

MINUTES
CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS (CBAA)
LOCAL CONSTRUCTION REGULATION BOARD (LCRB)
April 10, 2014

1. CALL TO ORDER/CONVENE AS CBAA

The Vice Chairman, Ron Dixon, called the meeting to order at 2:00 pm in the Vista Center 1st Floor Hearing Room 1E-47, Palm Beach County Planning, Zoning & Building Department, 2300 North Jog Road, West Palm Beach, Florida.

1.A. ROLL CALL

MEMBERS PRESENT

Ron Dixon, Vice Chair

Peter Dzenutis

Bart Rasper

Duane Drawdy

Michael Walker

Tom Donegan

MEMBERS ABSENT

Marc Weiner, Chair

Margie Walden

OTHERS PRESENT

Doug Wise, Building Official

Anne Helfant, Asst. County Attorney

Shannon Fox, Asst. County Attorney

Rebecca Caldwell, PZB Executive Director

Bob Hemp, Chief Structural Inspector

Dan Valletto, Building Inspector III

Vickie Day, Recording Secretary & Notary

Richard Boyette, PE

Ed Williams, EWRC

Chuck Schulze, Contractor Certification

Bruce Escher, Director of Contractor Certification

Jack Badalamenti, Contractor Certification

John Herring, Contractor Certification

Robert Melancon, Contractor Certification

Lawrence Fuchs, Mark & Son Attorney

Claudette Kemp

Tracie Feinsod, property owner

Richard Feinsod, property owner

Ciro Gonzalez, Mark and Son

Ramsay Bulkeley, Director of Code Enforcement

- 1.B. Approval of Minutes. *The motion was made to approve the minutes of March 13, 2014 meeting. The correction to add “%” on page 3, line 17 was noted and the motion was seconded and carried unanimously.***

2. ADJOURN AS CBAA / RECONVENE AS LCRB

- 2.A. Shannon Fox – Staff asked that we discuss the powers of the authority of the LCRB for this proceeding. I am sure you have looked at the rules and regulations. The rules allow that this Board has the authority to deny, suspend or revoke or limit with conditions the permit pulling authority of Certified Contractors within unincorporated Palm Beach County. The authority of this Board is to hear the testimony that is presented by Staff and to make a decision as to whether there is a finding of either fraud or willful code violation on the part of the Respondent. The way it works is Staff is going to present their case as to the conduct they feel is fraudulent or willful building code violation. It is the burden of this Board to determine if Staff has met their burden by clear and convincing evidence. In other words; based upon the evidence highly and substantially more probable to be true than not; you must have firm believe in the actuality of proof of the evidence you received from the County.**

3. ADDITIONS AND DELETIONS – NO

- 4. NEW BUSINESS – Vickie Day swore in all those giving testimony.**

4.A. Case #14-01 – Mark McAllister of Mark & Sons Construction CCC1328935

Doug Wise – WE are here today to hear a case which involves willful code violations on a reroof for Mark & Sons Construction. Subsequent to the completion of the roofing replacement, the property owner contacted the

County advised us of defects on the roof; which were in turn corroborated by County Staff. The specific defects are: broken tiles, loose tiles, plugged weeps in tile eaves closures and they constitute a violation of 905.1 and 905.8 in the Florida Building Code, residential Code. The defects have not been corrected at this time after repeated requests; therefore, we believe a willful code violation exists. The County asks to enter ***Exhibit A to be entered into evidence.***

Subsequent to the permit issuance, County staff performed inspections on the site. Exhibit 16 – affidavit from Jeff Moye. Jeff Moye requested the contractor, Mark McAllister to provide the notarized sign affidavit from the property owners. It was determined that he did not have this affidavit, stating the homeowners accepted the County's affidavit inspection program for the roof installation. Based on not having this letter, this inspection would fail. During this inspection, the contractor went on the roof and the inspector heard tiles being broken. It is important to note: He was not in compliance for not having the affidavit so it was requested to get an Engineer's affidavit to certify the installation of the underlayments and attachments. Subsequent to this request, the Engineers report (Exhibit #3) was received; based on this report in accordance with County policy and County standards, the County closed the permit at this time and issued a Certificate of Completion.

However, the property owner contacted the County about the Engineers report and the efficiencies in the roof installation. The County did inspection the property on multiple occasions and met with the Engineer on site. During the process, Mr. McAllister was notified along the way regarding the issues with the report.

Furthermore, Bob Hemp Chief Structural Inspector (Exhibit 6) did an inspection with the Engineer, Mr. Boyette, and noted the deficiency: Approx. 20 lineal feet not to have the first row of tile anchored. The remaining roof looked to be in compliance with the Code and approved plans based on the provided photos of his cursory inspection. Based on this inspection, a second Engineers report was conducted; he found some loose tiles where the foam had debonded, presumably as a result of foot traffic. He also certified the work was completed per engineers' instructions. Upon recent of engineers' report #2, we completed another inspection and still observed broken tiles.

Since defects still existed on the roof, a notice that all final approvals and certificates of completion have been rescinded and it was the County's intend to refer the case to this Board; as per letter (Exhibit 9) to the contractor. In this letter the County requested a third-part roofing consultant to provide an assessment of the roof and to correct deficiencies identified.

Based on the fact that the defects previously noted were not completed within the 90 days as requested, we sent Mr. McAllister a notice of hearing (Exhibit 15).

In summary, it is Staff's position that broken and loose tile exist on the roof today; that roof eave closures remain plugged with adhesive. That these defects constitute violations of Sections 905.1 and 905.3 of the Florida Building Code. In accordance with Florida Statutes, these defects to the best of our belief constitute willful building code violation.

In conclusion, County Staff is respectfully requesting the Board order the Contractors' permit pulling privileges suspended until the defects on this roof are corrected or alternatively, we request the Board to order the Contractor to correct the defects on the roof in a time certain or the Contractors permit pulling privileges will be suspended until such time as the defects are corrected. In either case, the County requests authority to notify the State of Florida.

Lawrence Fuchs (Attorney representing Mark McAllister) – asks Mr. Wise he indicated after the Engineers Report, that there was a cursory inspection by County Staff and Certificate of Completion was issued. Was there any mention of broken tile in his report at that time? Response from Mr. Wise, I am not aware of it being mentioned. Weep holes being blocked was brought up recently, they were not mentioned before the

Certificate of Completion was issued. Asks Mr. Wise was Mr. McAllister cooperative with you and did he have his employees go out to make repairs? Yes, he was cooperative and I believe he did send staff to make repairs.

Mr. Fuchs calls on Caro Gonzalez

Caro Gonzalez – I work for Mr. McAllister for five years

Mr. Fuchs – asks are you certified to apply the poly foam? And for how long

Mr. Gonzalez – Yes for five years

Mr. Fuchs – how many times were you at the property after the initial completion? Last time?

Mr. Gonzalez – I went back three times, the last time was about three months ago.

Mr. Fuchs – what happened the last time you went to the house?

Mr. Gonzalez – the owner yelling at me and she would not let me do anything at the house. I was there to replace broken tile.

Ms. Fox – the other two times you were there, what did you do?

Mr. Gonzalez – I fixed broken tile and every time I came back different tile was broken.

Mr. Walker – asked Mr. Gonzalez if he has any documents from his visits, notices?

Mr. Rasper – if you are certified, are the first two row holes suppose to be closed?

Mr. Gonzalez – no they are not supposed to be closed. The first time I came back, half of the holes were clogged and I cleaned them out with a nail. I cannot remember when I did this, maybe 6 ½ - 7 months ago.

Mr. Drawdy – In your inspection two days ago, it shows broken tile. Did the inspection two days ago find any clogged holes?

Mr. Valletto – I visited the site two days ago, the first time I was there was because they attempted to clear the weep holes, but they did not. They are still closed. Using a nail to clear them out is not the correct way to clear them. There are no mechanical wholes or adhesive that is why some tiles are sliding downwards. I am inspecting from a ladder, we do not go on the roof.

Mr. Boyette – I was the Engineer who originally reviewed the installation based on the photographs. I was out there to do a follow-up inspection and I do not recall seeing any broken tiles, I did not observe those conditions with weep holes; I was not aware of any problems with weep holes. I did not see any points where foam was exuded out of any weep holes. But visually there is no way to know if something was blocking it from behind.

Mr. Dzenutis – tiles are breaking because they are sliding; because it is a mechanically fastened system – you have to be very careful in installing it and walking on the roof will break the tiles.

Mr. Ed Williams – I am the roof consultant that Mr. McAllister hired as per the County. We went to the house and checked the tile over most of the house. We did not find any at the lower two rows that I could move. There were 2 tiles that the painters slide underneath. Mark had agreed to repair the broken tiles; however I understand he was not allowed to. We did not know about the issue with the weep holes, therefore I did not address it.

Mr. Rasper – asks Mr. Wise what he would like to happen.

Mr. Wise – County is requesting the Board to ask for the corrections to be corrected, it is the Boards determination on how you want to go about doing it. You can either suspend his permit pulling and give him so many days to correct the issue.

54:18

Ms. Feinsod – we have gone through a lot with Mark McAllister and his subcontractors.

May 25, 2013 – Mark McAllister started the job. May 27, 2013 – we had a massive flooding & we asked him to tarp the roof, he told us it was a waste of his time. We ended up having a massive flood in one of our bedrooms in the front of the house. We have asked Mr. McAllister many times to fix the problems we were having with him - it fell on deaf ears. Mr. Gonzalez, I had seen maybe five times throughout. I asked one of his sub-contractors if her was using foam because in our contract he is suppose to do the 1st and 2nd row with foam. And his worker told me they only do one row. Soon after, Mr. Gonzalez came to my door with a picture of a big

area with foam and said they are using foam. Two days later he came to me and said he was not coming back for 2 days as they ran out of foam. So we were doubtful from the beginning that they were going to do what they said they were going to do.

After the job was finished, on September 15th Mr. McAllister told my husband and me that he could not collect the final payment of \$8,000. We already paid him \$16,000. He said there was a back log at the Building Department and he wasn't able to get the inspections. We were not aware that there was a system where you could have pictures in lieu of a physical inspection. On September 17th, I contacted the building department whereby I was told that if Mr. McAllister would call them that day they could have someone out the following day. I saw Mr. McAllister that morning and told him he lied to me. You told me there was a back log and you couldn't get any inspections. He said he was waiting for a piece of paper, but couldn't tell me what it was. I spoke to Mr. Hemp and he is the one who informed me of using pictures in lieu of inspections and it was at this time I said I didn't give Mr. McAllister permission to do pictures, I want the physical inspections.

Then Mr. Moyer came out and I told him he couldn't pass the roof inspection, because there were no other inspections. At this time, Mr. Moyer failed the roof inspection.

Thereafter, Mr. McAllister placed a lien on our property because we failed to pay the balance. How can we pay him the balance when he never completed the job; he never had inspections done. Shortly then, he got Mr. Boyette to give him a report that he reviewed the roof. Mr. Boyette has never been on the property. When we called him, he said he went by Mark's word. We paid him \$16,000 to do a job, he never even showed up to see what was going on.

I contacted the Building Department many times about the issues we were having with Mr. McAllister and his sub contractors. Mr. Hemp came out with Mr. Boyette and they reviewed the roof, Mr. Hemp asked to correct the problems. November 1st, Marc and Ciro Gonzalez came out to foam the areas that weren't foamed and to fix the broken tiles and do whatever else they had to do. After the job was completed, we found all the weep holes were clogged and I notified Mr. Hemp; who said that is not what they are suppose to do. They came back out to unclog the weep holes with a nail or something – he never removed the tiles. Every time they came out there was a problem – the subcontractors' broke something around the house or broke tile.

About two weeks ago Ciro Gonzalez came to my door and said he was coming out to fix broken tiles. I told him that was not the only problem; you need to talk to Mark. What about the weep holes, there are other issues you need to take care of? They damaged our gutters beyond repair, damaged our driveway, they through tar on the garage door and on the driveway.

Mr. Feinsod – Marc McAllister got a Certificate of Completion based on his word, the Architect never came out and viewed the property or the roof and he freely admits it. When he came back out he failed it and there is still no Certificate of Completion, obviously. And this has been going on almost a year.

Mrs. Feinsod – I spoke to Mr. Williams and I told him we had the house painted and the painter noticed there were tiles sliding out of place. Also told him we are having leaks – but this information was not in his report.

Mr. Feinsod – In closing, if it wasn't for my wife Mr. McAllister would have gotten away with this. I can't imagine how many homeowners he has done this to.

Mr. Dzenutis - asks the homeowners, what do you want the contractor to do at this point?

Mrs. Feinsod – I do not trust this contractor as far as I can throw him; this man has caused us much grief over the year and his subcontractor. We have given him numerous opportunities; in November I told him let's just get past this so I can pay you and get the job completed. He has no respect for anyone; we've been living like squatters in our own home. AT 5:00am we were sweeping water out of our house because he refused to tarp. We had a rat in our home because of him and had three exterminators. We have gone through so much with this contractor- I can't imagine using him to do anything. This is a very sad situation; we have given him numerous opportunities. Mr. McAllister called us Friday to come and repair the tiles. I said you haven't taken the lien off our house, because you told us about a back-log. I personally do not want anything more to do with Mr. McAllister.

Mr. Walker- Do you still owe him \$8,000.00?

Mrs. Feinsod – Yes, which we were happy to pay him when the job was completed. He told us in June that he could not collect the money because there was a back log at the Building Department.

Mr. Walker – what you are telling the Board, is that you do not want Mr. McAllister back on your site.

Mr. Rasper – are you willing to let him come back and finish the job with an inspector from PB County?

Mrs. Feinsod – I do not want him back on my property. He still has an open permit on the interior of the house.

Mr. Wise – after Mrs. Feinsod contacted us and told water had gone into the house; it is my understanding that the work has been inspected and the permit needs to be closed.

Mr. Dixon – we are closing the public discussion on this case.

Mr. Fuchs – there is a legal process where an owner can terminate the services of a contractor; hire another contractor to do the work. But that is not what we are here for today. I think the issue is; there is not really any evidence of any willful violations. There are problems, numerous attempts to correct it and the latest attempt was thwarted by the owner. Based on what is in the complaint, there is not a willful violation.

Ms. Fox – Do you want to revise your recommendation being that the owner will not allow the contractor to repair any defects? This Board does not have the authority to hire a 3rd party.

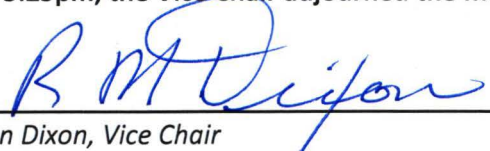
Board members discussion ensued.

A motion was made that willful violations do exist. The motion was seconded and carried unanimously.

A motion that The Appellant's permitting pulling privileges in Palm Beach County be suspended for thirty (30) days. The motion was seconded and carried unanimously.

5. OLD BUSINESS – NONE
6. BOARD MEMBER COMMENTS – NONE
7. STAFF MEMBER COMMENTS – NONE
8. ADJOURNMENT

At 3:25pm, the Vice Chair adjourned the meeting.



Ron Dixon, Vice Chair

Respectfully submitted,

Vickie Day
Recording Secretary