

**CITY OF PORT ST. LUCIE
CONTRACTORS' EXAMINING BOARD MEETING MINUTES
JANUARY 12, 2012**

A Regular Meeting of the CONTRACTORS' EXAMINING BOARD of the City of Port St. Lucie was called to order by Chairman Flaxman on January 12, 2012, at 10:00 a.m., at Port St. Lucie City Hall, 121 SW Port St. Lucie Boulevard, Port St. Lucie, Florida.

1. CALL TO ORDER

2. ROLL CALL

Members Present: Michael Flaxman, Chairman
Martin Zientz, Vice Chairman
Arlene Brown
Robert Cseak
Richard Fopiano
Greg Oldakowski

Members not Present: Jason Parish (Excused)

Others Present: Rusty Bedell, Chief Building Inspector
Matthew Boettcher, Building Department
Mark Brockway, Building Permit Specialist
Donna Noto, Building Permit Specialist,
Building Department
Roger G. Orr, City Attorney
Kevin Pierce, Licensing Investigator,
Building Department
Jack Reisinger, Technical Services Manager,
Building Department
Carol M. Heintz, Deputy Clerk Supervisor

Mr. Reisinger said, "This Board is established by the City of Port St. Lucie City Council, has been assigned specific duties, and operates in accordance with local ordinances, state statutes, and the Florida Building Code. Members of this Board, with the exception of the Building Official's designee, serve without compensation. The Chairman of the Board is Michael Flaxman, and the Board is represented today by the City Attorney. The Board agenda today consists of six applications for Certificate of Competency, a list of applications approved by staff, two citation hearings, eight disciplinary hearings, Certification of Fines and Orders to Lien for nine citations, and several items under Old Business. If the Board has a question of any applicant, the applicant will be asked to come

down to the podium to speak on his or her behalf. Once the application has been approved, you may stay for the remainder of the hearing or you may leave. Approved applicants must wait until Friday, January 13, 2012, to come to the Licensing Office of Building B with all documents and fees to receive their Certificate of Competency. Please direct any questions you may have prior to the meeting to the staff table at the front row. As a reminder, this meeting is televised and will be aired on Channel 20 several times during the next month. We ask that you turn off all cell phones, and conduct yourselves accordingly."

2. SWEARING IN OF STAFF

The Deputy Clerk Supervisor administered the Oath of Testimony to Kevin Pierce, Mark Brockway, Matthew Boettcher, and Donna Noto.

3. APPROVAL OF MINUTES - NOVEMBER 10, 2011

There being no corrections, the minutes were unanimously approved.

4. APPLICATIONS FOR CERTIFICATE OF COMPETENCY

<u>APPLICANT NAME</u>	<u>TRADE</u>
Richard Edmunds	Carpenter
Fabian Leon	Painting
Peter Gianotti	Painting

Mr. Cseak **moved** to approve the applications of Richard Edmunds, Fabian Leon, and Peter Gianotti. Ms. Brown **seconded** the motion, which **passed unanimously** by voice vote.

5. APPLICATIONS FOR CERTIFICATE OF COMPETENCY - GRANDFATHERED

<u>APPLICANT NAME</u>	<u>TRADE</u>
Fiore Abruzzese III	Stucco

The Deputy Clerk Supervisor administered the Oath of Testimony to Fiore Abruzzese III. Mr. Cseak said, "It says that an injury is the reason you were laid off. Do you feel you're going to be able to perform this job?" Mr. Abruzzese replied in the affirmative. Mr. Cseak stated, "We're always trying to protect the people, and between Workers' Comp and lawsuits, we worry about that." Mr. Abruzzese noted, "I'm just glad to be back working again. My knee is great now." Ms. Brown asked, "Do you

have someone in your company who handles the books?" Mr. Abruzzese replied, "I have an accountant." Mr. Cseak **moved** to approve Mr. Abruzzese. Ms. Brown **seconded** the motion, which **passed unanimously** by voice vote.

6. APPLICATIONS FOR CERTIFICATE OF COMPETENCY - HARDSHIP

<u>APPLICANT NAME</u>	<u>TRADE</u>
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Michell Valderramos	Painting
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The Deputy Clerk Supervisor administered the Oath of Testimony to Michell Valderramos. Chair Flaxman said, "You have your Business and Law exam, and you did well. It's the trade part that you're having a problem with." Mr. Valderramos stated, "I took a class with Ms. Noto for the Business and Law and that's why I did well. I never made the painting part." Chair Flaxman asked, "Have we issued painting licenses before?" Ms. Noto replied in the affirmative, and noted, "The difference with this is that he won't be able to reciprocate anywhere. He will continue to take the exam, so that he can reciprocate in other municipalities. They're not going to accept reciprocity without a passing grade. We could always approve with probation or something to that affect if you're uncomfortable with it." Ms. Brown asked, "Aren't you allowed to take two exams a year?" Ms. Noto replied, "The City of Port St. Lucie doesn't have a restriction on that. He can take it every month if he needs to. I know that Mr. Valderramos has actually looked into taking prep courses for that exam, but they don't offer them for the local painting exam." Ms. Brown commented, "So he's trying." Ms. Noto pointed out, "Very much so." Vice Chair Zientz **moved** to approve the application of Mr. Valderramos. Ms. Brown **seconded** the motion, and asked, "Because you have had some issues with your credit, do you have someone who will be helping you to make sure the bills will be paid timely, or are you going to be in charge of everything?" Mr. Valderramos replied, "I'm going to have to find someone. I'm only pressure cleaning now, and I don't need anyone for that. I will handle that myself. To do painting, I know that I have to get someone to help me. I've already talked to a guy who is in charge of payroll, Workers' Comp, etc. He's waiting for my notice that I received the license for painting." The **motion passed unanimously** by voice vote.

7. APPLICATIONS FOR CHANGE OF STATUS

<u>APPLICANT NAME</u>	<u>TRADE</u>
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Nicholas Tubito	Painting - Qualify as a City entity
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Ms. Cseak **moved** to approve the application of Nicholas Tubito. Mr. Oldakowski **seconded** the motion, which **passed unanimously** by voice vote.

8. SWEARING IN OF APPROVED CONTRACTORS

The Deputy Clerk Supervisor administered the Oath of Testimony to Richard Edmunds, Fabian Leon, Peter Gianotti, Fiore Abruzzese III, Michell Valderramos, and Nicholas Tubito. Chair Flaxman asked, "Do you understand that you will be legally responsible for every job undertaken by this business?" Mr. Edmunds, Mr. Leon, Mr. Gianotti, Mr. Abruzzese III, Mr. Valderramos, and Mr. Tubito replied in the affirmative. Chair Flaxman asked, "Do you understand that you will be financially responsible for every job undertaken by this business?" Mr. Edmunds, Mr. Leon, Mr. Gianotti, Mr. Abruzzese III, Mr. Valderramos, and Mr. Tubito replied in the affirmative. Chair Flaxman asked, "Do you understand that you are required to approve the work done on every job undertaken by this business?" Mr. Edmunds, Mr. Leon, Mr. Gianotti, Mr. Abruzzese III, Mr. Valderramos, and Mr. Tubito replied in the affirmative. Chair Flaxman asked, "Do you understand that your license is dependent upon how seriously you take these responsibilities?" Mr. Edmunds, Mr. Leon, Mr. Gianotti, Mr. Abruzzese III, Mr. Valderramos, and Mr. Tubito replied in the affirmative.

9. APPLICATIONS APPROVED THROUGH ADMINISTRATION (No Board Action Required)

<u>APPLICANT NAME</u>	<u>TRADE</u>
Thomas Knight	Tile & Marble
Craig Mahan	Tile & Marble

10. APPLICATIONS APPROVED THROUGH RECIPROCITY (No Board Action Required)

<u>APPLICANT NAME</u>	<u>TRADE</u>	<u>JURISDICTION</u>
Sal Destefano	Painting Contractor	Palm Beach County
Matthew Borgstrom	Child Safety Barrier	Palm Beach County
Paul Heaton	Electrical Contractor	Palm Beach County

11. CITATION HEARINGS

INVESTIGATOR KEVIN PIERCE

Citation #14519, Frank Balleste, \$760, Engage in the business of a contractor without being duly certified/registered, and

Citation #14520, \$760, Practice contracting unless the person is certified or registered.

Mr. Reisinger said, "We do have a letter asking for a continuance from his attorney." Mr. Cseak **moved** to grant a continuance until the next meeting. Vice Chair Zientz **seconded** the motion, which **passed unanimously** by voice vote.

12. DISCIPLINARY HEARINGS - TABLED

City of Port St. Lucie, Kevin Pierce, versus Arthur West, Florida Solar East

Violation of: FBC 1054 and PSL City Code 150.105.4, Conditions of Permits

Mr. Reisinger stated, "This complaint was originally heard on November 10, 2011, and tabled to this meeting in order for the contractor to obtain compliance. The complaint was filed by the City of Port St. Lucie Licensing Investigator Kevin Pierce against the license of Arthur West, Certified Solar Contractor, doing business as Florida Solar East. The contractor is charged with violating the FBC 105.4 and PSL City Code Section 150.105.4, Conditions of a Permit." Mr. Pierce stated, "The contractor was given time to come into compliance with respect to four addresses. As of 8:30 a.m., no replacement permit has been obtained for the work at 559 Ocean Spray or 116 SW Wind Court. The contractor has not complied. Permit #1111568 was obtained to replace the expired permit at 1149 SE Marisol, and Permit #1104561 was obtained to replace the expired permit at 5960 SW Baylor. The contractor has complied at these addresses. Compliance on a voided or expired permit requires not only obtaining a replacement permit, but getting a passed inspection. The complaints against the contractor at the Ocean Spray and Wind Court addresses remain. He has not complied." (**Clerk's Note:** Mr. West was not present).

Chair Flaxman asked, "Have you heard from Mr. West?" Mr. Pierce replied in the negative. Vice Chair Zientz asked, "How long did it take him to come in compliance with Marisol and Baylor after the last meeting?" Chair Flaxman noted, "I think we can take care of these. Two months is enough time to take care of these." Mr. Pierce commented, "On multiple occasions where we have had need to meet with Mr. West or discuss issues with Mr. West, I have met Mr. West once. Every other conversation that I've had with regard to any violations by Florida Solar East or Mr. West has been had with other individuals representing him." Ms. Noto said, "To answer your question, the two addresses that he is in compliance with, those were on the day of the hearing. Either

they had just picked them up that morning, or they had picked them up right after the meeting, and then got the inspections within a month. I had left a message for Mr. West at the end of December regarding Wind Court and a permit that he had pulled on that property, which I thought was to replace the expired one, but it was for pool solar. The one that was expired was water heater. I called to let him know he's not in compliance, and he never returned my call."

Ms. Brown said, "Based on the testimony heard today and the evidence produced by the parties of this case, I **move** to find that the following facts did occur, and the Conclusions of Law are as follows: On September 12, 2011, a complaint was filed by the City of Port St. Lucie against the license of Arthur West pursuant to Port St. Lucie City Code 150.520.2. Notice was achieved by certified mail. The contractor has been charged with and did violate FBC 150.4 and Port St. Lucie City Code 150.105.4." Mr. Cseak **seconded** the motion, which **passed unanimously** by voice vote. Ms. Brown asked, "Are there any prior disciplinary actions in the contractor's file?" Chair Flaxman replied, "On 2/12/2009, no permit, letter of reprimand, and on 5/14/08, no permit citation, \$500." Ms. Brown stated, "Based on the Findings of Fact and Conclusions of Law, I **move** to order the following disciplinary action: Suspension of permitting privileges for 180 days, and pay the administrative fee of \$205." Vice Chair Zientz **seconded** the motion, which **passed unanimously** by voice vote. Mr. Oldakowski asked, "Is he going to pull permits?" Ms. Noto replied, "He can obtain permits for the violations and get them in compliance, but not for 180 days on any new work." Ms. Brown noted, "I **move** to recommend to the CILB suspension of certification or registration for 180 days." Mr. Cseak **seconded** the motion, which **passed unanimously** by voice vote.

City of Port St. Lucie, Kevin Pierce, versus James T. Clark, Jr., Coastal Environmental DBA Vacuvent

Violation of: FBC 105.4 and PSL City Code 150.105.4, Conditions of Permits

Mr. Reisinger said, "This complaint was originally scheduled for November 10, 2011, and tabled at the request of the contractor until this meeting. The complaint was filed by City of Port St. Lucie Licensing Investigator Kevin Pierce against the license of James T. Clark, Jr., a Certified Air Conditioning contractor, doing business as Coastal Environmental DBA Vacuvent. This contractor is charged with violating the FBC 105.4 and PSL City Code Section 150.105.4, Conditions of a Permit." Mr. Pierce stated, "As of 8:30 a.m., replacement permits have been obtained

for the work at 201 Todd and 792 Majestic. Inspections at both of these addresses have failed. This is the third permit obtained for work at these two addresses. The remaining addresses in the complaint have not passed inspections. The permits for these addresses were replacements for expired permits, and have also now expired for lack of approved inspections. The contractor is not in compliance."

DIANE PERIERA, Counsel for Mr. Clark, noted, "I would like to go through each of these properties, because I think there's information that might not be available to Mr. Pierce, or perhaps to the Board, and I think it is relevant with regard to these charges. The first property is 792 Majestic, and that's the Nina residence. There is a new permit that has been obtained, but regrettably the homeowner is uncooperative, and has not allowed the contractor access to the property. The contractor has tried on many occasions as recently as a few days ago. To my understanding, the circumstances are that the contractor initially contracted with Mr. Nina, and Mr. Nina has passed away. They have not been able to successfully communicate with Ms. Nina about having access to the property and about making any corrections that need to be made. I think that, at some point, the homeowner has to take some responsibility for the property, for the permit. If the homeowner wants to transfer their permit to someone else, Mr. Clark will cooperate and do anything he can to facilitate that." Chair Flaxman asked, "Did Mr. Clark come in to address that situation where he couldn't get access to the property?" Ms. Noto replied, "No, and the homeowner is here."

Chair Flaxman pointed out, "That could have been handled very easily, because I'm a contractor and I've been through this. You come into the Building Department and explain what's going on. They will help you get through this." Ms. Periera remarked, "I'm not sure who they had communication with, but it's my understanding that Mr. Clark's staff has been in contact with people in the Building Department, and they have explained this. In certain circumstances the inspectors have gone out there and have not been allowed access. I don't know that it's true for this property, but I know it's true for other properties." Chair Flaxman asked, "Are we talking about 792 Majestic?" Ms. Periera replied, "Yes. There was an inspector there on January 6, so he has communicated with the Building Department." Mr. Pierce said, "Mr. Clark has had no contact with me as the investigator on the case. I want to read to you the inspector's notes on Permit #1007436, 7/30/10. The inspector's notes included the following: mark heater size and check breaker; low voltage cable missing; wire nuts; seal return at filter grill; return platform at drain fittings not sealed; blue condensate fittings no float switch;

missing connector at power cable; missing grill in house; seal plenum to air handler; mark heat size on air handler; identify air handler breaker in panel; illegal romex connection to air handler; seal plenum back at condensate piping; glue condensate piping together; seal interior and plenum box; inspection on 3/28/11 failed; seal plenum to air handler; mark heat size on air handler; identify air handler breaker in panel; illegal romex connector to air handler; seal plenum back at condensate piping; glue condensate piping together; and seal interior of plenum box."

Mr. Pierce continued, "There was a second replacement permit at the same address, Permit #110449. Inspection 9/26/11, failed by hand ticket - sealed duct board at filter grill; missing romex connector at air handler unit; no float switch at overflow fitting; and missing wire nuts on low voltage." Ms. Noto stated, "The recent inspection on the 10th was that there was no access, no one home for the inspection. It could mean that they didn't let the property owner know. He has been there quite a few times." Chair Flaxman noted, "I'm a licensed contractor. When I have an inspection, I do my best to make sure that I or one of my employees is at the property for the inspection." Ms. Periera commented, "In regard to this particular property, it has been a problematic property and I don't think those rise to the level of a willful Building Code violation. I think you do see a concerted effort." Chair Flaxman pointed out, "We have inspections that failed for life and safety, and that could cost a number of financial problems for the customer." Ms. Periera remarked, "I don't know if that's speculative. My understanding of their conversations with her is that she chose to hire someone else. That's what she told Mr. Clark's office. If she did, then the permit should have been transferred. The work should not have been done under Mr. Clark's permit, and they should have been notified of that."

Mr. Pierce said, "The reason that this complaint has been brought for willful Building Code violation is because the FBC required an approved inspection be obtained every 180 days. If an approved inspection is not obtained within the 180-day period, by FBC standards, the permit expires. The willful Building Code violation is for multiple addresses where the contractor failed to get a passed inspection. We have established that. The statements about the homeowner hiring another contractor would be a contractual thing between the homeowner and the contractor. The contractor that the complaint is against, in this case, is within his rights to come in and fill out a Hold Harmless and go through a process to remove himself from a permit if he feels that the homeowner has been uncooperative. To date, I have not been contacted with regard to

any attempt by the contractor to fill out such a Hold Harmless, and our staff is indicating that there has been no Hold Harmless submitted by the contractor at this address." Ms. Periera stated, "With regard to this address, there has not been a Hold Harmless submitted, because there have been ongoing efforts to satisfy the consumer that have been unsuccessful. With regard to the Building Code violations and the willful nature of it, Mr. Clark was sent a Notice of Non-Compliance on April 7, 2011, and I understood that was his notice and it initiated this proceeding."

Ms. Periera continued, "Within the 30 days, by May 4, 2011, he had obtained the permits, and he had started to make efforts to try to resolve these issues. There was a period of time where there was a lack of communication in his office, and things were not conveyed to him as quickly and accurately as they should have been. I think the notes in your staff's file and the notes that I've seen agree. They have admitted that and they have made efforts and they no longer have these ongoing issues. If he's put on notice for the first time by the City that there's a problem and he's given 30 days to commence his corrective work and he does that, and it's an ongoing process, I don't think that demonstrates a willful and deliberate violation. There is an issue with the permit and it does violate the Code, but there are provisions and procedures in place to correct that. Also, trying to lump all of them together to demonstrate one willful Building Code violation is not proper, because I've asked if we can analyze each of the properties separately." Chair Flaxman noted, "I think the City is being nice by not making these individual violations. This could cost him a lot of money. We can do that."

Mr. Pierce commented, "We want to be kind to the contractors, because we recognize that there are issues sometimes with contractors. With regard to the issue about it being willful, two points are pertinent. The FBC clearly states that an approved inspection is required every 180 days. In order to become a state certified contractor, you are required to be aware that it is by default that you are aware of the FBC. Therefore, failure to comply with the FBC by default makes it willful and deliberate. It's up to the licensed contractor to follow through with the requirements of the FBC." Mr. Cseak asked, "Hasn't he done this twice with this property?" Mr. Pierce replied, "Right. In addition, I read in my narrative this morning that in all but two cases these permits that are now expired are the second permits for work at the same addresses that have failed to get an inspection. On the address at Todd and Majestic, we have three permits for the same work, and compliance requires a passed inspection. Although 201 Todd and

792 Majestic have the third permit for the same set of work, they have also failed their inspections. Given that we don't have compliance, I feel we have more than established that the contractor did willfully and deliberately disregard the FBC."

The Deputy Clerk Supervisor administered the Oath of Testimony to Pearl Nina and Jeanne Sunafrank, daughter of Ms. Nina. Ms. Sunafrank said, "This all started in June 2010, and this is now January 2012. My mother has not been uncooperative at all. She has tried every possible way to contact the contractor, the subcontractors. She has made numerous calls to a number of people. Every time she makes another telephone call, the person she spoke to the last time is no longer with that company." Ms. Nina stated, "The fact that you have called me many times and I've not responded, I question that. If you had left a message, you would have gotten a call back." Chair Flaxman asked, "Would you be willing to let Mr. Clark come back and finish the work?" Ms. Nina replied, "Absolutely not. I've had it completed, and I had to pay extra for that. I don't want anything to do with them." Mr. Pierce stated, "Given those statements, Mr. Clark would be eligible to come in and fill out a Hold Harmless to remove himself from this permit." Ms. Noto commented, "Mr. Clark pulled a permit for the air conditioning change out, which he performed. There are issues with the change out, so the company that she hired to fix it didn't actually do the change out. They did service work to bring it up to Code. I don't know if that would actually require him to come off the permit or not, because he did the actual air conditioning change out. The company that she hired to bring it up to Code and fix the issues did not perform that change out."

Mr. Pierce noted, "Hold Harmlesses are not automatically granted. The particulars of the case are reviewed, and in most cases, a site inspection is performed. Then it's up to the Building staff and the Building Official to determine if the Hold Harmless would be granted to the contractor." Mr. Reisinger commented, "One of the reasons would be if there was no access granted to the inspector, and it was impossible to actually do the inspection. In one of these cases where the inspection was performed and there were obvious violations of the Building Code, we definitely wouldn't let that be a pass for the contractor to pass onto a new contractor. There are some serious violations there and they have to correct those, or the Board would take action against them for those violations." Mr. Cseak pointed out, "It sounds like this contractor made a lot of money doing an install and never corrected the problem. Now the homeowner has had to pay more money to get the problem corrected." Ms. Periera remarked, "When Mr. Pierce talked about the chronology of the permits, there were corrections made from

the first inspection." Mr. Cseak asked, "How many months has it been since this has been done?" Ms. Periera replied, "I'm a construction lawyer and a former DBPR CILB prosecutor, so I understand exactly what your role is and what your concerns are. I'm here on behalf of Mr. Clark trying to resolve them, because I think they can and will be resolved. With regard to this property, some of it that failed the first time has already been repaired. I know there was a second inspection and there were other comments that might have had to have been addressed, but I also think that as willing as Mr. Clark is to do what he needs to do to resolve the issue for Mrs. Nina, if she's going to bring in another contractor, I would like the contractor identified. I hope that they were licensed. I think Mr. Clark should be able to know what they did. If there was any consumer injury as a result of that, we would like to have the opportunity to know what it is, so that we can address that as well. If the homeowner isn't going to let him on the property, she's not going to let him do the work, and she's testified that she's had the work done, then I don't know what else Mr. Clark can do with regard to the permit. I don't think it's good for the homeowner to have an open permit on her property either. It needs to be inspected, and we need to. . . ."

Mr. Cseak asked, "On the second failing were there similar items that failed the second inspection?" Mr. Pierce replied, "On 7/30/10, Permit #1007436, the inspector's notes state that there are missing wire nuts on low voltage and no float switch. On Permit #1104449, which is the second one, there's no float switch and missing wire nuts at low voltage. We have from 7/30/10 to 9/26/11, one expired permit, a new permit with more than a year passing between the two, and the same problems remaining." Mr. Oldakowski said, "I think we've identified enough issues with this first address. He has two permits, and he has failed three in a row for the same work. Let's move to the next one." Ms. Periera asked, "When did you have someone else do the work on the property?" Ms. Nina replied, "I believe that was last November." Ms. Periera asked, "Can you please identify the company?" Ms. Nina replied in the negative. Mr. Cseak stated, "She doesn't have to. This isn't about who she hired. It's about your client not doing his job." Ms. Periera noted, "I'm just trying to gather as much information as I can, so that we can address whatever it is we need to address with her." Ms. Brown asked, "Why isn't he here? Where is he?" Ms. Periera replied, "He's in South Carolina." Ms. Brown asked, "Is that where his business is now?" Ms. Periera replied, "No. He has homes here and in South Carolina."

Vice Chair Zientz commented, "We have a captain of a ship, the ship is wandering, and you're in control of the ship when he's

not here." Ms. Periera pointed out, "As a state licensed qualifier he is responsible for supervising his work. He is able to delegate certain responsibilities to qualified people, and he is in Florida frequently." Mr. Cseak remarked, "He is responsible for every ounce of work done by his company." Ms. Periera said, "His supervisory staff is competent. A number of these issues with regard to communication have been addressed. I'm not arguing that there weren't problems. I just think that they have been resolved. You don't see new things coming up with this contractor, and he is supervising the work." Mr. Pierce stated, "I count 24 permits since he became registered with us for work. Out of those 24 permits, 14 are voided and two are currently not in compliance." Ms. Periera noted, "With regard to those two from a due process perspective, if there were charges that were going to be brought up to him for those two other permits, then he should have received notice and had an opportunity to respond. I think it's inappropriate and improper under the law for you to raise those at this time. However, I will say with regard to the two permits that I see them in the file and he has been made aware of them. He's in the process of taking corrective action."

Mr. Pierce commented, "With regard to the impropriety of it, all of these 14 permits that are in violation were part of the notification to Mr. Clark. The reason I make the statement about the two permits being in noncompliance is because those are direct references to the permits at Todd and Majestic, wherein the policy requires that if you're going to be in compliance with regard to an expired permit, not only do you have to get a new permit, but you have to get a passed inspection. On those two properties, it's the third permit, same set of work, both failed inspection for the same kinds of issues." Chair Flaxman asked, "Did you want a continuance until the next meeting?" Ms. Periera replied, "No. We had asked for a continuance from the November meeting, and that was because of my availability. I was unable to attend." Chair Flaxman said, "Mr. Clark did not plan on coming. He was going to have you come no matter what. Is that correct?" Ms. Periera replied, "I can't say that he wasn't planning on coming. I think that he wanted counsel to appear with him on his behalf regardless. With regard to the property at 201 Todd. . . ." Chair Flaxman said, "I'm almost tempted to have the Board make a motion to continue this to the next meeting, and separate these out as individual cases."

Ms. Periera stated, "I think procedurally that would be improper. You've brought charges against him. We're here today to address them." Chair Flaxman noted, "We're starting to treat each one of these as individual, so I don't think it's fair to. . . ." Ms. Periera commented, "I'm asking that you consider each

property individually with regard to the permit, because there is a property where the house is abandoned, it appears to be foreclosed, there's trash everywhere, the taxes haven't been paid, and there's nothing he can do with regard to that. There's another property where the homeowner was served with a Hold Harmless letter, and he has taken the actions required by the City to be removed from the permit. I don't see that reflected in your records, but I have the documentation that his former counsel submitted, and that's why I'm asking you to consider these properties individually. I don't think that some of them really rise to the level of a willful Building Code violation when there are circumstances beyond the contractor's control."

The City Attorney stated, "I need to understand what your position is, because if they find either one of them supports discipline, you can see that they can impose discipline based upon either one. They don't have to find a problem with both." Ms. Periera noted, "I agree." The City Attorney commented, "I need to understand, because. . . . Do you want or are you agreeing that the Board can proceed on this case looking at both addresses and both permits?" Ms. Periera replied, "I agree that the Board can look at all of the permits that were listed in this complaint." The City Attorney remarked, "Okay." Ms. Periera pointed out, "I'm just trying to give the Board some of the history and background about these permits, because it reflects on Mr. Clark, on his efforts, and on certain circumstances being beyond his control. Even if they find him guilty with regard to one property or two properties and they don't the others, then that's still important to Mr. Clark." The City Attorney said, "It's important to Mr. Clark and that's fine. Then we can proceed the way we're going. I don't suggest that we break these up and have different cases at this point. We have noticed it for these permits together. Let's proceed, but I would suggest to the Board that even if you find everything is copasetic on one and you find problems with another, it can support disciplinary action by the Board. You don't have to find both of them to be problematic. If that's the way the counselor agrees, then we can proceed. If counselor prefers that we break them out into separate cases, then I suggest that Chair Flaxman's recommendation of tabling or. . . . A better procedure would be to dismiss this complaint altogether and let the Building Department file new cases with a separate case for each address. What I'm hearing is that counselor doesn't want to proceed down that path. Is that correct?" Ms. Periera replied, "That's correct."

Ms. Periera continued, "In regard to any findings that are made if there are certain permits where continued corrective action is necessary, then that will be taken back to Mr. Clark. If

there are other permits where appropriately there is nothing more that can be done because of the circumstances, then that would be guidance for Mr. Clark as well, and that's demonstrative of his effort to comply." The City Attorney asked, "Do you have any competent substantial evidence that you intend to present to the Board today other than your argument?" Ms. Periera replied, "With regard to the Hold Harmless, I have the documents that were submitted by the company's former counsel." The City Attorney noted, "I want to make sure it's understood that your argument is not evidence." Ms. Periera pointed out, "That is true, because I'm a lawyer and an advocate, and I'm not sworn in for that reason. The information I'm giving to you, though, is really based on the information contained in your files." The City Attorney remarked, "And that's fine. I just want to make it real clear whether or not you have competent or substantial evidence, or you are simply challenging what's in our files." Ms. Periera said, "I'm just presenting the same information to you, and I'm giving you the background information from it. I have documentation with regard to one of the properties." The City Attorney stated, "When you say that you're giving background information you're giving that not by way of evidence. Do you have evidence to support what you're saying, or is this just being offered by way of explanation?" Ms. Periera replied, "It's being offered by way of explanation, but this is information that is available and included in your file or in public records, especially with regard to the foreclosed property."

Ms. Noto commented, "Staff will work with the contractor even if you do find him guilty today on certain addresses, and there are certain addresses that he can't comply with, because they're foreclosed. We do have a procedure in place. I'm still going to look for the contractor to comply with what he hasn't and bring those properties into compliance. If there is an issue with it, there is a procedure in place. He can simply contact my office and speak to me. I do it on a daily basis with several contractors throughout the day and inform them of the procedure on how to get off an expired permit, based on the fact that the property is foreclosed. If it is foreclosed on, that's absolutely fine. We will help him remove himself from the permit. I don't believe we need to go through all of that to determine that the property is foreclosed on. It's vacant, and there's a very simple solution for that." Mr. Pierce said, "I think that the City has established the violations at 792 Majestic. If counsel is not opposed, I would recommend that we move onto 2125 Imperial." Vice Chair Zientz stated, "At 792 Majestic we have Ms. Nina with a house that still has not been inspected to say that it's safe and that the work has been done safely by the second contractor. How do we protect her and make

sure the house is safe?" Mr. Pierce replied, "The idea of protection in this case is determined by a passed inspection. In other words, protection for the homeowner is that a qualified, certified building inspector goes out, looks at the work, and says that the work meets the minimum FBC. At this point, it's the responsibility of Mr. Clark since he currently holds an active permit for the work at that address. He would need to be the one, regardless of what anyone else did at the house, responsible to make sure the work is per Code and that the inspections were requested and approved."

Vice Chair Zientz asked, "How do we get Mr. Clark to call in an inspection to protect the homeowner?" Ms. Periera replied, "An inspection was already called in on the 6th, but if the homeowner, Ms. Nina, will agree that a City inspector needs to go out there and inspect the work that was done, that will go a long way toward resolving that problem. If there are problems identified and she doesn't want Mr. Clark out there, we will have to take each step as it goes to see what needs to be done to have any other corrective work performed, even if it's with another contractor. I'm still a little troubled about another contractor doing work and us not being able to identify him. I think Mr. Clark will work with her, and if there are corrections that need to be made, then we can find someone else who's licensed and we can get them out there for her." Vice Chair Zientz said, "I don't care if Batman goes out there in the middle of the night and does the work as long as it passes inspection. We don't have to identify the second contractor. That would help you, but does it really make a difference to Ms. Nina? She already hired someone to do the work. My interest now is getting it inspected, and making sure it's up to Code. Our discipline for Mr. Clark is based on his failure to do what he said he was going to do. It has nothing to do with whether the work has been corrected since then. The fact is that we're here today and we've spent approximately 25 minutes dancing around the fact that Mr. Clark didn't do his job, period."

Ms. Periera stated, "I'm not arguing with what you're trying to accomplish here, but my understanding of where we are in the conversation now is that we're trying to have a plan in place so that this can be corrected, and the homeowner can be protected. It might go a long way if one of you would ask Ms. Nina to at least allow the City inspector out there, and then Mr. Clark can work with the inspector from there. The only reason I bring up another contractor having come out and done work and then not being identified is that there could be other issues that Mr. Clark wasn't responsible for." Ms. Noto commented, "At this point, staff would recommend that she hire another contractor, and she take him to civil court. At this point, it's the only

resolution, because she's not going to let him on her property. I've been speaking to the property owner for over a year regarding this case, and I've never had a problem getting in touch with her. She always answers my calls or calls me back. At this point, I would recommend to her that she seek the advice of an attorney to recoup the funds she has lost, and have another contractor finish the job."

Ms. Periera stated, "I think that you're putting a burden on the homeowner. I'm here on behalf of Mr. Clark, and I've explained that if she just gets an inspection and if there is additional work that has to be done, we would take each step as it comes. If it is another contractor, that's fine. I think that Mr. Clark will work with her. I think that any out of pocket she has and that she can demonstrate, he's going to be willing to reimburse. I don't understand why you would want to put a burden on Ms. Nina." The City Attorney asked, "You're trying to help her when? Once the time frame evolved? This has been going on for a very long time, and I don't see that Mr. Clark has been particularly responsive to Ms. Nina's needs. What you're suggesting is that she should expose herself to more of the same. He's not here, and he's not going to commit. Are you going to commit for him?" Ms. Periera replied, "He already has the permit, and he has already tried to get it inspected. If she will give access to a City inspector, and the City inspector tells us what has to be done, another contractor can do it. Mr. Clark can see whatever the monetary out-of-pocket is, and he can cover that." The City Attorney asked, "Cover it when?" Ms. Periera replied, "I think as soon as it's demonstrated." The City Attorney asked, "Is she going to have to wait a year?" Ms. Periera replied, "That's not fair. I'm here trying to get the property inspected, to facilitate this, and you're asking me if it's going to be a year. I don't think it is. I don't think Mr. Clark would spend the money on me to drive from Miami to try to resolve this if he weren't serious about trying to resolve everything."

The City Attorney pointed out, "Part of that is a little problematic. I have no idea why you came up from Miami. I don't know if he retained you. There may be other reasons why you have chosen to represent him. That's none of our business. It is somewhat telling that even though he has arranged for representation before us today, and you make representations in his behalf that he is going to take care of these things, and he will pay incidental costs that Ms. Nina has, he's not here. He's not standing before this Board. He's not under oath and nor are you." Ms. Periera remarked, "As a lawyer I have a certain amount of authority, and I'm not going to exceed that authority. What I have represented to you is in the scope of my authority as an attorney." The City Attorney said, "Then give us a time frame."

If we are to go this route, we need a time frame." Ms. Periera stated, "Then we need to start with the inspection. We need to start with Ms. Nina allowing an inspector on her property." The City Attorney asked, "If that occurs and if she has incurred additional expense, which is what I've heard, and her testifying under oath that she has hired someone else to finish this out, when is she going to be reimbursed?" Ms. Periera replied, "I think that will be fairly soon." The City Attorney asked, "What does fairly soon mean? I'm having trouble with your client's calendar." Ms. Periera replied, "I think it would be within the month, based upon my communications and involvement with him." The City Attorney asked, "You said that you have authority to make representations to this Board, so let's see what that representation is." Ms. Periera noted, "I think that would be appropriate, and I think it is demonstrating to this Board his willingness and effort to resolve these issues."

The City Attorney asked, "If he doesn't do it within a month, what does this Board do? Do they reconvene this and hammer it out all over again?" Ms. Periera replied, "I don't think that would be appropriate. He's state licensed, and I guess you would go to the state at that point." The City Attorney commented, "We don't go to the state until this Board takes action. This Board has to take action one way or the other." Ms. Periera pointed out, "Within the scope of this Board's authority over state licensed contractors permitting privileges, it would be for fraud or willful Building Code violation, unless you think that there are other sustainable violations within the scope of your authority that would be within your purview. I'm disheartened by the direction of this conversation, because I'm here with my best effort on behalf of Mr. Clark to resolve this. I've asked if we can start with the inspection, and I'm getting resistance." Mr. Cseak pointed out, "You're getting resistance because it has been a year. Our job on this Board is to protect the homeowner. The gentleman that you're defending, who didn't bother to show up for multiple citations that we kindly packaged into one, is in South Carolina. To me, we didn't need to hear from you at all. That's the end of the discussion. It has been one year to do electrical work that he was paid for a long time ago." Ms. Periera remarked, "We're going in circles." Mr. Cseak said, "Your client had a year to try and resolve this. That's the way I look at it. Any contractor sitting on this Board has dealt with situations like this. We have all had customers angry with us for one reason or another. Ms. Nina sounds as though she doesn't want him near the property, so that would not be a good sign."

Ms. Periera stated, "Mr. Clark will submit a Hold Harmless with regard to this property." Mr. Pierce noted, "I would like to ask

Ms. Nina if she would be against a City inspector coming to her home to inspect the work that has been done under the permit." Ms. Nina commented, "I would be delighted to have a City inspector come to the house." Mr. Pierce pointed out, "With that being said, the first thing I would say is that Mr. Clark is well within his responsibilities to schedule an inspection. I would remind the Board that given the fact that Ms. Nina has had another contractor out there, whatever that contractor did, good or bad, would be grounds for Mr. Clark to say that he didn't do the work and he's not responsible." Mr. Cseak remarked, "We have to deal with the fact that he violated having permits completed." Mr. Pierce said, "The evidence presented to this Board today on this one address, in my view as the investigator, is more than enough evidence to find that Mr. Clark is guilty of a willful Building Code violation." Mr. Cseak said, "Based on the testimony heard today. . . ." The City Attorney stated, "Let's deal with all of the properties. Counselor said it was okay to look at them all before we make a determination. It may have some bearing upon what the level of discipline will be."

Mr. Pierce noted, "With regard to 2125 Imperial, the first permit was voided for lack of inspection. The second permit had a canceled inspection. It was then voided." Vice Chair Zientz asked, "What was the work for?" Mr. Pierce replied, "Air conditioning." Ms. Periera commented, "With regard to that property, I would tell you that the owner is an absentee owner. He's out of the state frequently. They've tried numerous times to reach him, and they will continue to try and reach him with regard to that." Mr. Pierce pointed out, "The property at 201 Todd has been referenced." Ms. Periera remarked, "That is Ms. Luther, and she's happy. The system works fine. They did have another inspection on the 6th. It failed. I don't know why, but I think they are making arrangements to address whatever those comments were as well." Mr. Pierce said, "The inspection on Permit #1200204, which is the third permit as well, was failed because when the inspector was there the overflow pan was full of water, and the panels were sealed so he was unable to access them." Mr. Periera stated, "I understand that they understand there's a re-inspection fee for that work to be inspected once it's opened." Mr. Pierce noted, "The second permit #1104445 failed inspection on 12/14/11, because the overflow pan was full of water, and the service panels were taped and masticed over, and not serviceable. Original Permit #1008388 has multiple failures; failed on 8/5 - return plenum lifted off return grill, return duct blocking access to AHU, reroute return duct, numerous leaks on AHU tape nuts sealed. The final failed 9/16/10, with duct connections at air handler still leaking. Failed on 2/2/11, previous items not addressed, and repair ceiling around air vent."

Ms. Periera commented, "If I understand where we are today was that the overflow pan and the access panels were sealed, and that's what needs to be addressed now. That's what is going to be addressed." Mr. Pierce pointed out, "That is correct, and we would appreciate Mr. Clark's ability and diligence in addressing this. However, that still does not get rid of the fact that this is the third permit. The previous two were voided or expired per the FBC for failure to obtain an inspection. This is demonstration of willful Building Code violations." Mr. Oldakowski remarked, "This also demonstrates that it takes a year and a half to make repairs." Mr. Cseak remarked, "And it's still not complete." Chair Flaxman asked, "What about 1433 Marisol?" Ms. Periera replied, "That's Garcia, and it's the abandoned house." Ms. Brown asked, "Does that mean he never did any work? He pulled the permit and never could get in there?" Mr. Oldakowski asked, "Would you read the comments on that one?" Mr. Pierce replied, "I'm going to begin with Permit #1008895. Air final failed on 8/10/10, seal tightened, condenser not weatherproof; appliance cord not rated for 10KW heat, replace with hard wire; breaker oversized for condenser. The permit was then voided. On Permit #1104446 for the same address no inspections were ever called in, permit voided." Mr. Reisinger asked, "So as far as we know, the violations are still remaining?" Mr. Pierce replied in the affirmative.

Mr. Reisinger noted, "Those are some serious violations. They are potential fire hazards." Chair Flaxman commented, "The next address is 2081 Kasim." Ms. Periera pointed out, "This is the property where Mr. Clark's counsel submitted a Hold Harmless form to the City. I do not see that in the City's records, so I made copies." Mr. Pierce remarked, "The only thing I have is that it failed its air final on 9/16/10. It says 'See back of permit, seven violations.'" Mr. Periera said, "This is where the owner wasn't paid, the property was liened, and they submitted the Hold Harmless. These go back to March 17, 2011." Mr. Oldakowski asked, "Do you have the inspection card for that address?" Ms. Periera replied in the negative. Chair Flaxman stated, "You don't have a certified letter to the City, so that doesn't mean that the City got it." Mr. Reisinger noted, "I approve the Hold Harmless once they come through, and as you see there's no approval on this. More than likely, I never witnessed this. Also, we would need it to be signed by the actual license holder, and not the general manager of the company. That would have been rejected." Ms. Periera commented, "We will resubmit it."

Mr. Pierce said, "I will move on to 651 Old Briar, Permit #1010442. On 9/28/10, it failed its inspection, because the seal tight not in connector properly. The second permit to replace

the first permit, Permit #1104448, failed its inspection on 1/4/12, because the breaker is too big." Ms. Periera stated, "That is being addressed as well." Mr. Pierce noted, "I have great respect for counsel and appreciate what she's doing. The fact that this contractor is willing to step forward and fix these problems. . . . I just lined up for you not one, not two, but in some cases three separate permits pulled for the same work. I have outlined for you clear violations of the FBC, some of which are serious life/safety issues. In at least two cases, the same issues remain and have not been corrected. It's clear to me that the evidence establishes willful and deliberate violations to the FBC. Quite frankly, this contractor is not paying attention to his business. He's not concerned." The City Attorney noted, "With all due respect, these are conclusions and we understand your opinions. However, I would also point out that what Ms. Periera says is not evidence. If she says that it has been taken care of or it's going to be taken care of, that's not evidence." Ms. Periera pointed out, "No. But when I'm saying that it's with regard to the dates and permits, and to what Mr. Pierce has just testified to with regard to current activity, that is evidence. It's in your records."

Ms. Noto remarked, "I would also like to make it clear that he is being brought before the Board for violation of 105.4, which is where he has to have an inspection every 180 days. That's it." Mr. Oldakowski said, "Based on the testimony heard today and the evidence produced by the parties of this case, I **move** to find that the following facts did occur, and the Conclusions of Law are as follows: On July 26, 2011, a complaint was filed by the City of Port St. Lucie against the license of James T. Clark, Jr., pursuant to Port St. Lucie City Code 150.520.2. Notice was achieved by certified mail. The contractor has been charged with and did violate FBC 150.4 and Port St. Lucie City Code 150.105.4." Ms. Brown **seconded** the motion, which **passed unanimously** by voice vote. Chair Flaxman noted, "Mr. Clark has no previous disciplinary actions on file." Ms. Brown asked, "How long has he had his license, or how long has he been working up here?" Ms. Noto replied, "I believe the end of 2009 or the beginning of 2010. That's when he registered here to start doing business." Mr. Pierce commented, "We registered him in order for him to follow through with our permits in 2010." Chair Flaxman pointed out, "He's a state certified air conditioning contractor." Mr. Cseak remarked, "From what I can understand from these dates, since the time he has been approved to be a contractor in this City he has had permits that have not been fulfilled." Ms. Noto said, "From the day he registered his state certification and submitted his insurance certificates in order to be able to obtain permits, yes, this has been going on for two years." Mr. Oldakowski stated, "Based on the Findings of

Fact and Conclusions of Law, I **move** to order the following disciplinary action: Suspension of permitting privileges for 365 days, and I want to note that he will have the privilege to take care of any of these six violations or any further violations that we will see in today's meeting, and pay the administrative fee of \$205." Mr. Cseak **seconded** the motion, which **passed unanimously** by voice vote. Mr. Oldakowski noted, "I **move** to recommend to the CILB a letter of reprimand placed in the contractor's file." Mr. Cseak **seconded** the motion, which **passed unanimously** by voice vote.

City of Port St. Lucie, Kevin Pierce, versus Frank Balleste, Cisca Construction and Development, Inc.

Violation of: FBC 105.1 and Port St. Lucie City Code 150.105.1, Required Permits

Mr. Reisinger said, "I reference the letter that was given to you earlier, asking for a postponement."

13. DISCIPLINARY HEARINGS

City of Port St. Lucie, Mark Brockway versus Arthur West, Florida Solar East

Violation of: FBC 105.1 and Port St. Lucie City Code Section 150.105.1, Required Permits

Mr. Reisinger said, "This complaint was originally scheduled for November 10, 2011, and was tabled at the request of the contractor." Ms. Noto stated, "That's the wrong one. That was the previous Arthur West, and this is a new Arthur West." Mr. Reisinger noted, "This complaint was filed by the City of Port St. Lucie Licensing Investigator Mark Brockway against the license of Arthur West, a certified solar contractor doing business as Florida Solar East. Since staff has had verbal contact with the contractor and his or her representative on several occasions regarding the violation and how to comply, we can assume that he's aware of the law. The formal complaint was sent to the violator October 11, 2011. The contractor was charged with violating the FBC Section 105.1 and Port St. Lucie Building Code 150.105.1, required permits. The contractor's response to the charges is on Page 7 of 19 in your packet." Mr. Brockway stated, "On September 29, 2011, the Lake Charles Homeowners Association called the Contractor Licensing Department to verify that a permit was obtained to install the solar pool heater at 735 SW St. Croix Cove, because the work was in progress and there was no permit visible."

Mr. Brockway continued, "Staff determined that a permit was not issued. I visited the site and found two workers from Florida Solar East installing the solar panel. Since a permit had not even been applied for, I required them to secure the job, make things safe, and told them to return upon the permit being issued to perform the work. About a month later, a permit was applied for. It was issued October 26, 2011, and it has passed inspection. That permit is now complete. I can't help but notice in the contractor's response to the formal complaint that it was his understanding that the homeowner had HOA approval and obtained an owner/builder permit. Once the crew found out otherwise, they were securing, making safe, and leaving before Mr. Brockway arrived. When I got there, there were two workers on the roof, tools and materials everywhere. There was no indication that anyone was packing up. I did speak to the homeowner who knew absolutely nothing about permitting issues. I took photos. The other thing I found somewhat interesting was that when I was taking down the names of the employees that were there, one of them expressed to me that he had been an employee for 20 years. I told him that he should be fully aware that it's his responsibility to make sure that a permit is posted on the jobsite before he starts the work."

Chair Flaxman asked, "Does this happen a lot?" Mr. Brockway replied, "We've had several cases of non-compliance that we've issued. In 2010, I counted seven after-the-fact permits. In 2011, prior to this job, I had another crew on a jobsite at Kimberly with the same thing, which was about five months prior to this. The crew was on the roof installing solar panels, and there was no permit even applied for. I told them to pack their things up and leave. From September 2009 to October 2010, we have documentation of seven after-the-fact permits. There are multiple non-compliance issues that have been sent over the years from 2007/2008." Mr. Reisinger stated, "We're giving the contractors three times, and then you will come before the Board whether you come into compliance or not. This way you can explain to the Board why you're doing this continually." Chair Flaxman noted, "I feel it's done intentionally now." Mr. Brockway commented, "I would like to give the Lake Charles Homeowners' Association credit for noticing this type of activity, and being diligent enough to call us. We need more cooperation like that."

Mr. Cseak said, "Based on the testimony heard today and the evidence produced by the parties of this case, I **move** to find that the following facts did occur, and the Conclusions of Law are as follows: On October 11, 2011, a complaint was filed by the City of Port St. Lucie against the license of Arthur West, pursuant to Port St. Lucie City Code 150.520.2. Notice was

achieved by certified mail. The contractor has been charged with and did violate FBC 150.1 and Port St. Lucie City Code 150.105.1." Ms. Brown **seconded** the motion, which **passed unanimously** by voice vote. Chair Flaxman requested to see the contractor's file. Mr. Cseak asked, "How long has he been a contractor in this area?" Ms. Noto replied, "Since 2002. He has over 100 total after-the-fact permits, and those are the ones we know about. I think what happened is that we had an issue with him in the past, and we brought him into the office to discuss the work without a permit. I think they went back through their records and pulled a number of permits. Before we even found them, he came in and pulled a number of permits." Mr. Cseak asked, "Is this one of those licenses where we really started being more diligent? If this one of the ones that after the storms we started. . . ?" Ms. Noto replied, "He has been a state certified solar contractor for many years. He was one of the first state solar contractors." Chair Flaxman commented, "He has two violations in his record. In 2009, no permit, and letter of reprimand was put in his file. On May 14, 2008, no permit, citation \$500." Mr. Reisinger pointed out, "He had another one today. You revoked his permitting privileges for 180 days." "Mr. Cseak stated, "Based on the Findings of Fact and Conclusions of Law, I **move** to order the following disciplinary action: Suspension of permitting privileges for 365 days." The City Attorney asked, "May I ask for a clarification as to whether it's concurrent or consecutive?" Mr. Cseak replied, "Concurrent." The City Attorney asked, "So the 180 will run at the same time as your 365?" Mr. Cseak replied, "No. I want the 365 after that, and pay an administrative fee of \$205." The City Attorney asked, "So you want it consecutive?" Mr. Cseak replied in the affirmative. Vice Chair Zientz **seconded** the motion, which **passed unanimously** by voice vote. Mr. Cseak said, "I **move** to recommend to the CILB a Suspension of Certificate of Registration for 365 days." Mr. Oldakowski **seconded** the motion, which **passed unanimously** by voice vote.

16. City of Port St. Lucie, Kevin Pierce, versus Frank Balleste, Cisca Construction and Development, Inc.

Violation of: FBC 105.1 and Port St. Lucie City Code 150.105.1, Required Permits

Mr. Reisinger said, "This item was tabled."

17. City of Port St. Lucie, Mathew Boettcher versus Stanley Hankins, Aurora Fiber & Communications, Inc.

Violation of: FBC 105.4 and Port St. Lucie City Code 150.105.4, Conditions of Permits

Mr. Reisinger said, "This complaint was filed by City of Port St. Lucie Licensing Investigator Matthew Boettcher against the license of Stanley Hankins, a certified electrical contractor doing business as Aurora Fiber and Communications, Inc. Since staff has had verbal contact with the contractor and his or her representatives on several occasions regarding the violation and how to comply, we can assume he's aware of the law. The formal complaint was sent to the violator on October 17, 2011. The contractor was charged with violating FBC 105.4 and Port St. Lucie City Code Section 150.105.4, Conditions of Permits. The contractor has not responded to the charges." Mr. Boettcher stated, "On July 12, 2010, Stanley Hankins of Aurora Fiber and Communications, Inc., was issued five separate permits to install low voltage systems at 9000 South US Highway 1. On July 20, 2010, the electric rough inspections passed and the final inspection was noted as needing the stamped plans on site and the wiring needing to be secured. On August 9, 2011, a final inspection was performed prior to voiding the permits for no inspection within 180 days. Per the notes from the inspector, there were no plans on site. He spoke with the contractor who stated he would schedule the inspection and have the plans on site. New permits have been pulled and the inspections passed on June 10, 2011." The City Attorney asked, "What is at 9000 US Highway 1?" Ms. Noto replied, "It's a Walgreens. I've spoken with Mr. Hankins and he has some medical issues, and I've been working with Aurora for compliance. I told him it would be okay if he showed up rather than the qualifier."

The Deputy Clerk Supervisor administered the Oath of Testimony to Robert A. Kirk III. Chair Flaxman asked, "Has this been an ongoing problem?" Mr. Boettcher replied, "I believe it's just this one instance." Ms. Cseak **moved** to dismiss the case. Ms. Brown **seconded** the motion, which **passed unanimously** by voice vote.

City of Port St. Lucie, Kevin Pierce versus Dennis Zacek, American Residential Services of FL, Inc.

Violation of: FBC 105.1 and Port St. Lucie City Code 150.105.1, Required Permits

Mr. Reisinger stated, "This complaint was filed by City of Port St. Lucie Licensing Investigator Kevin Pierce against the license of Dennis Zacek doing business as American Residential Services of FL, Inc. Since staff has had verbal contact with the contractor and his or her representatives on several occasions regarding the violation and how to comply, we can assume he's aware of the law. The formal complaint was sent to the violator on October 27, 2011. The contractor was charged with violating

FBC 105.1 and Port St. Lucie City Code Section 150.105.1, Required Permits. The contractor's response to the charges is on Pages 7 and 8 of 18." Mr. Pierce noted, "On September 2, 2011, I noticed a new air conditioning unit at 5270 NW Ever Road. Our records indicated that there was no permit for the work performed. The property owner supplied a copy of the contract from American Residential Services who performed the work. I called their office and spoke to Tara about the violation, requiring compliance within a week. We did get a permit and the contractor came into compliance. We brought him before the Board this morning, and the complaint remains from us, because in conversations in 2010 with regard to cases like this where work was done without a permit, we had conversations with the contractor and made him well aware that permits were required. We found this one in 2011 after those conversations and after he went through the process of coming into compliance on several other issues."

The Deputy Clerk Supervisor administered the Oath of Testimony to Dennis Zacek. Chair Flaxman asked, "Do you understand why you're here? I signed this to bring you in front of us today, because this has to stop. It's getting ridiculous. You're wasting their time, and now you're wasting my personal time to come in to sign this for you to come in to see us, and now our time here. You have to get a permit." Mr. Zacek stated, "We've changed some processes. We have a job folder on every job we do. I sign off, and I register the equipment. I'm active in the business. It's my license and I respect it. I've had it since 2004. I'm here to make right." Chair Flaxman noted, "I would definitely look back in the files to see if you have any more of these to take care of, because if they find them you're going to come in front of us again. Do you feel he's doing the right thing?" Mr. Pierce replied, "I feel that based upon what he has done and his statements today, I don't have any reason to conclude that he's not going to be a good boy from now on." Ms. Noto pointed out, "He has been very cooperative and responsive to phone calls and such since this has been brought to his attention." Mr. Cseak **moved** to dismiss this case. Ms. Brown **seconded** the motion, which **passed unanimously** by voice vote.

City of Port St. Lucie, Matthew Boettcher versus Keith Stuart, Nationwide Pools, Inc.

Violation of: FBC 109.6 and Port St. Lucie Code 150.109.6, Approval Required, and FBC 105.4 and Port St. Lucie Code 150.105.4, Conditions of Permits.

Mr. Reisinger said, "This complaint was filed by Port St. Lucie Licensing Investigator Matthew Boettcher against the license of

Keith Stuart, a certified residential pool contractor, doing business as Nationwide Pools, Inc. Since staff has had verbal contact with the contractor and/or his representatives on several occasions regarding the violation and how to comply, we can assume that he's aware of the law. The formal complaint was sent to the violator on November 8, 2011. The contractor was charged with violating FBC 105.4 and Port St. Lucie City Code Section 150.105.4, Conditions of Permits, as well as FBC 109.6 and Port St. Lucie City Code Section 150.109.6, Approval Required. The contractor's response to the charges is on Pages 7 and 8 of 23." Mr. Boettcher stated, "On February 4, 2011, Permit #1014292 was issued to Keith Stuart, Nationwide Pools, Inc., to construct a pool at 417 NW Floresta Drive. On April 8, 2011, the pool/patio inspection failed due to the patio being complete and the inspector not able to inspect equipotential bond grid (NEC 680). The contractor submitted a letter from Wayne Bennett, PE, on April 27 concerning the inspection. However, the letter was rejected on April 29 by Chief Building Inspector Chuck Tyrrell who stated that the letter did not state the bonding grid was inspected by the engineer. Since the patio was completed and the Building Department could not perform the inspection, staff alleges the contractor is in violation of FBC 109.6. The last passed inspection was May 4, 2011; therefore, the permit is expired and considered in violation of FBC 105.4. A new permit has been pulled and the final inspection passed on January 9, 2012. We do want to note that the pool has been full and in use since May of last year. The homeowners are also here today."

The Deputy Clerk Supervisor administered the Oath of Testimony to Keith Stuart. Mr. Stuart stated, "I'm in full agreement. I believe everything should be permitted and inspected. In no way do I condone this. We do hundreds of pools a year. This did get missed. I believe a mistake happened on a few people's parts. It seems far more difficult than it was in the past, but we have to keep doing it to make things better. Our scheduler who calls the inspections in claimed to me when I did my investigation that when she called in the inspection. . . . We seem to give employees more and more to do. She recently had taken on the Port St. Lucie area. When it was typically done with the light bondage inspection and she thought that's when it was, it wasn't. It's a totally separate bonding inspection. She did move on past that phase. We found out when the permit was still valid, calling in the final inspection. At that time, between the Building Department and the construction stress to a client, we tried to minimize the impact to the client in this case. We did call and were granted verbal approval to get a letter from an engineer. As stated, I guess the letter from the engineer wasn't the right wording. We were told the electrical contractor, the bond wire, would fall under the jurisdiction of

his permit. The electrical contractor did supply a letter as well stating that they installed it. I would want you to move to dismiss, because it's under his license for one of those claims."

Mr. Stuart continued, "I believe that was denied as well. While we're doing this the time is ticking away, and we ended up reaching that expired permit time, as the last inspection was during the construction of the pool. Once we received the letter from the Building Department, we contacted the Building Department and they renewed the permit. I think the letter came in November and we had a number of holidays. Rightfully so, the client didn't want their deck pulled up to expose that wire during the holidays, so we were given the task of pulling that up after New Years to do that inspection. We did obtain the final on the project, and put his pavers back down. We do have a person who handles finals, and we've had a meeting so this won't happen again. The scheduler also knows to really look into the different chronological order of each city's building department's inspections for future issues." Chair Flaxman stated, "What I have a problem with is that you are in control, and not the homeowner. That's your job to make sure that things are safe. If you would have worded your letter properly, I think they would have let you rip that deck up immediately. If they don't allow you to do that the City is here to help you with that." Mr. Stuart noted, "That's understood." Chair Flaxman commented, "We appreciate that you're here, and I do agree that you care, but that's a life threatening situation. Is it just the one case?" Ms. Noto replied, "This is the only case brought before you. I have worked them in the past on expired permits. I'm not too sure about going beyond the point of inspection, but I do know that they've had to either reopen permits or apply for new ones in the past."

The Deputy Clerk Supervisor administered the Oath of Testimony to Lance Nusca, homeowner. Mr. Nusca stated, "The bond wire was not installed by an electrician. I believe it was installed by John McCoy, his supervisor, and one of his helpers. When it was time to put the outlet in, the electrician didn't want to dig the ditch. That wasted about a week until the electrician was called to dig the ditch. I have pictures of the entire construction, and that grid was exposed for about a month. I had asked why no one had come out to inspect it and was told that the office is taking care of it. The pavers were removed and sat out there for about a month. I called and was told he didn't know. What he was trying to do was to get me to put out more money. I told him there would be no more money and to get the job done, or I'd get an attorney. The pool wasn't done until May 10." Chair Flaxman asked, "When did they start?" Mr. Nusca

replied, "January 27." Mr. Oldakowski noted, "The permit was issued February 4." Mr. Nusca commented, "There have been ongoing problems with this contractor. I had to clean up my own yard. I had about two yards of sand that they wouldn't remove. My neighbor's storm drain is still clogged that we've been trying to shovel out by hand but can't reach. My dog is deaf now, because he got a bad flea infection in his ears. My legs are shot from flea and ant bites. They guaranteed 45 days from the date of dig to water in the pool. It has been longer than 45 days."

Mr. Cseak pointed out, "Every one of us in our industry deals with frustration. Unfortunately, if a pool is completed start to finish in three months, I consider that almost a normal project. They may have had higher expectations when they started the pour, but if they're building a pool from scratch three months is what I would want to consider being allowed to work without a customer even. . . ." Mr. Nusca remarked, "We have had pools done before, and they had full access to this yard." Mr. Cseak said, "We would like very much to start and finish a pool in two months, but you have a number of subs that can play games with your scheduling. You have other issues, and I understand that. I would hope he would take care of those other issues for you, but we're just here about the one item. If you have suffered financial loss that's your decision as to what you should do. Unfortunately, in the scope of what we can cover, we can't give you that satisfaction. When he didn't do what he should have done with the inspection. . . ." Mr. Nusca stated, "I did not tell him that he couldn't come in my yard." Mr. Cseak noted, "I understand the frustration, and sometimes it's frustrating for both. I hope other customers come in and express themselves, because there are other people looking for pool companies. Your image and the way you handle situations is your future. I would advise everyone to check on the people you're hiring, so you know if the guy is doing it right. Use the Better Business Bureau, and check with Ms. Noto in the Building Department."

The City Attorney asked, "When you were talking about your storm drain, were you talking about your driveway culvert?" Mr. Nusca replied, "The black plastic thing." The City Attorney asked, "Are you talking about the swale liner?" Mr. Nusca replied, "Yes. It's all messed up and sand is building up into my neighbor's culvert drain. I scooped mine out, and now it's backing up into his." The City Attorney asked, "Is your culvert free flowing?" Mr. Nusca replied, "Mine is, but my neighbor's isn't." The City Attorney asked, "Is it because of the sand that he had put in your front yard?" Mr. Nusca replied in the affirmative, and noted, "He put the sand down so the trucks could go over the culvert. He never cleaned all that out." The

City Attorney commented, "He put the sand down in the swale. . . ." Mr. Cseak pointed out, "So he could get his heavy loaders over without doing damage. I had called the City's Engineering Department, because I was going to try and have them replace the plastic. They said that's the pool company. That needs to be addressed." Chair Flaxman said, "I think Mr. Stuart will take care of it if you let him." Mr. Nusca stated, "He had plenty of opportunity to do it. When he took up my patio, he chipped the bricks. I called his customer service, but they haven't gotten back to me yet."

Mr. Stuart noted, "We would like it to go as quick and painless as possible, and we know that with building a pool there are a number of trades that are going to be there. Our brochure states eight to ten weeks. I actually put it in writing on the purchase agreement 'no oral representations.' That's also defined as 45 work days, five-day weeks. I looked at this file, and even with some other issues that went on, it was within that 45 days based on our calculations. I had to speak to Mr. Nusca upon the payment request. Every step of the way was delayed with payments. He would negotiate payments with me. I don't ask for the money, our staff does. Upon every payment it was negotiation. It would typically hold up payment a week. We really tried to work with him, but it makes it that much harder if there is anything left on this job. I have given Mr. Nusca my personal cell phone number. If he needs anything, I will be willing to handle it personally for him. He won't have to go through the process of employees or anything. I have not received a single call, even from this last repair. As far as the drain for the access, we did do a final clean and many job cleanups. In between those times, clients may want to do some cleaning up themselves. It's not required of them, but sometimes it's thrown back at us that they would do it. It's in no way their responsibility. If the swale wasn't done correctly and it did seep to the neighbor because of the amount of rain we had, I'm willing to check that out and make sure that it's done correctly. We did call in last week for an Engineering inspection, and it passed. They're very thorough because of all the storm drains. I will make sure we look farther down past his area to make sure it's done. As far as the fleas, I never heard about that. I believe we do a pest control under the pavers, but I don't know what to tell him about the fleas he may have."

Mr. Nusca said, "I figured he was going to bring up the payment issue. He tried that with me before. I can prove that I had that money accessible at any given time. Money was never an issue. That excuse is getting old. There were no holdups on my part. They have always had access to the yard. I have receipts of every time I gave them money. They blatantly took their time

doing this. Maybe it's because they're from Pompano and they're not aware of our laws here. I just want something done. I don't think the guy should be working in Port St. Lucie. He's a liar." The City Attorney stated, "I don't take that this Board is impressed by the argument of a payment dispute between you and Mr. Stuart. That's a civil matter. They are dealing with permits and inspections right now, and I believe that is what the Board's focus is on." Mr. Stuart noted, "The reason it was brought forward was the document time, for permit time, and based on the time frame of the completion of the job. We were hired to do a job. We did the job and supplied everything per the agreement. We're willing to and have returned for numerous repairs and are still willing to do so. We did miss an inspection, and we made good of it. I work hard for what I do. I just hope the Board will take that into consideration. This is the first time I've been before you."

Ms. Brown asked, "How much work have you done up here?" Mr. Stuart replied, "We've been pulling permits in Port St. Lucie for seven years or more, and we have a Palm Beach location that we work out of as well." Ms. Brown asked, "Was he cooperative from the beginning?" Ms. Noto replied, "I actually speak with Thelma a lot in the office regarding violations, and they have come into compliance with this. The reason it's before the Board is the fact that it passed the point of inspection. My concern was that it was an electrical issue, a life/safety issue, and it hadn't been addressed for all that time that they were swimming in the pool. It wasn't until January when it was actually finalized. In my opinion, the job is complete when you get a final inspection. They have been cooperative in this matter and in previous matters that I had with them." Mr. Cseak stated, "Based on the testimony heard today and the evidence produced by the parties of this case, I **move** to find that the following facts did occur, and the Conclusions of Law are as follows: On November 8, 2011, a complaint was filed by the City of Port St. Lucie against the license of Keith Stuart, pursuant to Port St. Lucie City Code 150.520.2. Notice was achieved by certified mail. The contractor has been charged with and did violate FBC 150.4 and Port St. Lucie City Code 150.105.4." Ms. Brown **seconded** the motion, which **passed unanimously** by voice vote. Mr. Cseak stated, "The contractor has been charged with and did violate the FBC 109.6 and Port St. Lucie City Code Section 150.109.6." Vice Chair Zientz **seconded** the motion, which **passed unanimously** by voice vote. Chair Flaxman asked for the contractor's file and noted, "Mr. Stuart has no disciplinary actions in his file." Mr. Cseak said, "Based on the Findings of Fact and Conclusions of Law, I **move** to order the following disciplinary action: Level 1 - No Action." Ms. Brown **seconded** the motion, which **passed** by voice vote, with Vice Chair Zientz

voting against. Mr. Cseak stated, "And pay an administrative fee of \$205." Ms. Brown seconded the motion, which **passed unanimously** by voice vote. Mr. Cseak noted, "I **move** to recommend to the CILB Level 1 - No Action." Mr. Oldakowski **seconded** the motion, which **passed** by voice vote, with Vice Chair Zientz voting against.

14. CERTIFICATION OF FINES AND ORDERS TO LIEN

Mr. Reisinger said, "You have nine citations before you. The alleged violators have not requested an administrative hearing, and the citations have not been paid." Chair Flaxman stated, "In accordance with City Code Section 150.530(A)(6), I **move** to certify the Fines and Orders to Lien for unlicensed contracting as follows:

CITATION	VIOLATOR NAME	AMT
14234	Lyndmila Morozov	\$160
14434	Solon Silva, Jr.	\$310
14440	Narine Ramnaraign	\$160
14439	George Hernandez	\$160
13996	Keith Davis	\$160
14471	Robert Madison	\$310

Mr. Cseak **seconded** the motion, which **passed unanimously** by voice vote. Chair Flaxman stated, "In accordance with City Code Section 150.530(A)(9), I **move** to certify the Fines and Orders to Lien for willfully or deliberately disregarding or violating any City ordinance relating to uncertified/unregistered contractors as follows:

CITATION	VIOLATOR NAME	AMT
14235	Yevgeny Morozov	\$310
14435	Solon Silva, Jr.	\$460
14472	Robert Madison	\$460

Mr. Cseak **seconded** the motion, which **passed unanimously** by voice vote.

15. OLD BUSINESS

Ms. Noto said, "In reference to The City of Port St. Lucie versus William Starling, Sign Matrix, Inc., tabled from November, the contractor has passed away. We will be pursuing the property owner for compliance of those signs. With the City of Port St. Lucie versus Sean Luby, Always Available Garage Door, tabled from November, according to the City Code if a

complaint is brought against a respondent whose competency card is expired, then we have a stay of proceedings. If he comes in to renew, then we can bring him before the Board again, and we won't allow the renewal until he comes before the Board. His file is flagged for that. John George of JPG Enterprises, a state certified pool contractor, was disciplined by this Board on 2/14/08. He has relinquished his state certification to the state. Lonnie Brodock, United Roofing, Inc., was disciplined by the Board on 9/8/11 by suspending his license for one year. The state has revoked his license. Michael Hepworth, Sand Castle Construction & Development, was locally licensed, registered with the state. You disciplined him on 8/12/10, wherein you revoked his local license. The state has revoked his state registration." The City Attorney stated, "Kenneth Simone filed an appeal upon the Board's action taken in November. It was brought before Council Monday night on appeal. Frankly, this was the first appeal that the City Council has had from this Board in years. They handled it very well, and sustained the Board's action in revoking his license. He's state registered, and you had revoked his license in May of last year. This is the second revocation. He was represented by an attorney, and they pitched to the Council for permission to pay his administrative fee for the May and November cases, that the City hold that in abeyance until they pay the fee, and then dismiss the November case."

The City Attorney continued, "The Council didn't buy that, so they sustained the Board's action. He also said that he has moved to Port Charlotte and he doesn't do any business here. His son is the one who pulled the permit in his name. He didn't know anything about it, and he didn't appear in November, because he didn't want to throw his son under the bus. I asked if he were suggesting in his appeal if the Board has done anything wrong, and he said, 'No, I'm not suggesting that. I'm suggesting that the Board acted with incomplete information. My question to him was, 'Whose fault was that?' If he's saying that his son did things without his knowledge, the Board didn't know that. The Board acted upon what was before it. The Council asked the same questions, and the Council supported the Board's action. Lastly, I want to pass along to the Board that Councilwoman Berger was very complimentary of how this Board handled the case. She acknowledged that this Board deals with a number of complex issues that the Council doesn't have to see, because of the way that this Board handles it. As a follow up on that, you've had a challenging agenda today, and I will submit that you have handled it very professionally and appropriately today."

Ms. Brown noted, "I was at that meeting Monday night, and they did have very glowing things to say about us. They have confidence in the fact that we do as much homework as we

possibly can to do the right thing, not only for the homeowner but sometimes for the builder as well. They're not always the bad guy, but we certainly try to do the best we can. Thank you City Council."

ADDENDUM

16. NEW BUSINESS

Mr. Reisinger said, "We want to reschedule the meeting of March 8, 2012, to the date of March 15, 2012." It was the **consensus** of the Board to move the meeting date from March 8 to March 15, 2012.

GAINESVILLE INDEPENDENT TESTING

Ms. Noto stated, "I received an e-mail two days ago. Do you remember Gainesville Independent Testing that came before this Board in 2008 or 2009? He wanted us to be able to accept his scores. He has e-mailed me again and would like the Board to entertain a possible presentation again to come before you and get approved for us accepting his exams." Ms. Brown asked, "Has he done something different?" Ms. Noto replied, "I don't know. I haven't done any research. I spent way too much time the last time." Chair Flaxman asked, "Don't we have a testing company?" Ms. Noto replied in the affirmative. Mr. Reisinger noted, "He was before us before and we didn't agree with some of his testing. We don't reciprocate with anyone who actually took their test from another municipality. In a way, it kind of hurts him. People say that they don't want to take their test, because they want to work in Port St. Lucie also. He wants to give it another shot." Ms. Noto noted, "Part of the packet that I had given to you during that time that he appeared before the Board was a requirement on a test. A paving contractor was being tested in Broward about Broward County ordinances. The test was specifically written for Broward County, and our concern was how we reciprocate an exam grade on an exam that's just about Broward County. I don't know if he has changed anything, but I do need to answer the e-mail."

The City Attorney stated, "I would like to suggest that it not be put back on your agenda until he can show what has changed." Mr. Cseak noted, "If he has changed something, then we can hear it, but if he hasn't there's no point." Ms. Noto asked, "Can I just submit the paperwork in a packet and not have it on the agenda?" The City Attorney replied, "My suggestion is to go back to him and ask, 'What has changed since the last show and tell that we had?' If nothing has changed, then this Board doesn't need to take its time to go through the exercise." Mr.

Oldakowski pointed out, "If something has changed, I would also ask what benefit is it to us." The City Attorney remarked, "If he's going to say that something has changed, the following question would be what has changed."

17. ADJOURN

There being no further business, the meeting adjourned at 12:25 p.m.

Michael Flaxman, Chairman

Carol M. Heintz, Deputy Clerk Supervisor