

Pikes Peak Regional Building Department

2880 International Circle
Colorado Springs, Colorado 80910

BOARD OF REVIEW MINUTES

June 20, 2018

10:30 a.m.

MEMBERS PRESENT: Chairman Vince Colarelli, Citizen-at-Large
Tom McDonald, Building A or B Contractor
Edward Pine, Building A, B or C Contractor
Darin Tiffany, Engineer

MEMBERS ABSENT: Jim Nakai, Architect

RBD STAFF PRESENT: Roger Lovell, Regional Building Official
Jay Eenhuis, Deputy Building Official – Plans
John Welton, Deputy Building Official – Inspections
Dean Wemmer, Chief Electrical Inspector
Mindy Stuemke, Permit Supervisor
Ryan Johanson, Director of Finance
Linda Gardner, Executive Administrative Assistant

PROCEEDINGS:

Chairman Vince Colarelli called the meeting to order at 10:40 a.m.

1. **CONSIDERATION OF THE MAY 16, 2018 BOARD OF REVIEW MINUTES**

A motion was made by Edward Pine to **APPROVE** the May 16, 2018 Board of Review Minutes as written, seconded by Tom McDonald; the motion carried unanimously.

2. **CONSIDERATION OF TECHNICAL AND LICENSING COMMITTEES MINUTES**

a) Technical Committee Minutes of June 6, 2018.

A motion was made by Darin Tiffany to **APPROVE** the June 6, 2018 Technical Committee Minutes as written, seconded by Edward Pine; the motion carried unanimously.

b) Licensing Committee Minutes of June 13, 2018.

A motion was made by Edward Pine to **APPROVE** the June 13, 2018 Licensing Committee Minutes as written, seconded by Tom McDonald; the motion carried unanimously.

3. DECISION APPEALS

- a) A Complaint had been brought against William Jackson, licensee for Jackson Homes LLC, by Tony Hillard and Tracy Carlson for performing electrical work at 17295 Colonial Park Drive, Monument, Colorado, without the proper license and permits, in violation of Section RBC201.11.3, Nos. 5 and 6, 2011 Pikes Peak Regional Building Code. *This Complaint was heard by the Licensing Committee on April 11, 2018, and the Licensing Committee determined that it was a civil matter and dismissed the complaint. The homeowners, Tony Hillard and Tracy Carlson, have filed this appeal.*

Revised Appeal Procedure(s), as Implemented by this Board during its May 16, 2018 Board of Review Meeting: The Board of Review shall conduct a public hearing on the appeal. At the conclusion of the hearing, the Board of Review shall make appropriate findings and determine whether the Technical Committee's or Licensing Committee's decision, as applicable, shall stand, be overturned or modified. The Board of Review's decision shall be considered final agency action for all purposes under Colorado law.

Those aggrieved by the decision of the Technical Committee's or Licensing Committee's decision, as applicable, may appeal the decision provided that a notice of appeal, stating the grounds for appeal, was filed in accordance with RBC101.7. The Department, upon receiving a perfected appeal, shall forward the record of the Technical Committee or Licensing Committee to the Board of Review, and the matter shall be set for a public hearing at the next available Board of Review meeting. The Board of Review may hear the appeal de novo or may limit the hearing to the issues identified in the notice of appeal. At the conclusion of the public hearing, the Board of Review shall determine whether there was substantial evidence in the record to support the Technical Committee's or Licensing Committee' decision, as applicable, and if so, then the decision must be affirmed. If there was not substantial evidence in the record to support the Committee's decision, the Board of Review may overturn the decision or modify it.

All parties testifying were sworn in. Tony Hillard and Tracy Carlson appeared, and Mr. Hillard gave the Board a summary of their complaint against Jackson Homes for their kitchen remodel. He stated it was a complete kitchen remodel, the island was replaced, and the two electrical receptacles in the island were unpermitted by Jackson Homes. He stated during the Licensing Committee meeting, Mr. Jackson informed the Committee that he, the homeowner, had replaced the electrical outlets, but that was not the case for the island receptacles; but he did replace the receptacles on the sink side of the counters because the wiring was hanging out of the wall for three months. Mr. Hillard stated Mr. Jackson's employee did the wiring for the oven and the reconnection of the island receptacles, and he felt Mr. Jackson's employee was not qualified to do this work, as the work was substandard. Mr. Hillard furnished photographs that showed that the previous electrical faceplates were white and on the front of the island and the new faceplates were black and on the side of the island. He stated he had an inspection done by Ed Kovar, a master electrician, who pointed out the Code violations.

Vince Colarelli stated his understanding of Mr. Hillard's complaint was that it was specific to the island, the electrical work required a permit and a permit was not pulled, and the work was done in a non-Code compliant fashion. Mr. Hillard confirmed that was his complaint. He stated he was informed by Dean Wemmer that whenever the wiring was altered or replaced, a permit was required; and in this project, the faceplates were replaced and the wiring in the island was moved, which required a permit. He stated he gave Mr. Jackson multiple opportunities to resolve these issues, but after their kitchen was flooded three times, they terminated the services of Jackson Homes.

Dean Wemmer stated a homeowner could replace receptacles in their home without a permit, but if a contractor did the work, a permit was required. He stated if Mr. Jackson's employee replaced the two receptacles in the island, a permit would be required. He stated Mr. Kovar's assessment of the Code violations stated there was no physical protection of the wiring coming up through the cabinets, and that was a Code violation; the receptacles were not GFCI protected, which was a violation; the wall oven required a breaker lockout; AFCI and GFCI would be required in the island receptacles; and there was an issue with the disposal wiring. Mr. Wemmer stated the permit was pulled by Althouse Electric, who did the microwave circuit, and the addition of a receptacle in the foyer for Christmas lights. He stated a permit had still not been pulled for the electrical work in the kitchen island.

John Welton stated based on the scope of work for this project, a plumbing permit was not required, and most of the work for the kitchen remodel did not require a permit, with the exception of the electrical portion of the project. He stated when subcontractors were involved, they should know if a permit was required. Mr. Colarelli pointed out that in addition to the two receptacles, there was a new cooktop installed that was not GFI protected; and Mr. Wemmer pointed out if the pre-existing receptacle was used for the new cooktop, a permit would not be required. He stated smurf tube was added to the pre-existing wiring in the island, which did not require a permit; and was an improvement on the existing condition.

Mr. Hillard stated he was told by the general contractor that permits were not required because there was no structural work being done in the kitchen remodel. He stated the scope of work was a "kitchen remodel", which included minor electrical work. He stated he hired an electrician to do the microwave wiring and the receptacle for the Christmas lighting.

William Jackson stated there were two estimates; the first was not accepted, and the second estimate was accepted, signed, and did not include electrical work. He stated the wiring was pre-existing for the island. He stated he believed this issue arose when the Hillards refused to pay their bill. Mr. Jackson stated his employees reconnected the existing wiring when the new island was installed, and he was informed by Mr. Wemmer that a permit was not required to reconnect the existing wiring in a new opening. He stated he compensated the homeowners for the damage that was done to the hardwood floors.

Mr. Colarelli stated he feels Jackson Homes' professional duty was to manage and coordinate this project and furnish a contract that was clear as to what was included in the scope of work.

A motion was made by Darin Tiffany to **UPHOLD** the decision of the Licensing Committee, even though he feels the homeowners have a valid complaint against Jackson Homes; however, there was nothing definitive in the testimony that shows that Jackson Homes did work without a permit, seconded by Tom McDonald; the motion **FAILED** 1:2. Edward Pine and Tom McDonald opposed.

A motion was made by Tom McDonald to **POSTPONE** the decision on this appeal for 30 days to seek legal counsel for an opinion, seconded by Edward Pine; the motion **FAILED** 1:2. Edward Pine and Darin Tiffany opposed.

Mr. Colarelli stated he would recommend that an Incident Report be put in this contractor's file because there was work that occurred that should have been permitted. He stated the contractor should be held up to a "professional standard". He stated he does not think Mr. Jackson met the ethical standard as a general contractor if he reinstalled existing receptacles and wiring for this project. Mr. Wemmer stated he could only assume that the existing receptacles were Code compliant when they were installed. Mr. Jackson stated at the time the work was done, he believed it was done per Code, and had he thought a permit was required, he would have had his electrician pull a permit.

Roger Lovell appeared, was sworn in, and stated the Board of Review should take action on this matter today, whether it was to uphold, modify or overturn the decision of the Licensing Committee. John Welton stated the hearing before the Licensing Committee was very drawn out on this complaint because several of the accusations were not Code related, i.e. there was a lot of controversial testimony. He stated RBD staff believed that the Licensing Committee dismissed the complaint because there was no substantial evidence provided to the Committee to sustain the complaint.

John Welton asked Mr. Hillard if his point of contention were the two electrical outlets in the island, and Mr. Hillard responded in the affirmative. He asked Mr. Hillard if he would agree to allow Mr. Jackson to hire a licensed electrician to install new receptacles in the island to resolve this situation, and Mr. Hillard stated he would not allow Mr. Jackson or his employees/subcontractors do additional work in his home. He stated his kitchen was currently being demolished, and the island that Mr. Jackson installed was being removed and a new one will be installed by their new contractor.

A motion was made by Darin Tiffany to **UPHOLD** the decision of the Licensing Committee based on lack of substantial evidence that any of the work completed was not Code compliant or permit required, seconded by Edward Pine; the motion carried 2:1. Tom McDonald opposed.

4. **UNFINISHED BUSINESS**

There was no Unfinished Business to discuss.

5. **NEW BUSINESS**

There was no New Business to discuss.

The meeting adjourned at 12:37 p.m.

Respectfully submitted,

Roger N. Lovell
Regional Building Official

RNL/llg