



BROWARD COUNTY

Board of Rules & Appeals

One North University Drive, Suite 3500B, Plantation, Florida 33324

Phone (954) 765-4500 Fax: (954) 765-4504

BOARD OF RULES AND APPEALS

MAY 10, 2018

MEETING MINUTES

Call to order:

Chair Daniel Lavrich called a published meeting of the Broward County Board of Rules and Appeals to order at 7:00 p.m. The roll was called and the following members were present:

Present:

Daniel Lavrich, P.E., Chair
Jeffrey Lucas, FM, CFI, CFEI
Ron Burr
Gregg D'Attile
John Famularo
Shalanda Giles-Nelson
Robert A. Kamm
David Rice, P.E.
Daniel Rourke
John Sims
Robert Taylor
Dennis A. Ulmer

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

Approval of Minutes

MR. LUCAS MADE A MOTION AND MR. ULMER SECONDED THE MOTION TO APPROVE THE APRIL 12, 2018 MEETING MINUTES. THE MOTION CARRIED BY UNANIMOUS VOTE OF 12-0.

CONSENT AGENDA

1. Certifications – Staff Recommended

MR. D'ATTILE MADE A MOTION AND SECONDED BY MR. TAYLOR TO APPROVE ALL SUBMITTED CERTIFICATIONS. THE MOTION PASSED BY UNANIMOUS VOTE OF 12-0.

Mr. James DiPietro, Administrative Director, noted that Item 3 is being removed from the agenda.

2. **Letter from Rogers, Morris & Ziegler LLC, dated 4/30/2018 concerning legal representation.**

a. Staff Report

Mr. DiPietro, Administrative Director, highlighted the history concerning this firm and their representation of the Board. He noted that Mr. Kramer of Rogers, Morris & Ziegler is leaving the firm. He drew attention to the options available to the Board.

Mr. Romney Rogers of Rogers, Morris & Ziegler, provided history relating to the firm and the current composition. He indicated that he is very familiar with the ins and outs of codes. If the Board chooses to stay with Rogers, Morris & Ziegler, he would be pleased to represent them on a regular basis. He highlighted his credential and experience.

Mr. Rogers responded to questions posed by members of the Board relating to the scope of the Board and representation at the Board meetings.

Mr. Charles Kramer provided history relating to his association with the firm of Rogers, Morris & Ziegler, acceptance of a position with the firm of Benson, Mucci, & Weiss and representing the Board. He explained that the Florida Bar precludes attorneys from discussing their intent to change law firms until after the prior law firm makes the announcement. He went on to explain how his move to Benson, Mucci, & Weiss would equate to better service to the Board, the Certification Committee and staff, and offer a greater pool of resources for construction, engineering, land use and real property expertise. The Board has seen his work, both written and in live argument. He will continue to be the individual attending the Board meetings as well as working with the administrative director and staff. He highlighted his understanding of the Board's role in general. He indicated that he is board certified in construction law and expertise of the attorneys at Benson, Mucci, & Weiss which will provide backup.

Some discussion ensued as to the current contract being with Mr. Kramer or the firm of Rogers, Morris & Ziegler.

Mr. Rice noted his experience in working with various boards and municipalities. He has found Mr. Kramer to be the most knowledgeable attorney about the Board's business. Mr. D'Attila elaborated upon his work on the Certification Committee with Mr. Kramer and that it would be detrimental to change attorneys. Some discussion ensued relating to billing and what is outstanding at this point in time. Mr. Lucas raised the idea of retaining Mr. Kramer for an additional month and request that both Mr. Kramer and Mr. Rogers submit a new fee schedule. It would give both the opportunity to submit resumes and fee proposals. More discussion ensued as to how the contract for services has been handled and what could be done going forward. Mr. Lucas commented that the work load has increased. It would be beneficial to know charges upfront. He favored a formal comprehensive package. He commented that Rogers, Morris & Ziegler has been the

Board's legal counsel since its inception. Chairman Lavrich felt selection of the professional is the important part as opposed to it being a monetary issue. A contract can be negotiated after the selection. Mr. Rice was most concerned with selection of the professional. If the price cannot be negotiated, then they could go to another individual.

Mr. Burr complimented Mr. Kramer on his knowledge of the Florida Building Code. He felt the Board has been well represented. Mr. Kamm concurred and pointed out the harmony in transition that Mr. Kramer could provide. He supported him continuing.

More discussion ensued about the contractual and selection of the professional aspects.

b. Board Action

MR. LUCAS MADE A MOTION AND MR. ULMER SECONDED THE MOTION FOR OPTION 1, CONTINUE BEING REPRESENTED BY ROGERS, MORRIS & ZIEGLER LLP.

During discussion of the motion, some dialogue ensued as to whether the Board would be breaking its current contract if it voted to retain Mr. Kramer. Mr. Kramer noted that the current contract is with him. It expires December 31, 2018. Rogers, Morris & Ziegler is not mentioned in the contract. He responded to the question of whether there would be a financial impact if he was not selected and indicated he had not thought about any sort of penalty in terms of contract breach. Mr. Rogers believed the contract is terminable at will. The client's right to choose and the contractual obligation are two different issues. He did not think there would be a breach either way.

Chairman Lavrich commented that Mr. Kramer's responsiveness and work for the Board have been excellent. He added that continuity is another factor to consider.

THE MOTION FAILED BY A VOTE OF 8-3. BOARD MEMBERS BURR, KAMM, GILES-NELSON, D'ATTILE, TAYLOR, RICE, SIMS AND FAMULARO VOTED NO. MR. ROURKE ABSTAINED FROM DISCUSSION AND VOTING. A MEMORANDUM OF VOTING CONFLICT, DATED MAY 17, 2018, IS ATTACHED TO THESE MINUTES.

MR. D'ATTILE MADE A MOTION AND MR. FAMULARO SECONDED THE MOTION FOR OPTION 2, CONTINUE BEING REPRESENTED BY CHARLES M. KRAMER. THE MOTION PASSED BY A VOTE OF 8-3. MR. LUCAS, MR. ULMER AND MR. TAYLOR VOTING NO. MR. ROURKE ABSTAINED FROM DISCUSSION AND VOTING. A MEMORANDUM OF VOTING CONFLICT, DATED MAY 17, 2018, IS ATTACHED TO THESE MINUTES.

See further discussion on page 5.

3. **Proposed formal interpretation #21. Alteration of existing smoke evacuation or smoke control systems based on 6th Edition (2017), FBC Existing Building, Chapter 14, Performance Compliance Methods; FBC Building, Chapter 4, Special detailed requirements based on use and occupancy; FBC Building, Section 909 Smoke control systems.**

This item was removed from the agenda.

4. **Recommendation to approve the Fiscal Year 2019 Budget request (October 1, 2018 – September 30, 2019)**

a. **Report of Administrative Director**

Mr. James DiPietro, Administrative Director, discussed the reserve level and its growth rate. He went on to discuss the concept of a rate reduction of 4.6%. He noted County policy is to assume 5% less than anticipated. With this assumption, along with the economy slowing down and a rate reduction, he felt revenue will still be close to \$3 million. It is also recommended that the appeal application fee of \$50 be discontinued. The fee has no bearing on the actual cost. Miami-Dade County does not charge.

Mr. Rice was impressed with the rate reduction proposal. Mr. Lucas felt it is the most responsible course considering the revenue balance and that construction does not seem to be declining. Mr. Burr was pleased with the educational program and public awareness.

MR. LUCAS MADE A MOTION AND MS. GILES-NELSON SECONDED THE MOTION TO APPROVE THE BUDGET PROPOSAL AS RECOMMENDED. THE MOTION PASSED BY UNANIMOUS VOTE.

5. **Revision to Policy 06-06 entitled “Program guidelines for countywide certification of inspectors and plans examiners of all disciplines within Broward County, including State of Florida restrictions on provisional and temporary certificates pursuant to administrative rule 61q219-6.012, issued by the Florida Building Code Administrators and Inspectors Board (BCAIB).**

a. **Report of Administrative Director**

Mr. James DiPietro, Administrative Director, explained that this has to do with a new State regulation. Broward County has the most progressive policy in the state where an individual can be certified in one city and are allowed to work anywhere (in the county), whereas anywhere else one has to be re-certified in order to work in a second city. The new regulation would mean that provisional and temporary certifications would only be issued to persons employed or contracted by an agency of government and the authority of the certification shall be limited to the jurisdiction of the government agency with which the applicant was employed or contracted at the time the certification was originally issued. Cards would be issued specific to the municipality or the County. Once the individual receives their State certification, their card will indicate authorization countywide.

b. **If desired, motion approving rule revision**

MR. BURR MADE A MOTION AND MR. LUCAS SECONDED THE MOTION TO ACCEPT THE PROPOSAL AS RECOMMENDED. THE MOTION PASSED BY UNANIMOUS VOTE.

6. **Request from the Broward County Fire Chiefs Association to contribute to the safety program educational training during the 2nd annual Summer Sizzle.**

a. **Letter of request**

Mr. Lucas described the program and organizations where other donations were received, noting it is public education for day care centers.

b. **Board Action**

MR. ULMER MADE A MOTION AND MR. D'ATTILE SECONDED THE MOTION TO AUTHORIZE A DONATION IN THE AMOUNT OF \$500. THE MOTION PASSED BY UNANIMOUS VOTE.

7. **Director's Report**

Concerning the previously authorized NFPA (National Fire Protection Association) classes, Mr. James DiPietro, Administrative Director, announced two classes that will be held this month.

8. **Attorney's Report** – none

9. **Committee Report** – none

10. **General Board Members Discussion** – none

2. **Letter from Rogers, Morris & Ziegler LLC, dated 4/30/2018 concerning legal representation.**

Chairman Lavrich asked that the Board authorize the director and himself to negotiate a contract with Mr. Kramer and submit the contract to the Board for approval.

MR. BURR MADE A MOTION AND MR. RICE SECONDED THE MOTION TO AUTHORIZE THE ADMINISTRATIVE DIRECTOR AND CHAIRMAN TO NEGOTIATE A CONTRACT WITH MR. KRAMER AND SUBMIT THE CONTRACT TO THE BOARD FOR APPROVAL. THE MOTION PASSED BY UNANIMOUS VOTE.

11. **Public Comment (3-minute limit per person) and written communication**

Mr. Jonathan Haigh advised that he is a landscape architect with Kimley-Horn in West Palm Beach. He referred to information in the agenda packet numbered Item 8, containing an appeal for modification to the Broward County Florida Building Code Amendments. He submitted the appeal request, was informed of the submission timeline associated with appeals and acknowledged it as being submitted for the Board's next meeting. Mr. Haigh went on to describe the circumstances leading up to the appeal. He had submitted component landscape plans for a park in Sunrise and they were rejected by the Building Official on the basis that Broward County's Chapter 1 exclude landscape

architects from submitting for building permit. He believed there is a misunderstanding by staff of Florida statutes and the Florida Constitution.

Mr. James DiPietro, Administrative Director, advised that he has spoken with their attorney and their attorney has been in contact with the Board Attorney. He did not know Mr. Haigh would be addressing the Board this evening. He has asked the Board Attorney to augment the staff report. More information will be forthcoming to the Board.

Mr. Kevin Cavaioli of 3030 NE 22 Way, Lighthouse Point, indicated he is also a landscape architect. He urged the Board to work with those individuals associated with this appeal for a quick resolution. There are a lot of major projects that are at risk if landscape architecture cannot be practiced in the Broward County. There is not a problem in the other sixty-six counties in the state.

In response to Mr. Rice, Mr. Cavaioli indicated the problem just arose in the City of Sunrise.

12. Adjournment

Having no further business to go before the Board, the meeting adjourned at 8:15 p.m.

A handwritten signature in black ink, appearing to read "D. L. Lavrich". The signature is written in a cursive style with large, looped letters.

Daniel Lavrich, P.E. – Chair

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME <i>Lucas Jeffrey</i>		NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE <i>Borg</i>	
MAILING ADDRESS <i>1511 SE 24 Ave</i>		THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: <input type="checkbox"/> CITY <input checked="" type="checkbox"/> COUNTY <input type="checkbox"/> OTHER LOCAL AGENCY	
CITY <i>Pompano Beach</i>	COUNTY <i>Broward</i>	NAME OF POLITICAL SUBDIVISION:	
DATE ON WHICH VOTE OCCURRED <i>5/10/18</i>		MY POSITION IS: <input type="checkbox"/> ELECTIVE <input checked="" type="checkbox"/> APPOINTEE	

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which would inure to his or her special private gain or loss. Each elected or appointed local officer also **MUST ABSTAIN** from knowingly voting on a measure which would inure to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent, subsidiary, or sibling organization of a principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies (CRAs) under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you are not prohibited by Section 112.3143 from otherwise participating in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on page 2)

APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, John Lucas, hereby disclose that on May 10 2018, 20 ____ :

(a) A measure came or will come before my agency which (check one or more)

- inured to my special private gain or loss;
- inured to the special gain or loss of my business associate, Fire Rescue Dept.;
- inured to the special gain or loss of my relative, _____;
- inured to the special gain or loss of _____, by whom I am retained; or
- inured to the special gain or loss of _____, which is the parent subsidiary, or sibling organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

If disclosure of specific information would violate confidentiality or privilege pursuant to law or rules governing attorneys, a public officer, who is also an attorney, may comply with the disclosure requirements of this section by disclosing the nature of the interest in such a way as to provide the public with notice of the conflict.

5/10/18
Date Filed

[Signature]
Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME Rourke Daniel Joseph		NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE Board of Rules and Appeals	
MAILING ADDRESS 18240 NW 19 ST		THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF:	
CITY Pembroke Pines	COUNTY Broward	<input type="checkbox"/> CITY	<input checked="" type="checkbox"/> COUNTY <input type="checkbox"/> OTHER LOCAL AGENCY
DATE ON WHICH VOTE OCCURRED 5-10-2018		NAME OF POLITICAL SUBDIVISION:	
		MY POSITION IS: <input checked="" type="checkbox"/> ELECTIVE <input type="checkbox"/> APPOINTIVE	

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing and filing the form.

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For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

* * * * *

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

* * * * *

APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you are not prohibited by Section 112.3143 from otherwise participating in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

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APPOINTED OFFICERS (continued)

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- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, Daniel Joseph Rourke, hereby disclose that on May 10th, 20 18 :

(a) A measure came or will come before my agency which (check one or more)

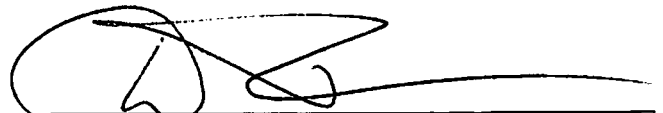
- inured to my special private gain or loss;
- inured to the special gain or loss of my business associate, _____ ;
- inured to the special gain or loss of my relative, _____ ;
- inured to the special gain or loss of I work with the new law firm on the ABCI board, by whom I am retained; or
- inured to the special gain or loss of _____, which is the parent subsidiary, or sibling organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

I serve on the board for ABCI which has a partner of law firm to which our current attorney is moving to.

If disclosure of specific information would violate confidentiality or privilege pursuant to law or rules governing attorneys, a public officer, who is also an attorney, may comply with the disclosure requirements of this section by disclosing the nature of the interest in such a way as to provide the public with notice of the conflict.

5/17/2018
Date Filed


Signature

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