



BROWARD COUNTY

Board of Rules & Appeals

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<http://broward.org/codeappeals.htm>

BOARD OF RULES AND APPEALS

JANUARY 12, 2017

MEETING MINUTES

Call to order:

Chair Jeffrey Lucas called a published meeting of the Broward County Board of Rules and Appeals to order at 7:05 p.m. The roll was called and the following members were present:

Present:

Jeffrey Lucas, FM, CFI, CFEI, Chair
Kenneth Wynn, Vice Chair
Ron Burr
Gary Elzweig
John Famularo
Shalanda Giles-Nelson (arrived during discussion of Item 3)
David Rice, P.E.
Daniel Rourke
Robert Taylor
James Terry
David Tringo
Abbas H. Zackria

After the roll call, the presence of a quorum was announced by Chair Lucas.

Approval of Minutes

MR. RICE MADE A MOTION AND MR. TRINGO SECONDED THE MOTION TO APPROVE THE DECEMBER 8, 2016 MEETING MINUTES AS SUBMITTED. THE MOTION CARRIED BY UNANIMOUS VOTE OF 11-0. MS. GILES-NELSON WAS NOT PRESENT.

CONSENT AGENDA

1. Certifications – Staff Recommended

MR. ELZWEIG MADE A MOTION AND MR. TRINGO SECONDED THE MOTION TO APPROVE ALL SUBMITTED CERTIFICATIONS. THE MOTION PASSED BY UNANIMOUS VOTE OF 11-0. MS. GILES-NELSON WAS NOT PRESENT.

REGULAR AGENDA

3. Safety Shoes for Employees, Proposed Board of Rules and Appeals Policy #17-01

a. Report of Administrative Director

Mr. James DiPietro, Administrative Director, noted this was discussed at the last meeting (December 8th) where a decision was made to expand the policy to include trousers and shoes however it was specified that the trousers would become mandatory. The employees have subsequently withdrawn their request for the trousers. He drew attention to OSHA (Occupational Safety and Health Administration) language incorporated into the policy explaining when the safety shoes would be worn. There is information in the backup that was provided the Board concerning the cost. He has proposed \$100 annually or \$200 for two years.

In response to a question about the County's dollar limit, Mr. DiPietro indicated he was told by a County employee that it is \$100 annually.

Mr. DiPietro advised that he will be developing language for safety hats.

Mr. DiPietro responded to various questions relating to mandatory wear of the shoes, verification on shoe standard purchased and the reimbursement documentation. Ms. Giles-Nelson arrived during the Board discussion of this item.

b. Board Action

A MOTION WAS MADE BY MR. TRINGO AND SECONDED BY MR. ZACKRIA TO ACCEPT STAFF RECOMMENDATION AND APPROVE THE ITEM AS PRESENTED. THE MOTION PASSED BY UNANIMOUS VOTE OF 12-0.

2. Appeal #16-03 – 107 NW 12 Manor, Plantation

Everyone wishing to testify was sworn in.

a. Staff Report

Mr. Cris Fardelmann, BORA Chief Structural Code Compliance Officer, noted that this appeal has to do with a fairly new roofing product. He read his memorandum of December 8, 2016 provided the Board. The City of Plantation does not agree this product meets the requirements of a secondary water barrier or underlayment and that it does not meet Florida Building Code Fifth Edition (2014), Section 708.7.2. Staff is unable to conclude that this product is equivalent to what is prescribed as a secondary water barrier as described in 708.7.2, and Florida

Building Code (Building) FBCB 1518.2 through 1518.4. Tag and Stick's product does not overlap 4 inches at the head and 6 inches at the end laps. The nail-on layer does not get overlapped with the next layer of nail-on, when the subsequent roll is installed but it is butted up to the previously applied nail-on portion. If these butted joints were exposed to the elements, the water could find its way into the joints of the sheathing. The product does have a NOA (Notice of Acceptance) as an underlayment which shows the individual components are approved but the NOA does not specify that it is considered a secondary water barrier. Also, when inquiry was made, Miami Dade Product Control would not express an opinion on the issue.

The following information was furnished in response to questions from members of the Board: Mr. Fardelmann advised if 30 pound dry-end is used, the Tag and Stick product would be acceptable. However, Tag and Stick wants to skip this step. He spoke with a couple Miami-Dade roofers who indicated they place strips on the joints and then put down the Tag and Stick product. He believed this would be acceptable to the City of Plantation because it is an accepted secondary water barrier method. It has to be on plywood, not tongue and groove. He believed this product is being used in the rest of the state. The part that is nailed down does not overlap the other previously nailed down portion which is the issue.

b. Appellant Request

Mr. George Desiderio, Appellant, described the product and indicated it has been used on numerous roof coverings at a 2:12 pitch or above. Tag and Stick has a NOA from Miami-Dade County issued in April of 2013, as well as a Florida Evaluation Report for product approval. He referred to Florida Building Code, High Velocity Hurricane Zone, Section 1512.2.2, noting that products or systems not currently recognized in the chapter may have product approval based on performance testing. Section 1518 specifies that all tile systems shall be installed over solid sheathed decks. And further that all installations shall be in accordance with Roof Application Standards (RAS) 118, 119 and 120. In the beginning of each of these standards, there is a choice of underlayment and one choice is any product approved underlayment system with a mechanically fastened base sheet, and cap sheet set in hot, cold, or self-adhered.

Mr. Desiderio assumed that Broward County was accepting Miami-Dade County's product approval and avoiding getting into their own product approval system. He also assumed that Miami-Dade County would not issue a product approval for a product that is less than the code. There are many Tag and Stick installations in Miami-Dade County with no 30 pound base sheet. They have also installed roofs throughout Broward. Tag and Stick's own base sheet is more sturdy and thicker than 30 pound felt.

Mr. Desiderio indicated that when this product was first introduced in 2012, he

presented it to Board of Rules and Appeals staff, who offered to explain it to the cities. He also went to every municipality at the time to show them the product. Permits and inspections were no issue. Almost every city in Broward has this product installed. He has not been questioned before now.

Mr. Desiderio responded to some technical application questions. As to why Miami-Dade County did not voice an opinion, he indicated that there have been challenges on the secondary water barrier and he believed Miami-Dade does not want another opinion on it. The secondary water barrier was actually created by the insurance industry to give credit to homeowners who would use something that would stop the water if the underlayment blew off. He went into more detail about current installations, indicating if a 30 pound felt is mopped to a 90 pound felt, both will come off if one comes off for whatever reason. At that point there is no secondary water barrier. Mr. Terry Johnson of Tag and Stick advised that when Miami-Dade originally called for a base sheet, it was purely for one reason. They were afraid the material would stick so well that the plywood would be delaminated when removed. This is happening now in re-roofings. For roofs that were applied directly to the wood deck, the top layer of plywood is coming off. Because there is a mechanical attachment to the decking and self-adherence to like and kind material, it always sticks, which might not be the case for 30 pound felt. It is a two-ply system with an 18 inch overlap and mechanical attachment to the wood deck that could be removed in the future. He elaborated on why 30 pound felt is not used.

Mr. Johnson indicated that Tag and Stick has a third-party manufacturing agreement with a large manufacturer that manufactures the product to Tag and Stick's specifications. There is product that was preliminarily tested which at this point is ten years old. It took seven years to get a patent. Prior to Miami-Dade approval, Tag and Stick had state approval. Distribution of this product is primarily in the southeast United States, and specifically Florida because it is a great solution for problems with concrete roof tile. It is also shipped to the Caribbean.

c. City Response

Mr. Danny Ezzeddine, City of Plantation Building Official, explained his concern is with the application. Dialogue ensued on the technicalities of the installation, including overlap, base sheet and whether there is any break in the membrane.

Mr. Elzweig asked how the City would reconcile that section of the code that allows a NOA to supersede the code or become the code. Mr. Desiderio pointed out that the code says that in addition to the NOA, it shall meet one of the other requirements. Mr. Elzweig suggested with a third-party independent recommendation on the installation method, it would be code compliant. Mr. Zackria pointed out that this product has an eighteen inch overlap whereas in products with a four inch overlap and there is a significantly higher chance of

failure. Although he understands the eighteen inch overlap over the tincap portion, Mr. Ezzeddine explained traditionally the tincap has one overlap and the next part has another overlap whereas this product does not. Mr. Zackria explained that everything after the start sheet is thirty-six inches, therefore there is no but-to-but joint.

Tag and Stick representatives demonstrated the installation. The nailing pattern is 30% more stringent than the current 30 pound requirement. Tag and Stick is the only underlayment that meets current wind loads. Once it is laminated together, it is similar to impact windows. This product has a twenty-five year warranty.

Mr. Ezzeddine showed his concern with the sample materials.

In response to Mr. Zackria, Mr. Desiderio indicated that their product passed testing by Miami-Dade County for all underlayment including uplift testing for adhesives. Mr. Fardelmann indicated that the Miami-Dade County testing was explained to him as two halves. In other words, it was not tested as a complete system. Mr. Johnson advised that more testing was done than a typical underlayment because they were concerned about the mechanical side and the adhesive side. For other products, they only test for adhesion. Therefore, this product has had more testing and passed in all cases. Mr. Elzweig pointed out that this installation can be accomplished in one day different than with 30 pound felt. Mr. Johnson clarified that this is modified, not organic and the chances of it failing with 110 mils of modified fiberglass is nil. It is more difficult for this to be blown off because there are more fasteners per square.

In response to Mr. DiPietro, Mr. Desiderio confirmed that Florida Building Code approval was statewide for the 65 counties and the high-velocity hurricane zone for Miami-Dade and Broward.

Mr. Fardelmann advised that Miami-Dade County issued a product approval as an underlayment but not a secondary water barrier, which is not necessarily the same. Water barriers by code are very specific.

d. Board Action

BASED UPON THE EVIDENCE PRESENTED AND AFTER CONSIDERING THE TESTIMONY AND THE PRODUCT'S APPROVAL, A MOTION WAS MADE BY MR. ELZWEIG AND SECONDED BY MR. TERRY TO APPROVE THE APPEAL. THE MOTION PASSED BY A VOTE OF 11-1. MS. GILES-NELSON VOTED NO.

4. Director's Report

Proposed Changes to Broward County Chapter 1, Inspector Experience to become Plans Examiner - Mr. DiPietro, Administrative Director, advised that in order to be a chief one must have two years of experience as an inspector. The private provider inspector standard, a state standard, is less. As a matter of background, he noted that a candidate for the recent code compliance officer vacancy had previously been a private provider in Miami-Dade County. He wanted the Board to consider the concept of one of the two years of experience as an inspector being as a private provider. No action is requested today, but this could be scheduled and discussed at a future meeting. Both Mr. Elzweig and Mr. Zackria spoke in favor of considering the concept. Mr. Tringo also agreed. He did not think it is good to have a different standard in Broward. It should be made easier for an individual to move from Miami-Dade to Broward. Mr. Elzweig commented that all of the additional requirements that used to be in the South Florida Building Code predate Florida Statute, Chapter 468, which required licensure of inspectors, plans examiners and building officials. Once Chapter 468 became the State protocol, all of those additional requirements were a way for the good ole boys to restrict people from going into the industry. It is becoming more and more difficult to find qualified individuals. Private providers are required to have the same credentials as the other inspectors.

Chair Lucas asked the Administrative Director if this should go to the Certification Committee or simply be brought back to the Board. Mr. DiPietro offered to bring this back to the Board with final language to discuss and decide at that time whether it should go to the Committee. There was consensus agreement.

NFPA 70, National Electric Code (NEC) – Mr. DiPietro explained by the time the next edition of the building code is published, January of 2018, many states will be on the National Electric Code, 2017 edition rather than what is specified in the Florida Building Code, which is 2014. NFPA copies have been mailed to the State's Electrical Technical Advisory Committee membership. The forum for this issue will be at that Committee level.

5. Attorney's Report

Mr. James DiPietro, Administrative Director, advised that this is an informational report. The last report to the Board was in December, therefore a status report at this time is appropriate. Mr. Charles Kramer, Board Attorney, noted this is a case of disciplinary action against a former chief structural inspector. The issue revolves around the improper approval of plans for buildings in the flood plain that were not compliant. The State conducted an investigation and took disciplinary action after the Department of Business and Professional Regulation (DBPR) filed complaints against the former City of Fort Lauderdale building official and a plans

examiner. The investigation did not include a third individual who was found to be complicit as far as knowledge was concerned of the new flood plain elevation and failed to take any action.

In response to Mr. Elzweig, Mr. Kramer advised that there was suspension and a fine levied. Mr. Elzweig questioned by this board is involved if the State has already taken action. Mr. Kramer indicated that no action was taken against the third individual, John Madden, because his position as chief structural inspector is not recognized by the state. Mr. Elzweig raised the idea of filing a complaint with DBPR. Mr. Kramer indicated that the complaint was filed at the local county level and a Probable Cause hearing was held where probable cause was found. Mr. DiPietro advised that the Office of Inspector General (OIG) prepared a report and turned it over to the State and this Board for whatever action the two agencies deemed appropriate. DBPR proceeded toward the boss and frontline individual. This is about the middle manager supervisor. Mr. Elzweig did not understand why this Board is involved in that it seems like a lot of expense to go after someone that the State has chosen not to. Mr. Kramer advised that the State does not have jurisdiction. Mr. Elzweig contended that the State has jurisdiction under Chapter 468 of the Florida Statutes. He was not aware of any administrative agency such as the Board of Rules and Appeals taking action against someone's license. In response to Mr. Elzweig's further questions, Mr. DiPietro explained that the Board was asked to review the matter by the Inspector General (OIG) and the State. Mr. Kramer added that it is a disciplinary action. It was not left to the Board's discretion to take up the matter. There was another disciplinary action matter some sixteen years ago. An evidentiary hearing will be held in March or April. He elaborated upon delays that have occurred and extensive records production requests.

Mr. Elzweig questioned if there is enough money in the budget for these legal fees. He was concerned about the expenditure. Mr. DiPietro said at this point, there is sufficient funding and he believed the Board should maintain this course. A minor fine proposal was made but it was declined. Information on the predominance of cost was provided in the backup for this meeting. There is about three months to go. Some discussion turned to the amount of the fine and that it rests ultimately with the Board as well as why the Board, and not DBPR is not handling the matter altogether. Mr. Kramer pointed out a situation where action is taken against one individual but not another and is that because that individual came with an attorney wanting to fight it. Mr. Elzweig pointed out that Mr. Madden did not review the plans; he was in a management position. However, Mr. Kramer advised that pursuant to 101.4, he is required to perform a plans inspection. In response to Mr. Zackria, Mr. Kramer indicated if the Board prevails, it is possible that Mr. Madden's attorney would file in circuit court. He recalled another matter that went to circuit court and the Board prevailed. It is not being presented now because Mr. Madden's attorney has not completed her discovery. He elaborated upon the delays on the part of the other parties. Mr. Tringo thought perhaps the

matter should have been presented before now to keep the Board informed. Mr. Elzweig felt it should be put on the next agenda and Mr. Madden testify at that time. Mr. Kramer explained that there are rules relating to prosecuting a violation of this nature. Mr. Elzweig reiterated his concern about the associated cost. Some discussion ensued as to Mr. Madden's attorney fees that are currently being borne by the City of Fort Lauderdale. Mr. Kramer explained that they are proceeding with care and thoroughness to make sure nothing negative comes back.

Mr. Elzweig wanted to drop this action or refer it to the State. Mr. Kramer indicated that taking such a course of action could result in mandatory payment of attorney fees. Mr. Burr pointed out that the Board was asked by the State to do this, which is why the Probable Cause Committee convened. He felt it best to follow the Board Attorney's advice. Chair Lucas emphasized that the process needs to be followed. As far as administrative law is concerned, Mr. Kramer advised that the Board has a duty to follow this through. He offered to provide additional background to the Board. Mr. DiPietro summarized the last major case which was seventeen years ago. In response to Mr. Elzweig, Mr. Kramer advised that the hearing date is actually set by Mr. Madden's attorney when she feels that they have been provided with all desired information. If he is deterred, he could go to circuit court and claim his due process rights were denied. He anticipated the hearing will be in April. Chair Lucas asked if the matter was taken to court, could the court award reimbursement of the Board's attorney fees. Mr. Kramer advised that could occur only if bad faith was shown. Mr. Elzweig asked whether the Board has the right to proceed with a summary settlement. Mr. Kramer indicated they offered that he pay the \$500 fine and a short probation. In this process, they are not in a position to offer a judgment. He commented that sometimes cases are driven by things other than facts.

6. **Committee Report** - none
7. **General Board Discussion** - none
8. **Public Comment** – none

9. **Adjournment**

Having no further business to go before the Board, the meeting adjourned at 8:22 p.m.

A handwritten signature in black ink, appearing to read "J. Lucas", with a long horizontal flourish extending to the right.

Jeffrey Lucas, FM, CFI, CFEI – Chair