



CONSTRUCTION BOARD OF ADJUSTMENT AND APPEALS (CBAA)

F. M. "Pete" Clements, III, Chairman, Division 1 Contractor

Leon Walton, Vice-Chairman, Division 1 Contractor

Peter Robinson – General Contractor

Mark Dean – Mechanical Contractor

Dave Meck – Plumbing Contractor

Rev. Hugh King – Member General Public

Gayle Lafferty – Member General Public

Dean Luethje – Engineer

The Construction Board of Adjustment and Appeals will meet at 12:00 pm on **TUESDAY, March 25, 2008**, in the **COMMISSION CHAMBERS** of the County Administration Building, 1801 27th Street, Vero Beach.

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AGENDA

1. Call to Order

2. Approval of Minutes of January 29, 2008

3. Custom Cutz Seamless Gutters, I.I.C.
Board/Staff Review

4. Condemnation Appeal: Fountain Residence 13020 North A1A
Board/Staff Review

5. Discussion

6. Confirmation of Tuesday, April 29, 2008. CBAA 12:00 pm hearing.

7. Adjournment

cc: Joseph A. Baird, County Administrator
William K. DeBaal, Assistant County Attorney
Robert Keating, AICP, Community Development Director
James "Buddy" Akins, Building Official
Darcy Vasilas, Acting Executive Aide to Board of County Commissioners
Tere Fieler, Contractor License Investigator
Scott Johnson, Webmaster
Press Journal

Anyone who needs a special accommodation for his meeting may contact the County's ADA (Americans with Disabilities Act) coordinator at 567-8000, ext. 1223, at least 48 hours in advance of the meeting. Anyone who may wish to appeal any decision made at this meeting will need to ensure that a verbatim record of the proceedings is made, which includes testimony and evidence upon which the appeal is based.

CONSTRUCTION BOARD OF ADJUSTMENT AND APPEALS

There was a meeting of the Indian River County (IRC) Construction Board of Adjustment and Appeals (CBAA) on Tuesday, January 29, 2008 at 12:00 p.m. in the Commission Chambers of the County Administration Building, 1801 27th Street, Building "A", Vero Beach, Florida.

Present were members: Chairman Peter Robinson, and Pete Clements, Division 1 Contractor Appointees; Dave Meek, Plumbing Contractor Appointee (12:05); Dean Luethje, Engineer Appointee; Reverend Hugh King, Member General Public Appointee and Leon Walton, Electrical Contractor Appointee

Absent were Gayle Lafferty, Member General Public Appointee (unexcused) and Mark Dean, Mechanical Contractor Appointee (excused).

Let the record show there is a vacancy for an architect member.

Also present was IRC staff: William DeBaal, Assistant County Attorney; James Akins, Building Division Director; Tere Fieler, Contractor Licensing Investigator; and Rela Smith, Recording Secretary.

Call to Order

Chairman Robinson called the meeting to order.

Approval of Minutes of November 27, 2007

12:34:18

ON MOTION BY Mr. Walton, SECONDED BY Mr. Luethje, the members voted unanimously (5-0) to approve the minutes of the November 27, 2007 meeting as presented.

Item #3 – Election of Chair and Vice-Chair (12:34:49)

Attorney William DeBaal, Assistant County Attorney, recommended putting this matter off until the end of the meeting since at this time there were only five members present (Mr. David Meek arrived at 12:05 p.m.).

The Secretary administered the testimonial oath to those who would be testifying at today's hearing.

Item #4 – Artistic Aluminum of Vero Beach, Inc. (12:36:19)

Ms. Tere Fieler, IRC Contractor Licensing Investigator, reviewed information contained in the backup on file in the Commission Office. She reported the Respondent was paying his fines and there was an outstanding balance of \$2,000.

Respondent Mr. Scott Hagerman stated three of his jobs were being inspected today, adding he was activating five permits at a time and working them off his schedule as he paid his fines.

Mr. James Akins, IRC Building Division Director, recommended continuance.

12:37:57

ON MOTION BY Mr. Walton, SECONDED BY Mr. Luethje, the members voted unanimously (6-0) to approve staff's recommendation.

Item #5 – Hurley Builders & Developers (12:38:11)

Ms. Fieler referred to information contained in the backup on file in the Commission Office, and advised Respondent Raymond Hurley had stipulated to relinquish his license but the Order had not yet been filed by the State.

Respondent Mr. Bruce Hurley, 3082 S.W. Sunset Trace Circle, Palm City, Florida, distributed updated information on the status of the jobs, a copy of which is on file in the Commission Office.

Mr. Akins recommended continuing to work with the Respondent until the license was closed out by the State.

12:42:17

ON MOTION BY Mr. Luethje, SECONDED BY Mr. Walton, the members voted unanimously (6-0) to approve staff's recommendation.

Item #6 – Hometown Roofing (12:42:54)

Ms. Fieler referred to a copy of an e-mail dated November 26, 2007 from Respondent Billy Parsons, a copy of which is on file in the Commission Office. She advised she was trying to contact the

Respondent to see if he would relinquish his license, adding he was still under suspension status and there had been no further work done on any of his projects.

Mr. Akins noted the Respondent was living out of state, but as far as he knew he had cleaned up everything he could and was paying off the rest.

After some discussion it was agreed to leave the situation alone and let it ride until it reached a conclusion. Attorney DeBraul advised no formal Board action was necessary.

Item #7 – Tropical Homes of Indian River, Inc. (12:45:20)

Mr. Akins reported Pine Ridge Club subdivision consisted of 41 homes permitted between February, 2003 and July, 2005, and Certificate of Occupancy (CO's) had been issued for all but two or three of the homes. He reviewed information contained in the backup on file in the Commission Office and showed photographs of roofs of several homes in the subdivision, noting the roof covering on every home was barrel tile but the roofing called for on the plans was cement tile.

Mr. Akins stated the Building Division had no record of any licensed roofer as a subcontractor on any permit included in the group, with the exception of repairs contracted to Community Roofing for the home located at 5809 Pine Ridge Circle. He read from his letter dated September 21, 2007 to Respondent Pierre Paquette of Tropical Homes of Indian River, Inc., a copy of which is on file in the Commission Office.

Mr. Akins stated for the record there had been a passage of time since the initial installations and in the interim between September, 2004 and now, the Respondent's subcontractors or other persons unknown had apparently performed remedial work on certain roof installations, for which there was no documentation. He stressed inspection of a tile roof, other than during the progress of installation, could not fully ascertain the use of proper installation or repair techniques.

Mr. Akins related after receiving a complaint, in July, 2007 the Building Division had inspected the 41 roof installations and provided the inspection reports included in the backup on file in the Commission Office. He confirmed the inspections evidenced only the installation of one screw per tile where the inspector was able to view the fasteners, with the exception of 5902 Pine Ridge Circle, where the owner indicated he paid for

two screws per tile at an extra charge, and 5809 Pine Ridge Circle, where the owner specified foam attachment.

Mr. Akins continued Building Division personnel had observed numerous instances of failed tiled installations, improper tile repairs, damaged tiles and continuing failures of the installation, whether original or repairs. Ms. Fieler read the Consumer Complaint by Petitioner Mrs. Joanne S. Downs, a copy of which is on file in the Commission Office.

Mr. Akins noted the Building Division did not do inspections on tile flooring and in this case the primary concern was the roofing. He added records showed no inspections were scheduled on the tile roofs and inspectors had only seen the intermediate roof covering. He noted for a tile roof, instead of five inspections there were six, and in most cases the Respondent had only called in five.

Discussion followed.

Attorney Doug Vitunac, representing the Respondent, stated just after the 2004 hurricanes there was an executive order by the Governor allowing general contractors to do roofing. Under the circumstances the Respondent put down his name as the roofer on the building applications, but in fact MRM Roofing Incorporated (MRM) and Roof Tile Specialists of Pompano Beach actually installed the roofs in the development.

Mr. Akins stated the IRC Building Division did not have any record of subcontractors associated with the buildings because the information had not been provided. He clarified in order to get a subcontractor legally tied to a project you had to have a signature on a document, and no affidavits had been supplied on the entire project.

The Respondent agreed there appeared to be quite a lot of problems with the tile but noted some of the homes had been through three major hurricanes since they were finalized. He stated 31 of the homes had been repaired and modified by non-licensed contractors after the people had moved in, which he had nothing to do with. He added he was not aware of the problems until two months ago.

Attorney Vitunac did not think it was wise for the CBAA to take any action today on the basis of a citizen's complaint because it had been four years since the house was inspected five times and he could not believe the inspector did not notice the roof was tiled and a sixth inspection should be done. He suggested there would be full remedy in civil court for these

types of things, and recommended the homeowners should go there rather than before the Board. He maintained the issues had become personal between the Petitioner and other residents and his client, which made it a civil matter.

Attorney DeBraal referred to a letter dated September 21, 2007 to the Respondent from Mr. Akins, which is on file in the Commission Office, and wondered why the Respondent did not get MRM and Roof Tile Specialists on the job at that time.

Attorney Janet Croom, on behalf of the Respondent, said there had been no written complaints except for the one they were hearing today. She explained the process as set out by the legislature, and stated once the Respondent had received any notices under the statute he would be willing to do the Right to Cure portion.

Lengthy discussion followed.

Mrs. Joanne Downes, the Petitioner, (1:23:23) submitted photographs and background information into evidence, which are on file in the Commission Office. Mrs. Downes testified unlicensed day laborers had installed her roof and no flashing had been put on the roof. She did not feel the residents should have to spend a lot of money to make right or defend something that was very wrong in the beginning.

Mr. Donald Hall (1:32:20) related he had a contract to purchase a house at 5809 Pine Ridge Circle and had a civil suit brought against the Respondent. He submitted information into evidence, a copy of which is on file in the Commission Office.

Attorney Fred Kretschmer (1:36:57), representing Mr. Hall, stated the contract between the Respondent and Mr. Hall was entered in August, 2004 and the home was still not completed. He confirmed the lawsuit regarding the quality of construction of the roof and other issues was currently in litigation and would probably go to trial in the early summer of this year.

Mr. William Piccione, 2213 Pine Ridge Circle, Vero Beach (1:38:14), recited a list of his complaints about the roof on his home.

Ms. Darlene Morrow, 5893 Pine Ridge Circle, Vero Beach (1:44:14), testified 13 or 14 homes were constructed before the 2004 hurricanes and she had moved in two weeks before the storms. She described problems

she had encountered with her roof due to poor installation, and submitted photographs into evidence. which are on file in the Commission Office.

Chairman Robinson strongly recommended the complainants retain a construction law attorney to address their issues in court.

Discussion ensued about the liability of inspectors in the IRC Building Division.

Ms. Barbara Landry, 5805 Pine Ridge Circle, Vero Beach (1:51:17), related she had moved into her home in December, 2005, and went to closing with a temporary CO. She explained the only thing holding up her CO at closing was because she had ordered some custom hurricane shutters that had not arrived before the closing. Ms. Landry stated she had since been refused a CO because of the roof.

Discussion followed.

Mrs. Maryanne Bannon, 5845 Pine Ridge Circle, Vero Beach (1:54:44) outlined problems she had encountered with the foundation and roof on her home.

Attorney DeBaal recommended all residents of Pine Ridge subdivision file a complaint and submit relative documentation to the IRC Building Division. He clarified the CBAA could not remedy construction complaints, but existed to review and enforce licensing and contracting certificates issued by the County. He reiterated if the complainants wanted to fix their homes or obtain damages for things they claimed were defective they would have to go to circuit court to sue the Respondent or arbitrate whatever was in their contract. He emphasized there was a four-year time limit in filing paperwork in such cases and urged the complainants not to delay.

Discussion ensued about what the Respondent might do to remedy the situation.

Mr. Pete Picirillo, 5897 Pine Ridge Circle, Vero Beach (2:13:18), stated last summer when the IRC Building Inspectors came to inspect and take photographs of his roof, they had told him to get someone to cement down the tiles. He was concerned if something had been done to remedy the problem by the homeowner, the Respondent would no longer be liable.

Chairman Robinson recommended this case be continued until the next meeting of the CBAA.

Mr. Meek left the meeting at 1:45 p.m., and it was decided the Board should deal with Item #9 on the agenda.

Item #9 – Condemnation Appeal – Fountain Residence 13020 North A1A (2:19:42)

Mr. Akins referred to a letter dated January 28, 2008, from Ms. Julie Love, Permitting Coordinator of Palm Coast Development of Vero Beach, a copy of which is on file in the Commission Office. He noted nothing could be done until March 19, 2008, which was the date the Department of Environmental Protection had set as its deadline on Notice to Proceed, and recommended this case be continued until after that date.

Mr. Meek rejoined the meeting at 1.50 p.m.

Item #8 – Custom Cutz Seamless Gutters, LLC (2:21:10)

Ms. Fieler reviewed information contained in the backup on file in the Commission Office.

The Respondent, Mr. Marcus Shimmin, testified he had hired Mr. David Clements to subcontract one of his jobs but it had not been done correctly so he had fired him. The Respondent confirmed he had paid Architectural Concepts to finish up the siding and described the various steps he had taken to complete the job, but in the meantime the customers had contracted with someone else.

Mr. Akins asked if the Respondent realized his aluminum contractor's license did not allow him to contract for anything having to do with concrete. The Respondent submitted an invoice into evidence which is on file in the Commission Office. Mr. Akins noted the Respondent should have told the customer he was not allowed to contract for concrete and given him back his money, and renegotiated the contract for the rest of the job.

Workman's compensation was discussed.

Mr. Don Fink, 7000 20th Street, Lot 734, Vero Beach (2:35:50), submitted photographs into evidence, which are on file in the Commission Office. He testified he had hired another company to finish the job and felt

the Respondent owed him money back from his \$5,000 deposit for the work that was not completed.

Discussion ensued.

Chairman Robinson asked the Respondent if he was willing to pay Mr. Fink \$1,300. The Respondent said he would. Mr. Akins recommended the Respondent pay the money through the IRC Building Division and be placed on probation for six months.

2:46:42

ON MOTION BY Mr. Luethje, SECONDED BY Reverend King, the members voted unanimously (6-0) to approve staff's recommendation.

2:48:22

ON AMENDED MOTION BY Mr. Luethje, AMENDED SECOND BY Reverend King, the members voted unanimously (6-0) to order the Respondent to make the payment to Mr. Fink within 15 days.

Item #3 – Election of Chairman and Vice Chairman (2:40:09)

ON MOTION BY Mr. Walton, SECONDED BY Mr. Meek, the members voted unanimously (6-0) to elect Mr. Pete Clements as Chairman for 2008.

ON MOTION BY Mr. Luethje, SECONDED BY Mr. Meek, the members voted unanimously (6-0) to elect Mr. Leon Walton as Vice Chairman for 2008.

Discussion followed about roof inspections done at Tropical Homes of Indian River, Inc. and the contractor's responsibility to call for inspections. Mr. Akins explained how the County did its inspections.

Item #10 – Confirmation of Tuesday, February 26, 2008 CBAA 12:00 p.m. Hearing (3:06:39)

The Board was advised of the date of the next meeting.

Item #11 – Adjournment (3:06:49)

There being no further business the meeting was adjourned at 2:35 p.m.

BOARD OF COUNTY COMMISSIONERS

1840 25th Street, Vero Beach, Florida 32960



Indian River County
Building Division/Contractor Licensing
1801 27th Street
Vero Beach, FL 32960
772-226-1125
772-770-5333 fax

March 5, 2007

Marcus Shimmitt, DBA,
Custom Cutz Seamless Gutters, LLC
6075 7th Street
Vero Beach, FL 32968

Re: 7000 20th Street Lot 734

Mr. Shimmitt,

Due to your non-compliance of the Indian River County Construction Board of Adjustment and Appeals decision at the January 29, 2008 meeting, it is my obligation to re-convene the Indian River County Construction Board of Adjustment and Appeals for review of your case file to determine if further action is warranted. This is a disciplinary proceeding that may require restitution, impose a suspension or revocation of your license, or a fine not to exceed \$5,000 or a combination thereof.

Your case #07-09 will be heard on Tuesday, March 25, 2008 in the County Commission Chambers at 12:00 pm at the County Administration Building. The County Administration Building is located at 1801 27th Street, Vero Beach, Florida.

BOARD OF COUNTY COMMISSIONERS

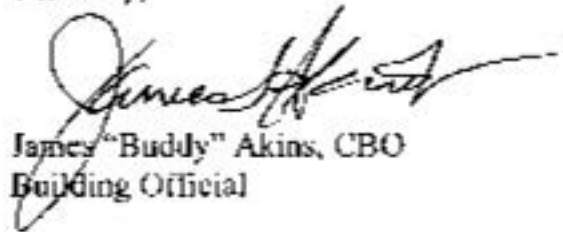
1840 25th Street, Vero Beach, Florida 32960

This is your opportunity to have your actions heard by the Construction Board of Adjustment and Appeals. Failure to appear at your scheduled hearing is considered a waiver of the right to an administrative hearing.

A waiver of the right to an administrative hearing shall be deemed an admission of the violation(s) and penalties may be imposed accordingly, including a possible lien on real or personal property.

If you have any questions regarding this matter, please do not hesitate to contact Betty Beatty-Hunter, Contractor Licensing Department at (772) 226-1800.

Sincerely,



James "Buddy" Akins, CBO
Building Official

JBA/bbh

cc: Pete Clements, Chairman of Indian River County Construction Board of Adjustment and Appeals
Leon Walton, Vice-Chairman of Indian River County Construction Board of Adjustment and Appeals
Robert Keating, AICP, Community Development Director
William DeBraal, Assistant County Attorney
Betty Beatty-Hunter, Contractor Licensing Investigator
Tere Fieler, Contractor Licensing Investigator
Rose Marie Anirina, Homeowner

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Board of County Commissioners
1801 27th Street
Vero Beach, Florida

Building Division

CASE #07-09

INDIAN RIVER COUNTY
CONSTRUCTION BOARD OF ADJUSTMENT AND APPEALS
PETITIONER.

vs.

Marcus Shimmin, DBA,
Custom Cutz Seamless Gutters LLC
RESPONDENT.

IRC COMP CARD# 16762

CONSUMER COMPLAINT

COMES NOW, the Petitioner, Indian River County Contractor Licensing and Regulation Section, hereinafter referred to as Petitioner, and files this Administrative Complaint before the Indian River County Construction Board of Adjustment and Appeals, against Marcus Shimmin, hereinafter referred to as Respondent, and alleges:

1. Petitioner is the county office charged with regulating the practice of construction pursuant to Ordinance 91-11 Chapter 400, and Chapters 455 and 489, Florida Statutes.
2. Respondent is, and has been material hereto, a Local Aluminum Contractor License Competency Card #16762, having been issued on May 10, 2007.
3. Respondent's last known business address is 915 24th Ave., Vero Beach, FL 32968.

STATEMENT OF FACT COUNT I & II

4. **Complaint #07-09:** Staff reports that the Respondent contracted with Rose Marie Anirina and Don Fink, 7000 20th Street, Lot 734 on May 9, 2007. Ms. Anirina contracted to add concrete

slab, utility/shed/laundry room and vinyl siding on the home. The respondent told the homeowners that a permit and notice of commencement would be required. The contract was sold by an employee, David Clements for \$9500.00. A deposit of \$5000.00 was paid. The siding was partially installed on the home by Mr. Clements employee of the Respondent. Mr. Fink hired another contractor to pour the slab to move the project on. The respondent never built the exterior room. Mr. Fink made several attempts to have the job completed. The Respondent holds a workers' compensation exemption.

COUNT I

5. Alleged violation of contracting violations specified in F.S.489.127 Prohibitions; penalties.-

(a) Falsely hold himself or herself or a business organization out as a licensee, certificateholder, or registrant; **(WORKING OUT OF SCOPE OF LICENSE; CONTRACTING TO DO CONCRETE SLAB)**

COUNT II

6. Alleged violation of contracting violations specified in F.S. 489.129 Disciplinary proceedings.-

(l) Committing fraud or deceit in the practice of contracting. **(WORKERS' COMPENSATION REQUIRED FOR EMPLOYEES)**

3/18/2008 Mr. Shimmin has not brought the check for \$1300.00 to staff for Ms. Rose Marie Anirina and Mr. Don Fink.

BOARD OF COUNTY COMMISSIONERS



Indian River County
Building Division
1801 27th Street
Vero Beach, FL 32960
772-226-1125
772-770-5333 fax

March 5, 2008

Herman M. Fountain
909 Orchid Point Way
Vero Beach, FL 32963

Re: 13020 N. A1A

Mr. Fountain,

The Construction Board of Adjustments and Appeals (CBAA) continued your condemnation appeal at the January 29, 2008 meeting. Your appeal has been placed on the CBAA March agenda. This is your opportunity to be heard concerning the rights of your property by the CBAA.

The Construction Board of Adjustments and Appeals will meet on Tuesday, March 25, 2008 in the County Commission Chambers at 12:00 pm at the County Administration Building. The Administration Building is located at 1801 27th Street Building A, Vero Beach, Florida.

If you have any questions regarding this matter, please do not hesitate to contact Betty Beatty-Hunter at 772-226-1800.

Sincerely,

A handwritten signature in black ink, appearing to read "James Akins".

James "Buddy" Akins, CAO

JBA/bbb

cc: Pete Clements, Chairman of Indian River County Construction Board of Adjustment and Appeals
Leon Walton, Vice-Chairman of Indian River County Construction Board of Adjustment and Appeals
Robert Keating, AICP, Community Development Director
William DeBraul, Assistant County Attorney
Betty Beatty-Hunter, Contractor Licensing Investigator
Tere Fielor, Contractor Licensing Investigator

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