

**BUILDING BOARD  
MEETING  
AUGUST 26, 2008**

**MEMBERS PRESENT:** John Burrage, Chairman  
Thomas Cavanaugh, Peter Coccaro, Mary Fleenor,  
James McClary, Larry Sandles, Al Villalobos

**OTHERS PRESENT:** David Levin, City Attorney  
Suzy Russell, Permit Supervisor  
John Smith, Plans Examiner  
Ray Blashill, Roberto Loiacono, Patricia Blashill

**CALL TO ORDER/ANNOUNCEMENTS**

A. Roll Call

- Mr. Burrage announced Ms. Fleenor and Mr. Coccaro had been reappointed to an additional three year term.

**APPROVAL OF MINUTES**

A. Special Meeting of June 17, 2008

- Mr. Sandles MOVED, Ms. Fleenor SECONDED approval of the June 17, 2008 minutes.  
MOTION CARRIED UNANIMOUSLY.

B. Meeting of June 24, 2008

- Mr. Sandles MOVED, Ms. Fleenor SECONDED approval of the June 24, 2008 minutes.  
MOTION CARRIED UNANIMOUSLY.
- Recording Secretary Kelly swore in all participants.

**UNFINISHED BUSINESS**

- Ms. Fleenor commented on a recent meeting which had been defined as information gathering only at which the Board had no legal representation, stating she felt it would have been beneficial to have had the Board Attorney present. She requested the City Attorney be asked to attend all meetings.
- Mr. Burrage recalled staff and City Attorney David Levin made the decision as to whether or not the Board Attorney should be present; however, he agreed it would have been useful to have legal representation at the information gathering meeting.
- City Attorney Levin noted he was always available. He explained staff had determined he did not need to be present when there were no quasi-judicial proceedings and/or hearings.
- Ms. Fleenor noted the above referenced meeting may lead to a future quasi-judicial meeting.

- City Attorney Levin asked members to contact Mr. Burrage if they felt he should be present, stating Mr. Burrage, as Chairman, could then request same through staff. He then noted the Board Attorney was unavailable to be present this date. He clarified he was serving in a prosecutorial manner this date as opposed to in an advisory capacity to the Board.

### NEW BUSINESS

**Note: Item A was heard following Item B.**

- A. Complaint Filed against ERS Construction, Roberto Loiacono, Qualifier
- Ms. Suzy Russell, Permit Supervisor, listed the following charges: Florida Statute (FS) 489.129(1)(g), Committing mismanagement or misconduct in the practice of contracting that causes financial harm to a customer; FS 489.129(1)(j), Abandoning a construction project in which the contractor is engaged or under contract as a contractor; FS 489.129(1)(m), Committing incompetency or misconduct in the practice of contracting; City Code Section 7-13(a)(2), Negligence, incompetency or misconduct in carrying on the business or contracting within the means of this chapter; City Code Section 7-13(a)(3), Abandonment of any contract without legal excuse or justification. She concluded each charge involved one count each.
  - Mr. Burrage clarified one count referred to one violation per charge.
  - Ms. Russell concurred, stating the charges were related to one project.
  - City Attorney Levin drew members' attention to a copy of a lien regarding Exotic Pools as well as a copy of the contract, both delineated in the agenda material, requesting those documents be submitted as exhibits.
  - Mr. Ray Blashill, complainant, submitted back-up information in the form of spreadsheets into the record, explaining he entered into a contract with ERS Construction in April 2007 for the following: destruction of existing/enclosed lanai; construction of a new addition; installation of a pool and pool cage; window replacements; hurricane shutters, extension and revision of roof; other interior, kitchen remodeling. He acknowledged construction commenced in August 2007 and proceeded well until January 2008, at which time he began to experience communication and timeline problems with Mr. Loiacono. He stated he began to receive Notices to Owner and filed claims in March 2008, adding a number of contractors revealed they had not been paid by ERS Construction even though he had paid Mr. Loiacono. He asserted this continued until all communication from the qualifier ceased effective May 2008. He noted their building permit was set to expire on July 8, 2008; thus, he contacted Mr. Randy Cole, Building Official, who had been extremely helpful. He explained he had been forced to retain additional contractors to

complete the work as the qualifier had not done so, specifically the hurricane shutters had not been installed, the cabinet supplier had not been paid nor had the sod company or the pool contractor. He explained lack of payment to the pool contractor resulted in a lien and legal action to foreclose, which in turn required him to pay the pool contractor \$22,536.95 directly. He stated he had also paid the electrical contractor and lawn service directly.

- Mr. Villalobos asked if the hurricane shutters had already been purchased through Mr. Loiacono.
- Mr. Blashill replied affirmatively, stating the original estimate was included as part of the contract. He noted the ERS Payment Schedule he had submitted to the Board this date also denoted an estimate from Raymond Building Supply (RBS) for hurricane shutters. He clarified he had been forced to pay \$4,323 to RBS in addition to \$8,300, which had already been paid to ERS.
- Mr. Burrage asked if Mr. Blashill was still in contact with the contractor.
- Mr. Blashill replied the contractor had not returned his telephone calls, dating back to July 7, 2008.
- Mr. Sandles confirmed Mr. Blashill had incurred approximately \$2,000 in legal fees related to the Exotic Pools lien. He clarified the initial contract was in the amount of \$89,940, followed by \$40,000 in change orders.
- Mr. Blashill responded the total was roughly \$131,000, including the changes. He stated he had paid \$9,106.55 over and above the original contract amount. He pointed out the section described as "Credits Due," stating \$8,213 was for the original ERS Lexan hurricane shutters.
- Mr. Sandles clarified Mr. Blashill had substituted that which he had purchased from RBS.
- Mr. Blashill then pointed out the estimate owed to Contemporary Cabinets in the amount of \$6,600, expressing uncertainty as to whether ERS had made any payments to that company; however, he confirmed he had paid that amount to ERS. He concluded the final credit due was \$1,350 owed to Other Side Sod, adding he was unsure whether same had been paid.
- Ms. Fleenor requested clarification of the amounts listed under "Change Orders" and "Balance" under Credits Due.
- Mr. Blashill offered to explain the spreadsheet, stating "Date" referred to the dates his checks were written, "Amount" was the money paid for each of those checks, "Change Orders" was self explanatory and totaled \$40,470.93, and "Balance" was the declining balance due as payments were made. He stated as of June 10, 2008, he still owed ERS

\$17,753.40; however, he had not paid Exotic Pools and the hurricane shutters had not been installed at that time.

- Mr. Sandles clarified Mr. Blashill was “upside down” at least \$17,319.55 and as much as \$25,269.55.
- Mr. Burrage confirmed there were currently no liens on the complainant’s property.
- Ms. Fleenor asked if any sub-contractors remained unpaid.
- Mr. Blashill replied he was unsure.
- City Attorney Levin questioned the amount of time between the date liens were imposed and then removed through payment by Mr. Blashill.
- Mr. Blashill replied the lien was filed on March 25, 2008, adding the payment was made to Exotic Pools on June 26, 2008, roughly 90 days.
- City Attorney Levin asked if the contractor had ever returned to Mr. Blashill’s property, and if so, how much time had elapsed.
- Mr. Blashill replied his notes indicated Mr. Loiacono had been on site at the end of March 2008.
- City Attorney Levin asked if Mr. Loiacono had performed any additional work.
- Mr. Blashill replied he had not.
- City Attorney Levin questioned whether the qualifier had completed the work.
- Mr. Blashill replied he had not.
- City Attorney Levin then questioned Ms. Russell regarding ERS’ status with the City.
- Ms. Russell replied Mr. Loiacono currently held an active Certificate of Competency (C.O.) for 2008 as a State registered, residential contractor.
- Mr. Sandles questioned the status of the permit for this project.
- Ms. Russell displayed several overheads denoting same.
- Mr. Coccaro asked if ERS had any other open permits in the City.
- Ms. Russell replied there were a number of permits which had all passed final inspection, stating all permits dating back to 2007 had been closed.
- Mr. Loiacono confirmed he had no questions for the previous two witnesses. He referred to the spreadsheet submitted by Mr. Blashill, expressing uncertainty regarding a few items, specifically Southwest Lawn Service. He announced all sub-contractors on this project had been paid; however, he was working on a payment schedule with Contemporary Cabinets for the \$2,500 balance due, stating he was paying \$1,000 per month. He clarified the original amount was approximately \$6,600.
- Ms. Fleenor asked how Mr. Loiacono planned to repay the homeowner for monies paid directly to sub-contractors on ERS’ behalf.

- Mr. Loiacono replied Mr. Blashill paid the sub-contractors directly with funds still owed to ERS, stating same were included in the original contract. He commented he had fallen somewhat behind because of the poor market, stating he had experienced some difficulty in obtaining draws from other jobs. He acknowledged he had been somewhat slow in paying the sub-contractors. He pointed out he had advised the pool contractor to place the lien for their protection as Mr. Blashill was not comfortable paying him for same. He commented on the legal fees, stating Mr. Blashill could have paid the pool company, thus avoiding the legal fees. He noted Mr. Blashill also paid \$807.50 directly to Englewood Electric, explaining same was the balance due out of a \$4,000 bill. He expressed disagreement with Mr. Blashill with regard to a credit due in the amount of \$8,213 for original ERS Lexan panel hurricane shutters, stating the change order was actually \$3,500. He advised he last spoke with Mr. Blashill on June 6 or 7, 2008, as he had extended the permit due to a delay by the painter which in turn prohibited him from installing the shutters. He then stated he last spoke with Mr. Blashill at the beginning of July 1, 2008, to schedule a date for installation of the hurricane shutters; however, Mr. Blashill informed him he had hired another contractor. He noted Mr. Blashill also advised him of his intent to bring Mr. Loiacono before the Board to have his license revoked. He mentioned another change order which included an additional \$1,000 for flooring, stating this was the homeowner's expense; however, the additional flooring actually cost \$3,000. He clarified \$3,000 was not included in the original scope of work.
- Mr. Sandles asked if the pool contract was in Mr. Loiacono's name.
- Mr. Loiacono replied the pool package had been combined with the addition contract. He explained the pool estimate was provided in March 2008 and included in the original contract; however, when he actually signed the contract in May 2008, their draw schedules conflicted with his own; thus, he had been forced to juggle payments between sub-contractors.
- Mr. Sandles clarified the contract with the pool company was with ERS as opposed to Mr. Blashill, asserting the property owner was not responsible for how the pool company was paid.
- Mr. Loiacono concurred.
- Mr. Sandles clarified Mr. Loiacono was disputing the amounts due as stated by Mr. Blashill for the hurricane shutters, flooring and Other Side Sod, confirming the latter had been paid.
- Mr. Loiacono contended he had extended the permit and thus had not abandoned the job.

- Mr. Sandles asked what dates Mr. Loiacono had met or spoken with Mr. Blashill.
- Mr. Loiacono replied June 6 or 7, 2008, to advise him the permit had been extended, adding Mr. Blashill was aware of a family health issue, which eventually resulted in a death. He explained his wife had been in Michigan for an extended period of time due to these family problems, adding he had been forced to handle these problems alone. He concluded his last contact with Mr. Blashill was at the end of June 2008 towards the beginning of July 2008 to schedule installation of the shutters. He mentioned he still had the shutters themselves. He stated he could not call for final inspections as Mr. Blashill had locked accordion shutters in the front and panels. He noted the shutters were installed incorrectly.
- Mr. Burrage asked why Mr. Loiacono had not returned any of Mr. Blashill's telephone calls.
- Mr. Loiacono replied his wife handled the administrative end of the business, reiterating she had been out of State.
- Mr. Burrage opined simple communication would have avoided much of this.
- Mr. Loiacono responded the permit had been extended for 60 days. He pointed out Mr. Blashill resided in Michigan and was not often in the area. He contended the lien could have been prevented.
- Mr. Sandles countered the lien could have been prevented if Mr. Loiacono had paid the bill.
- Mr. Loiacono asserted he would have done so if Mr. Blashill had paid him.
- Ms. Fleenor again asked why Mr. Loiacono had not returned the complainant's calls.
- Mr. Loiacono replied he had been overwhelmed with personal issues, acknowledging he should have contacted Mr. Blashill.
- Ms. Fleenor pointed out Mr. Loiacono still had an obligation to pay his sub-contractors regardless of the homeowner's payment or lack thereof.
- Mr. Loiacono explained he had not intentionally withheld payment to his sub-contractors but rather he had not been paid for several other jobs, which then trickled down and resulted in his financial inability to pay them.
- Ms. Fleenor asked if Mr. Loiacono had verbally communicated his financial difficulties to his sub-contractors.
- Mr. Loiacono replied absolutely.
- Mr. Villalobos asserted Mr. Loiacono was a contractor, adding it seemed placement of a lien and the threat of foreclosure would result in his client's unhappiness, to say the least. He opined Mr. Loiacono had to have known he must maintain communication with the homeowner.

- Mr. Loiacono agreed; however, he opined all of this could have been prevented if Mr. Blashill had paid him so he could in turn pay the pool company. He noted he had been working in Charlotte County since 1993, adding he had only experienced problems in the past year or two.
- Mr. Sandles commented on Change Order #3, \$3,500 for the shutters plus labor to install the windows and shutters, asking how much the latter would have cost.
- Mr. Loiacono replied \$250.
- Mr. Sandles asked if Mr. Loiacono took direct payment personally on the kitchen change order in the amount of \$12,000 instead of corporately.
- Mr. Loiacono replied funds were deposited into the corporate account.
- Ms. Fleenor asked if the work necessary to support the draw requests had been performed at the time those requests were submitted.
- Mr. Loiacono replied affirmatively. He clarified part of the reason some of the work had not been completed was same had to wait until the pool was complete. He asserted he had not abandoned the job.
- Mr. Cavanaugh asked how Mr. Loiacono anticipated handling the fact that the pool contractor's draw schedule was different from his own.
- Mr. Loiacono replied he attempted to work out a different schedule, adding Exotic Pools had worked with him on a payment schedule initially.
- Ms. Fleenor countered Mr. Loiacono should have addressed the differing payment schedules before entering into a contract with Mr. Blashill.
- Mr. Villalobos commented the bottom line appeared to be a lack of necessary cash flow on the part of Mr. Loiacono.
- Mr. Coccaro pointed out the amount of the draws did not equal the amount of the contract but rather was much less.
- Mr. Blashill commented on the payment to Southwest Lawn Service, explaining that work had been necessary due to re-installation of a sprinkler system; however, the sod had actually been installed prior to same. He explained he had left a message for Mr. Loiacono on April 23, 2008, requesting contact information so he could make arrangements for sod repair, reiterating he had not received a return call; thus, he contracted with Southwest for the repairs. He then stated a representative of Contemporary Cabinets had advised they were still owed \$4,600 as of the previous evening as opposed to \$2,500 as stated by Mr. Loiacono. He commented on Mr. Loiacono's statement with regard to advising Exotic Pools to file their lien, stating a representative advised him they had received no payment from ERS following issuance of a demand letter; however, Mr. Loiacono claimed he had never seen a demand letter.

He noted the above mentioned the amount of \$3,500 for Lexan panels was actually for windows not included in the addition. He explained the addition had four doors and three windows, adding the Lexan panels were part of the contract for same; however, the figure of \$3,500 was related to additional panels installed in the house.

- Mr. Sandles requested documentation regarding same.
- Mr. Blashill noted he had provided the Board with an addendum depicting the cost was applicable to additional windows besides that planned for the addition. He opined the additional costs totaling \$3,000 associated with the tiles should be assumed by the builder as the original contract provided for same at \$1,000. He asserted the original draws were on time, stating Mr. Loiacono had requested the final payment for the entire job in February 2008; however, all the work was not complete at that time, adding a 20% retention had been negotiated which would not be paid until final inspection. He stated he began leaving messages for Mr. Loiacono on May 29, 2008, providing a detailed review of same, asserting he had received no return calls until June 11, 2008. He announced he advised Mr. Loiacono he was considering an alternate source for shutters unless a date and supplier could be provided; however, he did not hear from Mr. Loiacono until July 7, 2008, at which time he notified him of his contract with RBS, his payment to Exotic Pools and the filing of this complaint.
- Mr. McClary asked if the project was complete.
- Mr. Blashill replied it was complete, adding he arranged for the final inspection himself, which was complete as of August 25, 2008. He mentioned there were a few remaining punch list items.
- Mr. McClary asked what Mr. Blashill was seeking from the Board.
- Mr. Blashill replied \$17,319.55 would compensate him for what had been expended over and above the contracted price.
- Mr. Burrage pointed out the Board had authority only over permitting and licensing privileges.
- Mr. McClary commented on the strained building industry, suggesting Mr. Loiacono and Mr. Blashill enter into a repayment schedule.
- Mr. Blashill pointed out he had been forced to take a home equity loan; however, he would not take this case any further if Mr. Loiacono repaid him.
- Mr. Loiacono stated he did not believe he owed Mr. Blashill \$17,000; however, he was unable to present an alternative amount. He expressed disagreement with regard to the flooring cost overage being his responsibility.
- Discussion ensued with regard to the exact amount owed to Mr. Blashill.

- Mr. McClary suggested continuing this case to the Board's next meeting, at which time both parties could hopefully present an agreed upon amount.
- Mr. Burrage pointed out same would prevent a civil lawsuit from being filed.
- City Attorney Levin reiterated the Board was not a civil court but rather had the authority to revoke or suspend permitting privileges.
- Mr. Loiacono pointed out he would be unable to make a living if the Board pulled his permitting privileges.
- Ms. Fleenor concurred, thus the basis for the Board's recommendation for the two parties to come to some type of financial agreement.
- Mr. Villalobos suggested the parties find an arbitrator due to the tension between the complainant and the qualifier.
- City Attorney Levin interjected if the Board did in fact suspend or revoke the qualifier's privileges conditioned upon restitution, the complaining party would not automatically be provided the opportunity to go to court to enforce same. He clarified restitution was sometimes available only through civil action.
- Mr. Cavanaugh asked if Mr. Loiacono was amenable to sitting down with the homeowner.
- Mr. Loiacono replied affirmatively.
- Ms. Fleenor MOVED, Mr. McClary SECONDED to continue Item A to September 23, 2008 and to request the parties meet to come to a financial agreement. MOTION CARRIED UNANIMOUSLY.
- Ms. Patricia Blashill commented this entire problem began with the pool, the costliest portion of the entire project, stating their second draw payment of over \$26,000 included the pool and was paid to ERS on October 12, 2007.
- City Attorney Levin recommended the parties contact the Charlotte County Bar Association with regard to an arbitrator.

**Note: Item B was heard prior to Item A.**

- B. Permitting Charges filed against PGA, LLC (formerly Punta Gorda Aluminum)  
Jeffery Scott Davis, Qualifier
- City Attorney Levin announced Mr. Davis had requested a continuance to the Board's next meeting, submitting correspondence into the record reflecting same. He advised the City had no objection to the request.
- Mr. McClary MOVED, Mr. Coccaro SECONDED to continue Item B to September 23, 2008. MOTION CARRIED UNANIMOUSLY.

**Note: Other Business was heard following Item A.**

### OTHER BUSINESS

- A. Announcements from Randall Cole, Chief Building Official
- Mr. Burrage stated the Board's bylaws had been amended recently to reflect City Council's new policy wherein members of any of the City's advisory boards/committees would automatically forfeit their seat after three absences in a twelve month period. He noted members were now required to contact the City Clerk's Office if they were unable to attend, thus allowing staff to ensure a quorum of members would be present. He mentioned the bylaws also provided for an appeal process, such appeal to be provided in writing to the City Clerk for referral on to City Council. He then asked if the Board was ever given the opportunity to review Chapter 7 of the City Code.
  - City Attorney Levin replied the Board was welcome to schedule same on any agenda. He suggested delaying same after the September 23, 2008 meeting as there were already two quasi-judicial hearings scheduled. He then requested a copy of the Board's March 2008 Annotated Agenda.

### ADJOURNMENT

- Meeting Adjourned: 10:24 a.m.

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John Burrage, Chairman

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Mary Kelly, Recording Secretary