

## MINUTES

### BOARD OF LANDSCAPE ARCHITECTURE

TELEPHONE CONFERENCE CALL  
850.414.5775 OR TOLL FREE 888.461.8118

GENERAL BUSINESS MEETING  
March 4, 2005

#### Call To Order

Mr. Davis called the meeting to order at 2:00 p.m.

#### Members Present

Elizabeth Gillick  
Paul Davis  
Elizabeth Marshall-Beasley  
Phillip Graham  
Collene Walter

#### Others Present

Diane Guillemette, Board Counsel  
Brian Higgins, Prosecuting Attorney  
Juanita Chastain, Executive Director  
Linda Tinsley, Government Analyst  
Maura Ziska  
James Towery  
Jeff Castor  
Marla Farnsworth, Court Reporter, For the Record

#### Discipline

##### **James M. Towery: Case Number 2004-021039**

Mr. Higgins advised the board that the case before them was a Motion for Waiver. He stated that on June 18, 2004 an administrative complaint was filed against the Respondent, James Towery. He stated that Mr. Towery received the administrative complaint on June 24, 2004 which gave him twenty one (21) days to respond. Mr. Higgins advised the board that he did not respond and the twenty one (21) day period expired on July 15, 2004. Mr. Higgins advised the board that Mr. Towery had waived his right to respond and waived his right to an administrative hearing and recommended that the board accept the Motion for

Waiver and subsequent to accepting said motion that the board move to discipline.

**MOTION:** Mr. Graham made a motion to accept the Motion for Waiver and move to discipline.

**SECOND:** Ms. Walter seconded the motion and the motion passed unanimously.

Ms. Guillemette advised the board that for the disciplinary matter before the board the Department had provided the administrative complaint, a copy of the investigative report, and the Department's recommendation for each file. She stated that the board should have received the material in advance. She stated that if there were any problems with the files such as missing pages or ineligible copies to bring to please bring it to the board's attention. She asked the board if there were any facts or reasons in which it would make it improper for them to deliberate on the case.

Ms. Gillick advised the board that she and Ms. Marshall-Beasley had to recuse themselves as members of the probable cause panel.

Ms. Ziska asked Mr. Higgins to explain in layman terms what the complaint is against Mr. Towery.

Mr. Higgins stated that Mr. Towery was assisting Mr. Mario Nivera, who was not licensed, in the practice of Landscape Architecture and he was practicing as a landscape architecture business without a certificate of authorization.

Mr. Ziska asked Mr. Higgins if that meant that Mr. Towery was not licensed.

Mr. Higgins stated that Mr. Towery had an individual license, however to do business as a DBA he needs a license from the Department of Business and Professional Regulation.

Ms. Ziska stated that Mr. Towery did not know he needed a license for his business because he is a one man office.

Mr. Higgins advised Ms. Ziska that Mr. Towery could work as James Towery but if he is incorporated he has to have a certificate of authorization.

Mr. Higgins advised the board that the Department's recommendation was, two (2) years probation, eight (8) additional hours of continuing education, two (2) satisfactory appearances before the board per year, a fine of two thousand dollars (\$2,000.00) and two hundred and forty two dollars and ninety nine cents (\$242.99) in costs. Mr. Higgins asked the board to accept the recommendation.

Ms. Walter advised the board that in the past the board has required that the back renewal fees be paid for the certificate of authorization.

Mr. Higgins advised the board that Mr. Towery had to pay them anyway if he wanted a certificate of authorization. Mr. Higgins stated that was a separate transaction.

Mr. Towery advised the board that he was not aware of any license he needed other than his personal landscape architecture license. He stated that this was the first he had heard of this.

Mr. Higgins advised Mr. Towery that the problem was not that he did not renew, he never had a certificate of authorization. He stated that if you plan to do business in a name other than your own name you have to obtain a certificate of authorization. He stated that the Department is not going to send a renewal for something that you never had.

Mr. Towery stated that how would he know he needed it if he never got any thing from the Department.

Mr. Higgins advised Mr. Towery that he had to read the statutes. He stated that it is the licensee's responsibility to know what the laws and regulations are.

Mr. Davis advised Mr. Towery that when you incorporate you become a second person the business entity also becomes a person. He stated that what the statute requires you to do is in addition to having an individual license is that the business also has to have a license to operate. Mr. Davis stated that the board also expects the licensee's to read the statute every year or two (2) to refresh their memory they do change over time.

Mr. Towery advised the board that if he knew he needed a certificate of authorization he would have taken care of it.

Ms. Walter stated that Mr. Higgins made reference to back fees that had to be paid for the certificate of authorization before it is issued. Ms. Walters stated that on a previous case the board required it as part of the penalty phase because the corporation had been practicing for those past years. She stated that if Mr. Towery, being a sole practitioner, does not want to continue pursuing the corporation, the corporation was able to practice without paying any fees for the last eight renewal cycles.

Mr. Higgins stated that this was a disciplinary matter and not a licensing matter.

Ms. Walter advised the board that she would like to make a motion that in addition to Mr. Higgins recommendation that Mr. Towery pay the back renewal

fees. Ms. Walter stated that he had been practicing for eight renewal periods and the amount would be thirty six hundred dollars (\$3,600.00).

Ms. Guillemette advised the board that was outside the disciplinary guidelines and could not be added to the penalty.

Ms. Walter advised the board that she would like to amend the penalty to require four (4) hours of the continuing education to be in laws and rules.

After discussion by the board the following motion was made.

**MOTION:** Ms. Walter made a motion to impose two (2) years probation, eight (8) additional hours of continuing education and four (4) of those hours must be in laws and rules, two (2) satisfactory appearances before the board each year of probation a two thousand (\$2,000.00) dollar fine and two hundred and forty two dollars and ninety nine cents (\$242.99) in costs.

**SECOND:** Mr. Graham seconded the motion and the motion passed unanimously.

Mr. Davis asked the board if there was any discussion on whether the appearances could be by telephone or in person.

Ms. Chastain asked the board if telephone meetings were acceptable.

Ms. Guillemette suggested that the board may want to consider requiring Mr. Towery to make one appearance in person and one meeting by telephone per year. She stated that Mr. Towery could decide which meeting he wanted to attend in person and by telephone.

Ms. Ziska and the board members stated that they agreed.

Ms. Ziska advised the board that Mr. Towery preferred a payment plan of five hundred dollars (\$500.00) per month.

**MOTION:** Ms. Walter made a motion to accept the payment plan as proposed.

**SECOND:** Mr. Graham seconded the motion and the motion passed unanimously.

## **Review of Continuing Education Courses**

**Continuing Education Course Renewal  
Red Vector.Com**

Ms. Walter advised the board that Red Vector.Com submitted eighteen (18) courses for renewal. She stated that all of the courses were previously approved by the board. She stated that the content had not changed since the board's previous approval.

**MOTION:** Ms. Walter made a motion to approve the following course renewal applications.

**SECOND:** Mr. Graham seconded the motion and the motion passed unanimously.

***A Wetland Primer for Design Professionals – 1 hour***  
***A Wetland Primer: Advanced Field Evaluation & Permitting Considerations for Design Professionals – 2 hours***  
***Alternative Dispute Resolution – Arbitration & Mediation – 3 hours***  
***Basic Civil Engineering – Asphalt – 1 hour***  
***Basic Civil Engineering- Sewage Treatment – 1 hour***  
***Basic Civil Engineering – Sewers & Sewerage – 1 hour***  
***Basic Civil Engineering – Water Distribution – 1 hour***  
***Basic Civil Engineering – Water Supply – 1 hour***  
***Coastal Engineering – Storm Surge – 1 hour***  
***Coastal Engineering – Tides – 2 hours***  
***Signage for Architects, Interior Designers & Landscape Architects – 2 hours***  
***Basic Civil Engineering – Culvert Design – 1 hour***  
***Parking Lot Storm Drain Design – 2 hours***  
***Culvert Sizing Using HY-8, Basics – 3 hours***  
***Culvert Sizing Using HY-8, Inlets – 3 hours***  
***PVC Pipe – Which Type Should I use? – 1 hour***  
***Introduction to Minerals soils – 1 hour***  
***Understanding Utility Cadd Standards – 4 hours***

**Discussion**

**Florida Department of Transportation  
Continuing Education Course Renewal**

Ms. Guillemette advised the board that she spoke with someone in Mr. Castor's office and they talked about filing a rule waiver. She stated that the board could not consider the matter until the petition for a rule waiver was filed.

Mr. Castor stated that he would have the petition to the board in time for the next meeting.

Ms. Walter asked for clarification if those that took the course would then receive credit.

Ms. Guillemette stated that if the board waives the rule then the course would have been valid at the time the licensee took the course.

### **Ratification List**

**MOTION:** Ms. Walter made a motion to approve the ratification list as presented.

**SECOND:** Mr. Graham seconded the motion and the motion passed unanimously.

### ***Certificate of Authorization***

Zamia Design Corp

### ***Endorsement***

Honathan Haigh, Robert Rosner

### ***Exam***

Michael Clanton, Vincent A. Filigenzi, Kelly Hughes

### **New Business**

Ms. Gillick stated that she was a little confused after listening to the board's deliberation on the Towery case and the board imposing a maximum fine of two thousand dollars (\$2,000.00). She stated that she had recollection that on other cases that the board did go back and access the past renewals that were skipped and fined in excess of five thousand dollars (\$5,000.00) for certain licensees.

Mr. Davis stated that those were not fines they were conditions of approval for licensure and certificates of approval.

Ms. Walter advised the board that in the disciplinary action heard last May the board made a finding that there were aggravating circumstances and harm to the public and it gave the board the ability to go beyond the guidelines.

Ms. Guillemette advised the board that in sub section three of the disciplinary guidelines it lists all of the aggravating and mitigating circumstances that the board could use to deviate from the guidelines.

Mr. Graham stated that there were two (2) open seats on the board and he asked who job it was to fill those seats.

Ms. Chastain stated that it was the job of the Governor's office and she stated that she had shared the board's concerns with the Division Director and the Governor's Office was aware of their concerns.

**MOTION:** Mr. Graham made a motion to adjourn.

**SECOND:** Ms. Gillick seconded the motion and the motion passed unanimously.

The meeting adjourned at 2:55 p.m.

