

Pikes Peak Regional Building Department

2880 International Circle
Colorado Springs, Colorado 80910

BOARD OF REVIEW MINUTES

May 19, 2021

10:30 a.m.

MEMBERS PRESENT: Chair Jeffrey Finn, Citizen-At-Large
Vince Colarelli, Building A or B Contractor
Christine Riggs, Architect
Loren Moreland, Building A, B or C Contractor
Edward Pine, Alternate Board Member

MEMBERS ABSENT: Vice Chair Darin Tiffany, Engineer

RBD STAFF PRESENT: Roger Lovell, Regional Building Official
Virginia Koulchitzka, Regional Building Attorney
Jay Eenhuis, Deputy Building Official – Plans
Matt Matzen, Permit/Licensing Supervisor
Linda Gardner, Executive Administrative Assistant

PROCEEDINGS:

Chair Jeffrey Finn called the meeting to order at 10:33 a.m.

The Board of Review meeting was conducted virtually via a program called Microsoft Teams live events, which is accessible via Pikes Peak Regional Building Department's website Boards & Committees' page at: <https://www.pprbd.org/Information/Boards>.

1. CONSIDERATION OF THE APRIL 21, 2021 BOARD OF REVIEW MINUTES

A motion was made by Vince Colarelli to **APPROVE** the April 21, 2021 Board of Review Minutes as written, seconded by Christine Riggs; the motion carried unanimously.

2. CONSIDERATION OF TECHNICAL AND LICENSING COMMITTEES MINUTES

a) Technical Committee Minutes of May 5, 2021.

Jina Koulchitzka stated Item 10 of the Technical Committee Minutes has been continued to the July 7, 2021 Technical Committee meeting; therefore, it should not be included in the motion to approve the May 5, 2021 Minutes. A motion was made by Vince Colarelli to **APPROVE** the May 5, 2021 Technical Committee Minutes as written, with the exception of Item 10 which has been **CONTINUED** to the July 7, 2021 Technical Committee meeting, seconded by Christine Riggs; the motion carried unanimously.

Christine Riggs stated she would like to recuse herself from Item 2.b. due to an active working relationship with Go Freedom Ventures, dba K2 Homes LLC – Bridger Kucinski.

b) Licensing Committee Minutes of May 13, 2021.

A motion was made by Vince Colarelli to **APPROVE** the May 13, 2021 Licensing Committee Minutes as written, seconded by Loren Moreland; the motion carried unanimously.

3. **DECISION APPEALS**

- a) A complaint has been brought against Richard Ornelas, Licensee and CEO for Progeniture Construction LLC, by Tray Ortiz for performing work at 10870 Hardy Road, Colorado Springs, Colorado prior to obtaining permit(s), in violation of Sections RBC105.1 and RBC201.11.3, Nos. 1, 5, 6 and 7, 2017 Pikes Peak Regional Building Code, as amended. *This complaint was heard by the Licensing Committee on April 15, 2021, and the Committee determined: A motion was made by Michael Finkbiner to recommend to the Board of Review **REVOCATION** of the contractor license of Richard Ornelas with Progeniture Construction LLC because this is the second time Mr. Ornelas is before this Committee for the same Code violation (formerly resulting in a letter of reprimand of permanent public record in the contractor's / examinee's file), and continued work by the contractor / examinee in El Paso County without obtaining permit(s), seconded by Tim Toussaint; the motion carried unanimously.*

Jina Koulchitzka addressed the Department's Conflict of Interests Policy for all parties in attendance and further provided an advisement resulting from conflict analysis and opinion(s). She stated Mr. Ornelas has filed a civil suit against the Department, naming a number of Department employees (former and present), as well as volunteers (former and present) as defendants in the lawsuit. Certain of the defendants are named individually, while others are designated in broad categories, as of recently such including the "Board of Review" and "Inspection Staff". She stated Loren Moreland and Christine Riggs are among the individually named defendants in addition to the category designations; as a result, she advised both to recuse themselves from Item 3.a. Loren Moreland and Christine Riggs both recused themselves from Item 3.a. Upon questioning by Ms. Koulchitzka, Jeff Finn stated he was an instructor at Pikes Peak Community College approximately 15 years ago and Mr. Ornelas was a student in that class. He stated such, in his opinion, does not result in a conflict, and with the understanding that Board of Appeals has been designated as an additional defendant in the pending action, he can remain impartial to hear the appeal; no other known conflicts of interest for discussion or consideration. Vince Colarelli and Edward Pine each stated that, with the understanding that the Board of Review has been designated as an additional defendant, they can remain impartial to hear the appeal and there are no known conflicts of interest, which require disclosure or further discussion. Ms. Koulchitzka advised similarly with regard to herself as counsel for the Department and a named defendant in the action. Further, she

questioned Matt Matzen, who also has been named individually in the action, and the unavailability of other staff to provide testimony, if needed, specific to licensing related matters. A brief discussion / advisement took place re: frustrating the purposes of a government agency by contemplated recusal(s) of current employees and volunteers and the degree to which such can be considered / practically accomplished or not. Initially Mr. Ornelas objected to Mr. Matzen's involvement in the hearing, but then consented to his involvement as Mr. Matzen is not a voting member of the Board of Review.

Jina Koulchitzka presented the appeal procedures for all parties in attendance.

Richard Ornelas (Ornelas) and Ruth Ellen Faber-Milks (Faber-Milks) (attorney-in-fact for Tray Ortiz) appeared. All parties testifying were sworn in. All parties appeared pro se. Ornelas and Faber-Milks both stated they do not have any witnesses for this hearing, and they are in receipt of the record on appeal.

Ornelas stated in 2017 he appeared before the Licensing Committee for his first offense resulting in a license revocation. He applied for a commercial license two years later, which was denied, although he held commercial licenses in other jurisdictions. He stated he applied for a provisional license on two different occasions and was denied. Ornelas stated during the November 12, 2020 Licensing Committee meeting, after his license had been reinstated, his license was restricted to one permit at any one time for one year; he was called "arrogant" for requesting additional time to close all "loose ends", one of which was the home of Mr. Ortiz. He stated his appeal grounds are discrimination, retaliation, and violation of civil rights; he is not getting the equal protection under the law.

Ornelas referred to a document from 2015 specific to e-mail communications which he felt showed the relativity of his claims. Ornelas stated during the November 12, 2020 Licensing Committee meeting, the Committee put restrictions on his license, a Letter of Reprimand was issued, and he was fined by the Department. He stated the three disciplinary action(s) were a violation of his civil rights. He stated he felt he was not able to return to the Ortiz home to complete the project for fear of further sanctions.

Faber-Milks stated Ornelas was hired on June 24, 2020 to perform a number of remodeling projects in the home; October 1, 2020 was supposed to be the completion date. She stated the demolition work had been done without permit(s), and a Stop Work Order was issued on October 5, 2020 (4 days after the work was to be completed). Faber-Milks stated Ornelas was paid approximately \$17,000 and none of the items on the scope of work for the project were completed in full. She stated Ornelas commenced work on the home the end of July/beginning of August, 2020. She stated she and Mr. Ortiz moved to Idaho on August 4, 2020. Ornelas sent them photographs on August 9, 2020, of the work in the kitchen and the deck, which showed the demolition work completed, as confirmed by the invoice for payment therefor. Ornelas' services were terminated in December 2020 after a number of attempts to get the work completed.

Ms. Koulchitzka questioned Faber-Milks as to the scope of work for the project, and Faber-Milks stated the project was a home remodel, consisting of new garage doors, finishing the front deck, replace the back deck, a full kitchen remodel, and new flooring. She stated another company installed the garage doors before the family moved on August 4, 2020, but the doors were never painted. The rails on the front entry to the house were never replaced, nor was the deck completed. She stated permits were not obtained for any of this work. Faber-Milks produced and submitted supplemental photographs of the construction work done to the home, which she received on August 9, 2020 from Ornelas.

Break from 11:49 a.m. to 11:56 a.m.

Ornelas stated it was always his intent to obtain permits for the Ortiz project, but due to a busy schedule and the fact that his crew was moving quickly, the permits were not obtained. He stated he felt he was not able to finish the project after the sanctions he received during the November 12, 2020 Licensing Committee meeting and after the posting of the Stop Work Order by the Department.

Ornelas confirmed with Faber-Milks that the garage door openers were installed, which were a change order item. He also confirmed with Faber-Milks that the realtor requested the inspection for the fireplace. The inspector noted the work being done to the home at that time without permit(s), which resulted in the Stop Work Order, as issued by the Department on October 5, 2020.

A motion was made by Vince Colarelli to **AFFIRM** the recommendation of the Licensing Committee on April 15, 2021, to revoke the license due to lack of testimony showing any other course of action should be considered. The recommendation by the Licensing Committee was prudent, seconded by Edward Pine; the motion carried unanimously.

Jina Koulchitzka advised the Board of Review's decision is the final agency action for all purposes under Colorado law. For purposes of appeal, the Colorado Rules of Civil Procedure Rule 106 apply.

Christine Riggs and Loren Moreland rejoined the meeting.

4. UNFINISHED BUSINESS

There was no Unfinished Business.

5. NEW BUSINESS

There was no New Business.

The meeting adjourned at 12:36 p.m.

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Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Roger N. Lovell".

Roger N. Lovell
Regional Building Official
RNL/llg

Accommodations for the hearing impaired can be made upon request with forty-eight (48) hours' notice. Please call (719) 327-2989.

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