

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FLORIDA ENGINEERS)
MANAGEMENT CORPORATION,)
)
Petitioner,)
)
vs.) Case No. 05-2049
)
LESTER M. MAPLES, P.E.,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice a hearing was held on August 11, 2005, in the above-styled case by Stephen F. Dean, assigned Administrative Law Judge of the Division of Administrative Hearings, in Panama City, Florida.

APPEARANCES

For Petitioner: Bruce A. Campbell, Esquire
Florida Engineers Management Corp.
2507 Callaway Road, Suite 200
Tallahassee, Florida 32303

For Respondent: Alvin L. Petters, Esquire
Peters and Scoon
25 East 8th Street
Panama City, Florida 32401

STATEMENT OF THE ISSUE

Did the Respondent violate the provisions of Chapter 471, Florida Statutes, as alleged in the Administrative Complaint?

PRELIMINARY STATEMENT

The Petitioner filed a two-count Administrative Complaint against the Respondent on April 1, 2005, alleging that the Respondent, a licensed professional engineer, violated Chapter 471, Florida Statutes, by negligence in practice of engineering with regard to plans for the fire sprinkler system to be installed in the gymnasium at Gulf Coast Community College, and by failing to date said plans.

The Respondent requested a formal hearing, to consider disputed factual allegations contained in the Administrative Complaint, and raised laches and the statute of limitations as affirmative defenses. The case was referred to the Division of Administrative Hearings to conduct the formal hearing.

Prior to the hearing, the presiding Administrative Law Judge (ALJ) determined that the proceedings were not barred by laches or statute of limitations. At the hearing, the Respondent filed a motion to dismiss for failure to comply with Section 455.225(4), Florida Statutes, requiring a determination of probable cause by the probable cause panel. The ALJ presiding at the hearing denied the motion to dismiss, observing that laches did not apply in administrative proceedings against a board or agency, but that the Respondent was not precluded from showing that the delay in prosecution prevented the Respondent from presenting evidence due to loss, destruction or

unavailability of evidence or testimony. This was shown to be a problem as evidence was presented. See Tx-p. 21.

The Petitioner called four witnesses: Lester Maples, the Respondent; Gene Schmidt; Ken Caldwell; and Larry Simmons. The Petitioner introduced into the record Petitioner's Exhibits 1 through 4. The Respondent called Chris Thomas and Richard Lovejoy as witnesses, and testified in his own behalf. The Respondent introduced Respondent's Exhibits 1 and 2 into the record. The parties stipulated to the introduction of Joint Exhibit 1, calculations which accompanied the original drawings and were a part of the plans package.

Both parties filed Proposed Recommended Orders containing their proposed findings of fact and their arguments on the law, which were read and considered.

FINDINGS OF FACT

1. The Respondent is a licensed professional engineer.
2. The Respondent holds license number PE 10214.
3. The Respondent signed and sealed on or about November 15, 2001, a set of plans for the water fire sprinkler system for the new student gymnasium at Gulf Coast Community College consisting of three pages, and a set of calculations consisting of 14 pages for said sprinkler system. All discussions herein of sprinkler systems and the statutes related to such systems is limited to water-based systems.

4. The calculations are intended to show that the performance of the sprinklers is sufficient in the area defined by the National Fire Protection Association (NFPA) standards as the hydraulically most demanding. The hydraulically most demanding area is the 1500 square feet farthest away and highest from the "fire riser" or the source of water to feed to the system.

5. The area defined as the hydraulically most demanding was identified on the plans as being in the southwest corner of the building, taking the top of the plan as pointing due north, or that portion of the building on the bottom, left corner of the building consisting of the women's showers and women's toilets.

6. The calculations were generated by a computer based upon data provided on the size, height, length, and diameter of the pipes servicing the system and the number of sprinkler heads required in the hydraulically most demanding area. These calculations assume all the sprinkler heads in the hydraulically most demanding area will be activated, but no other sprinkler heads in the system will be activated.

7. The calculations, Joint Exhibit 1, contained an error regarding the nodes and their length. See page 3 of Joint Exhibit 1, Nodes 20 and 25 at the bottom of the page. The best demonstrative evidence of the nature of the error is contained

in Petitioner's Exhibit 3 in the diagram marked Piping Isometric. In sum, there should have been another node in the calculation of 61 feet.

8. Testimony was received regarding the plans, their modification and actual construction of the system. The best presentation of the ultimate construction is represented in Respondent's Exhibit 1, which clearly shows two service pipes into the women's shower area. According to the uncontroverted testimony of the contractor, the intent was always to have two pipes servicing this area, one suspended under the other on the same set of supports, each pipe servicing the same number of heads in the area of the women's shower room. This was not adequately shown in the original drawings, and a second drawing clearly showing the two pipes was prepared to satisfy the general contractor.

9. The calculations for the second pipe would be essentially the same as the first pipe because they are the same length and both have the same "load." There was testimony regarding new calculations supporting the plans, R-1, these calculations were introduced as R-2. They also show the pressure was adequate.

10. The plans were approved by the State Fire Marshall's Office, by the Department of Education, and the Petitioner's

expert witness opined that two pipes would supply sufficient water to service the area.

11. Credible testimony was received that the quality and performance standards for valves, alarm checks, and switches were contained in the specifications provided to the bidders by the general contractor. These were not necessary in the Respondent's plan.

12. Credible testimony was received that the entire project had one classification of hazard occupancy, as stated on the calculations, Joint Exhibit 1. No credible evidence was received that electrical or mechanical rooms have a different hazard occupancy and should have been treated any differently.

13. The Board's witness testified that one of the design approaches is hydraulic calculation, See Tx 75-75. It is clear from the calculations, Joint Exhibit 1, that this was the method used.

14. The installation of the backflow preventer was the responsibility of the general contractor and not part of the Respondent's responsibility. Further, pipes, valves, etc., were contained in the general contractor's specifications. Lastly, there is a four-inch check valve shown in the detail for the fire riser, which is a four-inch pipe and is the responsibility of the Respondent.

15. The source of water is city water, which is treated. There would be no microbial corrosion concerns.

16. The first page of the plans marked Petitioner's Exhibit 1, shows the fire riser as being located in the northwest corner of the building. The second and third pages show the fire riser as being located in the northeast corner of the building. Testimony was received concerning the modification of the plans to conform to the location of the fire main. Except for computation of the hydraulically most demanding area, location of the riser is not particularly important. The location of the fire riser was in fact, on the northeast corner, and this was the location used for calculation of the hydraulically most demanding area. The "as built" drawings, Petitioner's Exhibit 2, clearly show the riser in its proper location. To the extent that page one fails to reflect the same location as pages two and three, it is of no real significance.

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.

18. Section 633.021(18), Florida Statutes, defines the "point of service" as 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 statute provides that the point of service is designated by the engineer who sealed the plans for a system of more than 50 heads.

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 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 a 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.

Special Findings Regarding the Various Sets of Plans

21. As stated above, there were several sets of plans introduced at hearing. Petitioner's Exhibit 1 was identified as the set of plans signed and sealed by the Respondent; however, there was no evidence that these plans were used to build any

portion of the project. In fact, the testimony was to the contrary, that these plans were expected to be modified and were modified prior to construction.

22. Petitioner's Exhibit 2 was identified by Mr. Caldwell as a set of plans which he "red lined" as "as built" drawings after the construction was completed. He did not identify what iteration of the original plans he used; however, inspection and comparison show that they are virtually identical to the set, Petitioner's Exhibit 1. Mr. Caldwell qualified his additions to the plans to state that they reflected only what he could see without removal of tiles or materials.

23. Respondent's Exhibit 1 was identified by Chris Thomas as being plans that were amended to address the concerns of Mr. Schmidt. These plans show two pipes where the original plans showed one pipe servicing the women's shower room. Because of the delay in prosecuting this case and the losses due to storms these plans are received and accepted as definitive because to do otherwise would raise due process issues the Petitioner having been aware of the alleged problems since before the plans were executed.

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.

26. The Respondent admits that he did not date the calculations or the plans.

CONCLUSIONS OF LAW

27. The Division of Administrative Hearings has jurisdiction over the parties and subject matter pursuant to Sections 120.57 and 455.225, Florida Statutes.

28. The Board of Professional Engineers is authorized by Section 471.033(1), Florida Statutes, to discipline licensed professional engineers, and may revoke, suspend or otherwise discipline them for violations of the statutes and rules governing their professional conduct.

29. Count I of the Administrative Complaint alleges specifically that:

- a. The Point of Service is not accurately identified;
- b. The classification of hazard occupancy is not identified for specific rooms;
- c. The plans do not provide a design approach for the rooms primarily housing electrical or mechanical equipment;
- d. The plans show two different locations for the water main riser and a different water pressure than that used for calculations;
- e. The plans and calculations do not specifically identify the water supply nor

consider the potential for microbial induced corrosion;

f. The detail on the plans of the backflow preventer shows a six inch pipe, but the submitted check valve manufacturer's information uses a four inch pipe;

g. The plans and specifications lack quality and performance specifications for gate valves, alarm checks, trim switch, gong switch and tamper switches.

30. The allegations contained in subparagraphs b, c, e, f, and g, above, were not proven. See Finding of Facts 11, 12, 13, 14, and 15.

31. Considered in the light that the allegations of subparagraph a, above, are alleged to be negligence in the practice of professional engineering, they were not proven. See Findings of Facts 18, 19, and 20. The facts did not identify in the situation presented who would be responsible for identifying the point of service, and clearly did not establish that this was a substantive departure for standard engineering practice.

32. Considered in the light that the allegations of subparagraph d, above, are alleged to be negligence in the practice of professional engineering, they were not proven. See Findings of Facts 16 and 17. The facts did not clearly establish that this was a substantive departure for standard engineering practice. The allegations of subparagraph d, above, were not proven.

33. Regarding the allegations that the system as designed would not provide sufficient service to the hydraulically most demanding area, the facts reveal that the system as designed and built 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.

34. The allegations in Count I were not proven.

35. The Respondent admits that he did not date the plans at the time he signed and sealed them. He explained that this was because he viewed them as preliminary plans. He also explained that he has changed his practice and now stamps initial drawings as "Preliminary Drawings." This is a violation of Florida Administrative Code Rule 61G15-23.002 and Section 471.033(1)(a), Florida Statutes. This is a technical violation, the same one the Board found the Respondent guilty of violating several years ago in preparing a set of contemporaneously drawn plans. Since that time, the Respondent has altered his procedures and practices to conform to the Board's rule.

36. In light of the previous prosecution with identical results in DOAH Case Number 02-0128 and the willingness of the Respondent to admit not having properly dated the plans, it would serve no useful purpose to fine the Respondent for this

technical violation after forcing him to defend the other charges.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law set forth herein, it is

RECOMMENDED that the Board dismiss the complaint against the Respondent.

DONE AND ENTERED this 13th day of October, 2005, in Tallahassee, Leon County, Florida.



STEPHEN F. DEAN
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 13th day of October, 2005.

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.