

**BUILDING BOARD
MEETING
DECEMBER 22, 2009**

MEMBERS PRESENT: Mary Fleenor, Chairman
John Burrage, Thomas Cavanaugh,
Peter Cocco, James McClary, Larry Sandles

MEMBERS ABSENT: David Reeves

OTHERS PRESENT: Randy Cole, Building Official
Mark Martella, Board Attorney
David Levin, City Attorney
Suzy Russell, Permit Supervisor
Francisco Gonzalez, Robert Adamo

CALL TO ORDER/ANNOUNCEMENTS

A. Roll Call

APPROVAL OF MINUTES

A. Meeting of August 25, 2009

- Mr. Burrage MOVED, Mr. Sandles SECONDED approval of the August 25, 2009 minutes. MOTION CARRIED UNANIMOUSLY.
- Mr. Randy Cole, Building Official, then introduced Mr. Mark Martella, recently retained to serve as the Board Attorney.
- Board Attorney Martella stated he looked forward to assisting the Board as needed.

Note: Unfinished Business was heard following New Business.

UNFINISHED BUSINESS

- Recording Secretary Kelly swore in all participants.
- A. Robert Adamo (Ideal Homes) vs. the City of Punta Gorda and City of Punta Gorda Building Board, Circuit Court Case #07-1644-CA
- Board Attorney Martella confirmed members had been provided with copies of a transcript of their April 24, 2007 hearing, a February 4, 2009 Court Order, and a clarification of the latter dated March 4, 2009. He stated Circuit Court Judge Keith Kyle had clarified the Board's only authority with regard to a State certified contractor was to suspend his/her permitting privileges. He noted Judge Kyle had also referred this matter back to the Board for specific findings of fact in order to make a determination as to whether or not there had been a violation. He stated his review of the transcript indicated the City had argued because of the filing of three liens, violations had been committed. He noted State Statute required such argument to be based on proof of the validity of these liens, particularly with respect to service of a Notice to Owner. He

pointed out one of the liens, on its face, was invalid as it had not been filed within the time frame required by State Statute. He continued Judge Kyle also required evidence of fraud committed by the contractor or that the contractor's conduct was willful, stating he had found no evidence in the transcript which rose to that level. He stated the transcript revealed a great deal of argument by the respondent's attorney but no real, admissible facts. He announced his recommendation, based upon Judge Kyle's opinion, was for the Board to make findings of fact, to continue the matter and to have a continued, evidentiary hearing.

- Mr. Burrage commented he felt the main contention regarding the Board's error was a failure to make a finding of guilt or innocence but rather proceeding directly to the penalty phase.
- Board Attorney Martella agreed, reiterating same was the Circuit Court's finding as well.
- Mr. Burrage pointed out the Board had a tendency to take such action, asking if future actions should be two-phased.
- Board Attorney Martella replied same was dependent on each case. He acknowledged the subject case was somewhat unusual, adding lien laws were very specific.
- City Attorney confirmed Mr. Robert Adamo was present and was still represented by Mr. Thomas Valentine, attorney; however, he pointed out Mr. Valentine was not present. He then stated he disagreed with Board Attorney Martella's interpretation of the term "willful"; however, the purpose of the Board Attorney was to advise members and to ensure the respondent was provided due process. He maintained the evidence presented by the City was sufficient. He clarified he was present to act on the City's behalf while Board Attorney Martella was the Board's advisor.
- Ms. Fleenor commented the respondent was required to be aware of his authority and responsibilities and to act accordingly, adding if he had been negligent with regard to same, she felt he had willfully disobeyed his obligation to his company and customers.
- City Attorney Levin stated he believed Board Attorney Martella was advising the Board to reopen the evidentiary portion of the hearing to allow for additional evidence, adding if this was done, the City and the respondent would both have the opportunity to argue their positions on the willfulness issue. He clarified the Board may then be in a better position to gauge that issue.
- Mr. McClary asked Board Attorney Martella to comment on the Board's options based on both reopening the evidentiary hearing as well as a decision to not do so.
- Board Attorney Martella replied if the Board did not reopen the hearing, they must make a determination based upon the transcript of the Board's last hearing; however,

his review of that transcript indicated the need to reopen the hearing and place the missing elements on the record.

- Mr. McClary asked if two of the three liens were valid and outstanding.
- Board Attorney Martella expressed uncertainty regarding same; however, he confirmed one of the three was invalid. He mentioned liens were valid for only one year from the filing date; however, this did not negate the existence of a violation.
- Mr. Sandles questioned the current status of Mr. Adamo's State license.
- Mr. Adamo replied he had voluntarily inactivated his State license in 2007 and had not reactivated the license as of this date.
- Mr. Cole mentioned the Department of Business & Professional Regulation (DBPR) was awaiting the outcome of this case before proceeding.
- Mr. Adamo interjected he had received a letter from the State in which they found no wrongdoing on his part.
- Mr. Cole countered the State had found no probable cause but did intend to reopen their case if probable cause was established at the local level.
- Ms. Fleenor asked if the Board's revocation of Mr. Adamo's permitting privileges would remain in effect until any other action was completed.
- Board Attorney Martella replied Judge Kyle basically remanded the case to the Board.
- City Attorney Levin added the case was still under review by the Court, stating until such time the Court made a final order invalidating the City's actions, the Board's rescinding of Mr. Adamo's permitting privileges remained in effect. He opined the Board could take no further action this date.
- Board Attorney Martella reiterated Judge Kyle's order stated the Petition for Writ of Certiorari was granted, the order challenged by the petitioner was quashed and the matter was remanded for a new hearing. He clarified the Board's order had been rescinded or quashed by Judge Kyle and was thus no longer valid. He noted Judge Kyle issued a second order giving the Board the option to make their findings of fact based upon the prior hearing; however, he opined the record was not satisfactory for the Board to make their findings, thus the basis for his recommendation to hold a new hearing.
- City Attorney Levin interjected the Board's disciplinary action had been rendered null and void.
- Mr. McClary commented Mr. Adamo sold his company to another party, stating the liens were a result of circumstances occurring between that sale and activation of the new company. He maintained almost three years had passed, adding another hearing

would only serve to extend that time well beyond three years. He opined the entire matter should simply fade away.

- Board Attorney Martella opined the latter would open the Board to another appeal by the City.
- Mr. McClary asked why the City would wish to litigate with their own Board.
- Board Attorney Martella replied the City must ensure due process.
- Mr. Burrage questioned Mr. Cole's recommendation.
- Mr. Cole asked the Board to set the matter for a new hearing to be held on a date certain in the future and to allow the City to present their case.
- Mr. Burrage MOVED, Mr. Sandles SECONDED to hold a new evidentiary hearing on January 26, 2010. MOTION CARRIED UNANIMOUSLY.
- Ms. Fleenor confirmed Mr. Adamo was thereby noticed for the January 26, 2010 hearing.
- City Attorney Levin added the City would provide written notice as well.

Note: New Business was heard prior to Unfinished Business.

NEW BUSINESS

- A. Certificate of Competency Application for Depot Electric Corporation (Francisco Javier Gonzalez, Qualifier)
 - Ms. Suzy Russell, Permit Supervisor, announced she had received a Certificate of Competency (COC) application for Depot Electric Corporation in September 2009 but had returned same for correction, noting work had been performed prior to receipt of same. She mentioned she was not contacted by Depot Electric for several months but then received a new application, adding the signatures on each were quite different. She pointed out the notary stamps on each application were the same; however, those signatures also did not match. She concluded these issues were the basis for her request for the Board's review.
 - Mr. Francisco Gonzalez, qualifier, advised Depot Electric was a family run company, stating he had been away in September 2009 due to the passing of a family member. He explained another family member had signed the application on his behalf, asserting no fraud or deceit had been intended and apologizing for same. He stated this was the first occurrence of this type, adding he took full responsibility for these actions. With regard to performing work without a permit, he explained the property owners had been out of town at the time the work was done; however, he clarified he meant no disrespect toward the City's procedures.
 - Mr. Sandles asked if the remaining documents were in order.

- Ms. Russell replied she assumed the second application held a correct signature, stating same matched the signature on Mr. Gonzalez' driver's license. She asked Mr. Gonzalez if one of the notary signatures was correct.
- Mr. Gonzalez replied he believed so, stating the notary was his wife's uncle.
- Ms. Russell mentioned she had verified the notary's bond with the State.
- Mr. McClary confirmed the work was complete, asking if an inspection was done.
- Ms. Russell replied the inspection could not be done until a permit was in place; however, there had been no complaints by the homeowner.
- Mr. Coccaro confirmed the work was done on a residential property.
- Mr. Cavanaugh requested staff's recommendation.
- Ms. Russell replied the penalty for this violation was \$300 per City Code.
- Mr. Cavanaugh MOVED, Mr. Coccaro SECONDED to require the respondent to pay \$300 and to pull the appropriate permit. MOTION CARRIED UNANIMOUSLY.

OTHER BUSINESS

- Mr. Burrage questioned the status of the UDI Underground case.
- Mr. Cole replied the matter had been resolved.
- A. Announcements from Randy Cole, Chief Building Official
 - Mr. Cole expressed his wish for all to have a Happy Holiday. He mentioned the City had participated in the Green Futures Expo & Energy Options Conference held on November 1-2, 2009, at the Event Center and would continue to act as a sponsor each year.
 - Mr. Burrage then commented on the case involving Mr. Adamo, asking if alternate members of the Board could participate in the event they were needed to make a quorum.
 - Board Attorney Martella replied affirmatively if the City planned to present completely new evidence and treat the matter as a new hearing.
 - City Attorney Levin added in light of Judge Kyle's quashing of the Board's previous order, he believed the City would present a new case and new evidence; thus, he opined all members could be participate.
 - Mr. Cavanaugh asked how the Court would respond if the Board elected to act against the advice of the Board Attorney and acted in accordance with the City Attorney's recommendations.
 - City Attorney Levin replied he did not believe the Board's action would be invalidated unless the Court felt their decision was clearly erroneous and not based on any legal precedent. He acknowledged he and Board Attorney Martella clearly had a difference

of opinion on the definition of willful; however, the Board was the ultimate decision maker.

- Mr. Sandles questioned the result if Mr. Adamo decided not to participate or defend his position.
- Board Attorney Martella replied he believed the City would still have the burden of presenting a prima facie case.
- Mr. Sandles confirmed the hearing could still proceed if Mr. Adamo opted against participating in same.
- Board Attorney Martella agreed, provided Mr. Adamo was properly noticed.
- Ms. Fleenor opined such action would be considered willful.
- Mr. Sandles stated from a general contractor's point of view, the events which had occurred in this case may have been out of Mr. Adamo's control; however, he asserted his actions were willful.

ADJOURNMENT

- Meeting Adjourned: 9:49 a.m.

Mary Fleenor, Chairman

Mary Kelly, Recording Secretary