

Final Order No. BPR-2006-09500 Date: 12-15-06
FILED

Department of Business and Professional Regulation
AGENCY CLERK
Sarah Wachman, Agency Clerk

By: Brandon M. Nichol

STATE OF FLORIDA
BOARD OF PROFESSIONAL ENGINEERS

FLORIDA ENGINEERS MANAGEMENT
CORPORATION,

Petitioner,

vs.

FEMC CASE NO.: 02-0128
DOAH CASE NO.: 05-2049PL
LICENSE NO.: PE 10214

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2006 DEC 18 AM 11:51
DIVISION OF INE
ADMINISTRATIVE
HEARINGS

LESTER M. MAPLES, P.E.,

Respondent.

FINAL ORDER

THIS CAUSE came before the BOARD OF PROFESSIONAL ENGINEERS (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on October 26, 2006, in Ft. Lauderdale, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order and Exceptions to the Recommended Order, and (copies of which are attached hereto as Exhibits A and B, respectively) in the above-styled cause. Petitioner was represented by Bruce A. Campbell. Respondent was represented by, Alvin Peters, Esquire.

Upon review of the Recommended Order, the argument of the parties and after a review of the complete record in this case, the Board makes the following findings and conclusions.

RULINGS ON EXCEPTIONS

1. Petitioner's Exception One is granted. Rule 61G15-32.004, Florida Administrative Code, sets forth the minimum requirements for water-based fire protection systems and includes

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CLERK Jessica Baker

the point of service. First protection systems cannot be tested to ensure they will work; therefore the design must rely on the engineering calculations, and the calculations must be based on the point of entry. By Respondent's own admission, at page 39 of the hearing transcript, he did not comply with the requirements of the rule. Even if a contractor is responsible for the point of service, the engineer must know its location and properties.

2. Petitioner's Exception Two is granted on the grounds that the findings in paragraph 24 are not supported by competent substantial evidence.

3. Petitioner's Exception Three is granted on the grounds that the conclusion is a correct interpretation of the Board's rules. Rule 61G15-19.001(4), Florida Administrative Code, defines negligence to include failure to comply with the procedures set forth in the responsibility rules, including 61G15-32.004. Paragraph 31 is amended to read:

“31. Respondent's failure to include a point of service in the plans and calculations was negligent.”

4. Petitioner's Exception Four is granted to modify conclusions of law to address the defects in calculations and plans stated in paragraphs 7 and 8. The following conclusions of law are adopted:

32A. The system design reflected in the plans and calculation signed and sealed by Respondent on or about November 15, 2001, would not provide sufficient service to the hydrolically most demanding area.

33. The facts reveal the amended plans and calculations provided sufficient service to the hydraulically most demanding area. There was no question that the system was built with two pipes serving the women's shower room, and the Petitioner's expert opined that such service would meet the requirements.

5. Petitioner's Exception Five is granted as not supported by competent substantial evidence.

FINDINGS OF FACT

1. The findings of fact set forth in the Recommended Order are approved and adopted with the exceptions noted above and incorporated herein by reference.
2. There is competent substantial evidence to support the amended findings of fact.

CONCLUSIONS OF LAW

1. The Board has jurisdiction of this matter pursuant to Section 120.57(1), Florida Statutes, and Chapter 471, Florida Statutes.
2. The conclusions of law set forth in the Recommended Order are approved and adopted as amended by Petitioner's exceptions and incorporated herein by reference.

DISPOSITION

Upon a complete review of the record in this case, the Board determines that Respondent, LAWRENCE M. MAPLES, violated Section 471.033(1)(g), Florida Statutes, by being negligent in the practice of engineering. In addition, Respondent violated Section 471.033(1)(a), Florida Statutes, and Rule 61G15-23.002(1), Florida Administrative Code, by failing to affix a date to sealed plans.

IT IS HEREBY ORDERED AND ADJUDGED that Respondent shall pay an **ADMINISTRATIVE FINE** of \$10,000.00 within 30 days. The fine shall be made payable to the Florida Board of Professional Engineers, and sent to the Board at 2507 Callaway Road, Suite 200, Tallahassee, Florida 32303.


The license of LESTER M. MAPLES shall be placed on **PROBATION** for two years on the following terms: Respondent shall submit to the Board a list of projects completed by the Respondent at six and eighteen month intervals from the date that the Final Order is filed with

the Agency Clerk. A FEMC Consultant will select two projects from the list for review. Respondent is responsible for promptly furnishing any set of completed plans (signed, sealed and dated) and calculations requested by the Consultant. Respondent is also responsible for the Consultant's fees for reviewing the projects, and shall remit payment by check or money order made payable in the name of the Board's Consultant and shall remit said payment to the Florida Engineers Management Corporation within thirty (30) days from the date of invoice. Should the Consultant return an unfavorable report concerning Respondent's projects, that report shall be submitted to the Probable Cause Panel for determination of whether additional disciplinary proceedings should be initiated.

This Final Order shall take effect upon being filed with the Clerk of the Department of Business and Professional Regulation.

DONE AND ORDERED this 14th day of December, 2006.

BOARD OF PROFESSIONAL ENGINEERS



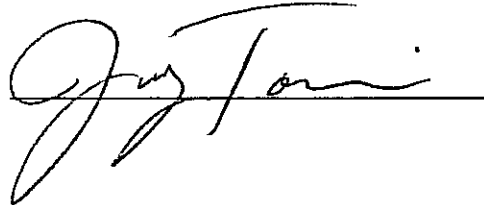
Paul J. Martin, Executive Director
for Henn Rebane, PE., Chair

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE FLORIDA ENGINEERS MANAGEMENT CORPORATION AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided by U.S. Mail to LESTER M. MAPLES, P.E.,c/o Alvin L Peters, Esquire, Peters and Scoon, 25 East 8th Street, Panama City FL 32401; to Stephen F. Dean, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; and by interoffice delivery to Patrick Creehan, Esquire, FLORIDA ENGINEERS MANAGEMENT CORPORATION, 2507 Callaway Road, Suite 200, Tallahassee FL 32303 and Lee Ann Gustafson, Department of Legal Affairs, PL-01 The Capitol, Tallahassee FL 32399-1050 this 15th day of DECEMBER, 2006.

A handwritten signature in cursive script, appearing to read "Lee Ann Gustafson", written over a horizontal line.

STATE OF FLORIDA
FLORIDA BOARD OF PROFESSIONAL ENGINEERS

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FLORIDA ENGINEERS
MANAGEMENT CORPORATION,

CLERK *Brandon M. Nichols*
DATE 10-26-2005

Petitioner,

Case No. 05-2049PL
FEMC Case No. 02-0128

v.

LESTER M. MAPLES, P.E.,

FILED
Florida Engineers Management Corporation
Clerk

Respondent.

CLERK *Jessica Baker*
DATE 10-26-2005

**PETITIONER'S EXCEPTIONS TO
RECOMMENDED ORDER**

Petitioner files with the Florida Board of Professional Engineers these exceptions to the Recommended Order entered in this case by the Division of Administrative Hearings on October 13, 2005.

EXCEPTION ONE

Petitioner takes exception to the last sentence of Finding of Fact 17 and Findings of Fact numbered 19 and 20, which state:

17. Under the contract for the sprinkler system, the general contractor was responsible for providing water to the fire riser and the sprinkler contractor was responsible for the system from that point. In sum, the plans incorporated those specifications given.

19. The Respondent was not responsible for designing or presenting plans for the underground water service "mainward" of the fire riser. The riser by definition is not underground service. Therefore, the Respondent was not responsible for that portion of the total system at which the point of service would have been designated.

20. No evidence was presented to establish that the definition of point of service creates a requirement for an engineer designing sprinkler system design to control the system design to that point. No evidence was

presented regarding the practices of the profession when this factual situation arises. No evidence was presented on the importance of the point of service in terms of sprinkler system, and no testimony was offered regarding how an engineer would sign and seal plans that were beyond the scope of the work he was engaged to do.

These paragraphs present two facts. First, Respondent's contract did not require him to design a system from the point of service in his fire protection design documents; second, in paragraph 17, the apparent finding that Respondent prepared his plans according to a set of specifications given by the contractor. The balance of the statements set out legal analysis and conclusion, not properly part of findings of fact.

Petitioner does not take exception to the fact that Respondent's contract did not require him to design the system from the point of service, but to argument and conclusion that he did not have responsibility to design from the point of service. The Board's rule requires that the Fire Protection Design Engineering Documents include The Point of Service as defined by Section 633.021, Florida Statutes.(capitalization as in rule)

Section 633.021(18), Florida Statutes provides:

"Point of Service" means the point at which the underground piping for a sprinkler system using water as the extinguishing agent becomes used exclusively for the sprinkler system. The point of service is designated by the engineer who sealed the plans for a system of 50 or more heads or by the contractor for a system of 49 or fewer heads.

In essence, the Recommended Order attempts to make a finding that Respondent was relieved of responsibility to design according to statute and professional rule because he entered into a contract that didn't require it. That is a

conclusion of law that would undermine all regulation of the profession by the Florida Board of Professional Engineers.

Paragraph 19 should be stricken because it is wrong as a matter of law. Paragraph 20 should be stricken because it is not supported by competent substantial evidence; indeed, it is a mere recitation of the absence of evidence. The last sentence of Paragraph 17 should be stricken because it is not supported by competent substantial evidence, is misleading and it conflicts with legal requirement.

The significance of the point of service is that the hydraulic calculations that show whether a system will function must be made back to that point. (Trans. pp. 115-117, 123, 170) The exhibits in this case established that the direction to the connection for the point of service totally changed from the plans to construction and the pressures shown on the plans were different from those used in the calculations. (Exhibits J-1, P-1 and P-2) Assuming a third party determines the point of service and resulting water pressure, it is only reasonable that the engineer's documents should include the point of service and water pressure that control the design.

Paragraph 19 should be replaced with a finding:

19. Respondent's plans and calculations do not include the Point of Service.

EXCEPTION TWO

Petitioner takes exception to Findings of Fact 24 and 25 which state:

24. No evidence was received regarding the customary practice in signing and sealing multiple versions of plans.

25. There was no evidence presented regarding amended calculations in support of the drawings. In the absence of such testimony, it is concluded that only one set of calculations were prepared, and they were determined by the approving authorities to be sufficient.

Paragraph 24 and the first sentence of Paragraph 25 should be stricken because they not supported by competent substantial evidence; they merely recite the absence of evidence. The second sentence of paragraph 25 should be stricken because it is a conclusion of magic that does away with the need to deal with the fact Respondent signed and sealed defective plans and calculations. Exhibits J-1 and P-1 still exist.

EXCEPTION THREE

Petitioner takes exception to Conclusion of Law, Paragraph 31. It implies agreement that Respondent did not include a point of service, despite proposed findings 17, 19 and 20, but concludes that failure to comply with the rule is not a substantive departure from standard engineering practice. This conclusion ignores Rule 61G15-19.001(4), Florida Administrative Code which defines as negligence the failure to comply with the procedures set forth in the Responsibility Rules adopted by the Board of Professional Engineers.

Paragraph 31 should be replaced with a conclusion:

31. Respondent's failure to include a Point of Service in the plans and calculations was negligent.

EXCEPTION FOUR

Petitioner takes exception to the absence of a conclusion of law addressed

to the defects in calculations and plans found in paragraphs 7 and 8. The subsequent amendments prove the significance of the defects. Logically, an additional conclusion of law should be added between existing paragraph 32 and 33:

32A. The system design reflected in the plans and calculations signed and sealed by Respondent on or about November 15, 2001, would not provide sufficient service to the hydraulically most demanding area.

Paragraph 33 should then be modified to provide coordination as follows:

33. The facts reveal the amended plans and calculations provided sufficient service to the hydraulically most demanding area. There was no question that the system was built with two pipes serving the women's shower room, and the Petitioner's expert opined that such service would meet the requirements.

EXCEPTION FIVE


Petitioner takes exception to the conclusions of Law in Paragraphs 35 and 36, as they refer to a previous case involving Respondent. The Recommended Order misidentifies the case number and misstates the facts of that administrative complaint. The proper DOAH case number was 02-4774, and in that case Respondent was found to have committed a technical violation because he dated the plans in the wrong place. In the current case, Respondent admits that he did not affix any date at all to the plans and calculations he signed and sealed, because he considered them to be preliminary plans. Thus, this is not the same violation addressed by the previous case. Failing to date plans and signing and sealing preliminary plans are two substantive violations of Rule 61G15-23.002. The last two sentences of paragraph 35 and all of Paragraph 36 should be stricken.

CONCLUSION

Adoption of the foregoing exceptions will result in a Final Order with one violation of Section 471.033(1)(g), Florida Statutes for negligence in the practice of engineering, with a penalty range from a reprimand and two years probation to a five year suspension and ten years probation; and an administrative fine from \$1,000.00 to \$5,000.00. The Final Order would also include one violation of Section 471.033(1)(a), Florida Statutes for violation of a Rule of the Board, with a penalty range from a reprimand and two years probation to a one year suspension; and an administrative fine from \$1,000.00 to \$5,000.00.

As the record stands, the subsequent amendment of the plans that provided adequate performance in the opinion of Petitioner's expert would mitigate the appropriate punishment.

10/25/05
Date


Bruce A. Campbell
Florida Engineers Management Corporation
2507 Callaway Road, Suite 200
Tallahassee, FL 32303-5267
Ph (850) 521-0500
Florida Bar No. 191163

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Response to Initial Order has been furnished to the attorney for Respondent by U. S. Mail to Alvin L. Peters, 25 E. 8th Street, Panama City, Florida 32401, on the 25 day of October, 2005.


Bruce A. Campbell