

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FLORIDA ENGINEERS MANAGEMENT CORPORATION,)	
)	
Petitioner,)	
)	
vs.)	Case No. 98-1877
)	
CRAIG J. EVANS,)	
)	
Respondent.)	
_____)	

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings by its duly designated Administrative Law Judge, Mary Clark, held a formal hearing in the above-styled case on October 21, 1998, in Tallahassee, Florida.

APPEARANCES

For Petitioner: Natalie A. Lowe, Esquire
Department of Business and
Professional Regulation
Board of Professional Engineers
1208 Hays Street
Tallahassee, Florida 32301-0750

For Respondent: E. Renee Alsobrook, Esquire
Post office Box 10426
Tallahassee, Florida 32302-0426

STATEMENT OF THE ISSUES

The issue for disposition in this proceeding is whether, as alleged in an administrative complaint dated February 20, 1998, Respondent Craig J. Evans committed negligence in the practice of engineering when he erroneously determined that a real property

parcel was not within the flood protection zone. If that violation occurred, an appropriate penalty must be recommended.

PRELIMINARY STATEMENT

Respondent disputed certain factual allegations of the administrative complaint and the case was referred to the Division of Administrative Hearings for formal hearing.

On June 19, 1998, pursuant to Section 471.038, Florida Statutes, duties assigned to the Department of Business and Professional Regulation regarding the Board of Engineers were transferred to the Florida Engineers Management Corporation (FEMC). The style of this case is amended to reflect that change.

After one continuance at the request of the parties, the hearing was held as described above.

At the hearing Petitioner presented the testimony of Fred Varn and Nevins Smith. Petitioner's Exhibits nos. 1-8 were received in evidence without objection. Petitioner's Exhibit no. 8 is a deposition of George Simonof.

Respondent testified in his own behalf and presented the additional testimony of Ted L. Biddy. Respondent's Exhibits nos. 1-6 were received in evidence without objection. In addition, at the request of Respondent and without objection by Petitioner, the Administrative Law Judge took official recognition of designated Leon County records and certain Final Orders of the Board of Professional Engineering.

The transcript of hearing was filed on November 5, 1998; the deposition transcript (Petition's Exhibit no. 8) was filed on November 18, 1998; the parties' Proposed Recommended Orders were filed on November 25 and November 30, 1998.

FINDINGS OF FACT

1. Respondent Craig J. Evans is and has been at all material times a professional engineer licensed in the State of Florida with license no. PE 0033652. He is currently practicing as a professional engineer, and is licensed as such, in St. Croix, U.S. Virgin Islands. In the approximate 15 years that Mr. Evans has been licensed as a professional engineer, the instant proceeding is the first disciplinary action or allegation of professional wrong-doing.

2. In October 1992, Mr. Evans was engineer of record for a residence being built for his father on a parcel now designated as 1588 Chadwick Way, Tallahassee, Florida. On or about October 10, 1992, Mr. Evans signed and sealed a Leon County Flood Protection Certification for the Chadwick parcel in Killearn Lakes, Unit 3, Lot 3, Block B M. This certification was a necessary component of the local permitting process. In the certification Mr. Evans stated that the parcel was at or above the flood protection elevation.

3. After the certificate was filed and the building permit was issued, Fred Varn, then a Leon County building inspector, spoke to Mr. Evans about the inspector's concern that the floor

level of the house might be too low. Mr. Varn was aware that some other properties in the area had flooded. Mr. Evans responded that he felt the level was safe, but he was willing to listen and he raised the floor level approximately 16 inches.

4. The house was built and Mr. Evans and his parents lived in it for a short time. It rained during that time and according to Mr. Evans, there was a little bit of flooding on the front of the property and a little of standing water in the back, but neither lasted long.

5. Mr. Evans' parents put the Chadwick house on the market and Mr. and Mrs. George Simonof expressed an interest in purchasing it. In response to the Simonof's surveyor's concerns about flooding, Mr. Evans or his father faxed the October 10, 1992, certification to the Simonofs on June 30, 1994. The Simonofs, in turn, provided the certification to their surveyor and lender.

6. On July 14, 1994, the Simonofs closed on their purchase of the Chadwick house.

7. In early October 1994, Tallahassee experienced severe rainstorms. Between October 6-12, 1994, the Simonof's property on Chadwick flooded. With the help of friends and neighbors, they filled sandbags and placed them around the house. The house did not flood but the backyard was filled with standing water.

8. Contrary to Mr. Evans' certificate, the property on Chadwick is within the flood protection zone. When he determined

the location of the flood zone, Mr. Evans scaled from Federal Emergency Management Area (FEMA) maps to a plat map showing the lot's location. He erred in the plotting process, a common error, but one that a prudent engineer would be more careful to avoid.

9. Initially, the Chadwick property appeared to Mr. Evans to be in the flood zone, so he rechecked his work by pulling certificates on two lots nearby and found they were not certified in the flood zone either. He was somewhat familiar with the property as he used to jog in the Killearn area. He had no personal knowledge of flooding there prior to his certification.

10. Mr. Evans did not exercise due care in preparing his flood zone certification and was negligent in the practice of engineering. If he had checked his plotting, he would have realized there should have been more distance between his 2100 and 1600 feet lines. Further, in close cases, a survey should have been obtained. It was not sufficient that Mr. Evans attempted to check his work against two certifications of other lots in the area; he did not know the engineers who did the work and could not be certain of their certificates' relevance or accuracy. He did not speak with other property owners in the area nor did he seek information from Leon County staff who would be familiar with flooding problems.

11. To Mr. Evans' credit he raised the house elevation upon query by the building inspector and the house did not flood. However, the buyers of the property relied on his erroneous certificate and suffered some loss due to the flooding.

CONCLUSION OF LAW

12. The Division of Administrative Hearings has jurisdiction in this proceeding pursuant to Sections 120.569 and 120.57(1), Florida Statutes.

13. In license discipline cases such as this, the agency must prove the allegations of its complaint with evidence that is clear and convincing. Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987); Department of Banking and Finance v. Osborne Stern and Company, 670 So. 2d 932 (Fla. 1996).

14. The agency has charged Mr. Evans with negligence in the practice of engineering in violation of Section 471.033(1)(g), Florida Statutes, and Rule 61G15-19.001(4), Florida Administrative Code. The referenced rule defines "negligence" as the failure of a professional engineer to utilize due care in performing in an engineering capacity or failing to have due regard for acceptable standards of engineering principles. "Professional engineers shall approve and seal only those documents that conform to acceptable engineering standards and safeguard the life, health property and welfare of the public."

15. The agency met its burden of proof in this case. Both

parties concede that the plotting error occurred. They and their respective experts differ, however, on whether the error constituted "negligence" within the meaning of the statute and rule.

16. Both experts agreed that an engineer should check his work; both agreed that in close cases a survey of the parcel should be used to determine whether the property is within or outside the flood protection area.

17. In similiar cases the Board of Engineers has assessed a fine as penalty for violations of the relevant statute and rule. The recommendation here is based on review of those cases provided by Respondent. Petitioner's counsel has made no suggestion for an appropriate penalty.

RECOMMENDATION

Based on the foregoing, it is hereby

RECOMMENDED: that the Board of Engineers issue its Final Order finding Craig Evans guilty of negligence and assessing a fine of \$750.

DONE AND ENTERED this 30th day of December, 1998, in Tallahassee, Leon County, Florida.

MARY CLARK
Administrative Law Judge
Division of Administrative Hearings
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Tallahassee, Florida 32399-3060
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Filed with the Clerk of the
Division of Administrative Hearings
this 30th day of December, 1998.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.