep a log of all state certified contractors that are not officers or members of the business they qualify.

REPRIMANDED STATE CONTRACTORS

CENTONZE: It would be nice to know what happens to state contractors when we recommend "Further Action."

MAYAN: Well, when I do get a letter from them, when I do get a response from them, they send me an official letter and I do make copies and put them in your agenda.

CENTONZE: What happens to cases that we do ask for "Further Action To Be Taken." Can we get some kind of example or at least of a description of what might happen to a general contractor or any licensed contractor that is state licensed? Probably gives this board a little bit better knowledge of what happens when we fine them and send them off. I know that it might affect our decision.

STAFF REPORT

Item # 2 **Jefferson T. McClendon** holds a certificate of competency as a 1A Primary Pipelines (Water, Sewer, and Drainage) in Broward County. Mr. McClendon took the 1A Primary Pipelines trade exam and the Business and Law exam and provided four (4) years of experience to Broward County. He is interested in reciprocating to Monroe County to obtain a similar license. However, since we do not have an **underground (utility) construction license** we are unable to reciprocate. We do offer the **underground construction** exam but do not have the license. My suggestion would be that we could add "underground utility engineering contractor" as another category to our Code under the engineering Class II license and model the scope of work to that of the State of Florida's underground utility construction definition. **Underground construction bulletin is in each of your packets and see State of Florida definition below.**

STATE OF FLORIDA:

CU and RU - An "**underground utility and excavation contractor**" means a contractor whose services are limited to the construction, installation, and repair of:

- main sanitary sewer collection systems;

- main water distribution systems;
- storm sewer collection systems;
- the continuation of utility lines from the main systems to a point of termination up to and including the meter location for the individual occupancy, sewer collection systems at property line on residential or single-occupancy commercial properties, or on multioccupancy properties at manhole or wye lateral extended to an invert elevation as engineered to accommodate future building sewers, water distribution systems, or storm sewer collection systems at storm sewer structures; and
 - install empty underground conduits in rights-of-way, easements, platted rights-of-way in new site development, and sleeves for parking lot crossings no smaller than 2 inches in diameter, provided that each conduit system installed is designed by a licensed professional engineer or an authorized employee of a municipality, county, or public utility and that the installation of any such conduit does not include installation of any conductor wiring or connection to an energized electrical system.
 - *An underground utility and excavation contractor shall not install any piping that is an integral part of a fire protection system as defined in s. 633.021 beginning at the point where the piping is used exclusively for such system.*

*Contractor's obtaining this license will have to register with the Department of Business and Professional Regulation (DBPR).

*Motion by Steve Henson and second by Bill Kelly to institute an equivalent *underground (utility) construction* license in Monroe County to match up with the State, and the scope of the license, the work that they can do under their scope of their license would match exactly to the State's scope. Motion carried unanimously.*

FYI: Robin Eubanks - CEB 3/28/06: Motion to find defendant not in violation based on owners testimony and appeal has been granted. 1- No All Others- Yes.

INSPECTOR WINDSOR

Inspector Windsor addressed the board with two concerns: 1) Sometimes we do a cost of prosecution and sometimes we do not do a cost of prosecution, so I wanted to ask about that. If that is something that we can do; can we recoup some of our cost when they are found guilty?

MERCADO: Yes, there are provisions in the Code of Ordinance for the recovery of administrative fees.

WINDSOR: I mean, on a state contractor though.

MERCADO: No, not on state.

WINDSOR: We can't recover any cost on a state contractor.

MERCADO: No.

HENSON: But we can sure recommend further action due to the losses incurred on people's back.

MERCADO: Yes, we can.

CENTONZE: How does that money make it back to Monroe County?

MAYAN: It won't.

CENTONZE: So then again, it puts more of a burden on a registered contractor whose license is locally. Where we could ask Code Enforcement upon presenting the case to give us a dollar amount if they are found in violation how much for prosecution. So we are back to the same question.

WINDSOR: Well, for Contractors Board there is a cap on the coast of prosecution; Special Magistrate we are actually keeping track of our time that we spend on a case. And we are actually trying to recoup some of our cost.

WINDSOR: And this leads me to my number one question: We are anxious to start imposing liens on contractors that are not paying for their citations.

KELLY: I think Odalys came up with a good idea, though, when we make a motion to put in there that the license would be suspended if the fine is not paid within thirty (30) days that their license could be suspended.

MERCADO: I have one last form to draft so we can proceed with liens and foreclosure. And I believe that is the order of the board to start procedure. The findings of this board are not that they are not a Code for purposes of an ordinance. On 6-66 refers specifically to –

MERCADO: Foreclosure is a pretty good motivator because the way the ordinance was drafted allow us to foreclose on any real or personal property, which means if we can locate a vehicle that they own we can foreclose on that.

KELLY: Pedro, I think right now, what we could do as board members when we do a motion on a fine to add to our motion to add the thirty days period for it to be paid or suspension of their license would be automatic. That should cover it rather than creating another ordinance for it. With the unlicensed people, we just have to remember to word it to say that a lien would be imposed to such property.

MERCADO: We can recover court cost if we go through the lien route, yes.

KELLY: With a licensed contractor, ok, the threat of pulling his license in thirty days is enough, ok.

VETRICK: Now supposing the lien is on the husband or the wife and both own the property. You cannot enforce a lien on one person when both own the property.

MERCADO: It would have to be as to both. So, we've gone back and amended Code Enforcement citations because that has been an issue in a couple of cases where initially only one person was cited and the property is jointly held. Code Enforcement goes back and cites both so that is going to be slightly different in this case. We are going to run into some issues with that here. At least in a Code Enforcement case, the violation is effective as to the property and we can cite both. But here when you have a single person that is the violator and they have jointly held property, that is going to be an issue, yes.

VETRICK: Would it make some difference when it became jointly owned>

MERCADO: Yes, the argument would be that that was a fraudulent transfer.

Rudy Krause addressed the board. When somebody hires an unlicensed contractor, can't you pull in the homeowner for hiring an unlicensed contractor? Don't you take them both the homeowner and the unlicensed contractor?

WINDSOR: Right, they get a monetary for aiding and abetting.

KRAUSE: Right, and now is the same as the Code. In other words, the same as doing something illegal, and once you fine a homeowner; you can go ahead and put a lien on the property.

WINDSOR: The same ordinance as it would be for the contractor because aiding and abetting is for the contractor citation.

KRAUSE: Right, but the contractor has nothing you can't get nothing from. But the homeowner does have a home that they are working on. Therefore, it's like somebody putting in a dock without a permit. The fine goes against the homeowner and they don't pay it you can put a lien and foreclose on it.

WINDSOR: We do not want to lien the property, we do not want to take the property, we don't want to incur all those cost, we want to get them to pay of the money. Similar to the Special Magistrate is, if you notice in 6-90 - all of our monetary citations are \$500.00 now. And when we bring somebody here for \$500.00 and you listen to a story and decide to bring it down to \$250.00, perhaps you can do something that if you pay it within thirty (30) days, the fine will revert back to \$500.00 and a lien on your personal property.

HENSON: That's cool, I'll buy that.

HENSON: My recommendation is that Odalys bring us a list of the people that have not paid. Draw up a letter, a notice you haven't paid this. You need to pay this to this address to avoid any further action against you.

MERCADO: Mr. Kelly, one of the documents that I modified for use here is actually a Notice of Hearing that informs the violator that we are going to have a hearing on a motion to authorize collection proceedings. And in the letter it informs them that In the event of nonpayment of imposed penalties, a certified copy of an order imposing a civil penalty may be recorded in the public record and shall thereafter constitute a lien against any real or personal property owned by

the violator. So we already have that form letter done. And that would be sent prior to the hearing at which we come before the board to start procedures.

HENSON: You may want to put a note in there that further administrative cost and penalties and interest could be levied at that time.

CENTONZE: I would like to respectfully request that that Code Enforcement submit color pictures for their cases. Those color pictures made a huge difference.

Inspector Windsor has addressed the board with her second concern regarding when a Code Enforcement Inspector no longer with Monroe County and another Code Enforcement Inspector inherits that Inspector's cases.

MERCADO: Hearsay is admissible in an administrative proceeding. The caveat is that you cannot base your decision solely on hearsay evidence. There has to be substance of evidence, which is either direct testimony from whomever is testifying or photographs or documents that aren't otherwise hearsay.

NAT CASSEL: But there is an exception to the hearsay rule, which has to do with public records. And we might want to qualify our people who are, to say, if you did not actually go out and issue it. But you are testifying from someone else's pictures, affidavits, whatever it is that you are testifying from. We may want to go a little further and say, "How you got that information, where it came from, its done in the normal course of business," that sort of thing. And we may want to do that. But we do not have to do that as long as no one objects to that.

HENSON: If you have a lawyer on the other side he's going to jump on that. He is going to hang his hat on that

CASSEL: Exactly, and we can very quickly by her (Inspector) saying here is how I got my information. This information is regularly kept by Monroe County in such and such drawer in such and such place, and my supervisor and I went to that such and such drawer in that place and these are the documents that were there. And we can elaborate then if she (Inspector) is challenged. We can make it and that gives us a little more ground to stand on because that is an exception to the hearsay.

WERLING: Here is the problem that I have with it. If a cop issues you a speeding ticket and you show up in court but the officer does not show up to the court. Is the judge going to throw that out?

MERCADO: That is different. That judicial hearing is authorizing our State Legislature, and the rules of evidence are different And they don't strictly apply in quasi-judicial hearings. What a quasi-judicial hearing has to have is 1) adherence to the law, and 2) due process has to be accorded in a quasi-judicial hearing, in which it doesn't mean that strict rules of evidence has to be followed as long as a person has had an opportunity to be heard and is fairly heard.

CASSEL: We need to have that record now before it is appealed.

WINDSOR: So, my answer to Ronda is going to be yes, if we, it is possible to have a backup. Thanks, that's all for me.

OUTSTANDING CITATIONS FOR CONTRACTORS

MAYAN: Going back to unpaid citations, contractors, this is the year that we renew our license. Contractor's that have outstanding citations can Monroe County allow them to renew their license if they have not paid their citations.

CENTONZE: Why are you asking us? Is it something that we can help you with?

MAYAN: When an unlicensed contractor gets a citation, we will not issue a license until they 1) pay the citation, or 2) appeal and come before the board.

MERCADO: I think I would have to look at passing an ordinance at denying the renewal.

KELLY: I think that would come under good standing. I mean, his license is not in good standing because the fine has not been paid.

HENSON: It is not a right to have a license.

MERCADO: That is true. However, we have to have a specific set of requirements in order to issue a license. It cannot be done arbitrarily. And by the same token I don't think that suspension or denial of a renewal can be done arbitrarily. I think we need have to have an ordinance in place to do that.

KELLY: I don't think we can do it this time but we can do it for the next time.

HENSON: What we need to avoid is a situation where it is not applied consistently and done arbitrarily because then we do run into legal challenges.

MERCADO: To me, that seems like a great idea to base their renewal of their license on payment of any outstanding citations. Again, my initial reaction is to codify it.

KELLY: For right now, we have to let this go; it is another loophole that we can close.

VETRICK: In terms of where you put it, if they put it in that definition in the qualification for a renewal. Then they, they are on notice that they cannot have their license renewed unless they paid all of their fines.

MERCADO: Yes, that is probably a real good place to put it.

PRE-APPROVED APPLICATIONS AND RECIPROCITY APPLICATIONS TO GO BEFORE THE BOARD FOR REVIEW AND APPROVAL

There being no further business to be heard by the Contractors' Examining Board, the hearing was adjourned at 4:15 PM.


Odalys Mayan, Coordinator

OM

CC: Board Members

Pedro Mercado, Assistant County Attorney

Murray Shatt, VP, Florida Keys Contractors Association, oceanmaster@bellsouth.net

Bob Rowand, Lifetime Dock & Lumber, bob@lifetimeboatlifts.com

Wendy Murphy, Permitting Technician, City of Marathon, murphyw@ci.marathon.fl.us

Ed B., City of Key Colony Beach, cityclerk@keycolonybeach.net

DBPR