

**MINUTES
OF THE KEY WEST
CONTRACTORS' EXAMINING BOARD
KEY WEST, FLORIDA
September 30, 2010**

3:01pm Pledge of Allegiance

Call to Order

3:02p.m. Vice Chairman opened meeting

Present for Roll Call

Peter Pike

Norman Wood

Merrell Sands

Nick Reeb

Paul Marotte

Ron Ramsingh; Assistant City Attorney

John Woodson; Chief Building Official

Jim Young; Code Compliance Manager

Kathleen Williams; Recording Secretary

Absent

Emigdio Gil

Late

Frank Balbuena (3:09pm)

➤ **Old Business**

3:03p.m. Approval of minutes from August 26, 2010
Motion made by Nick Reeb, Second by Paul Marotte; *Motion Carried*

➤ **New Business**

3:04p.m. **Item 1; Discuss Interlocal Agreement with MOCO**
Ron Ramsingh said he is still gathering information. Ron needs to discuss with City Attorney Shawn Smith before presenting to the CEB. Board will discuss topic at a later date.

3:05p.m. **Item 2; Discuss when Contractor(s) will come before the CEB or Special Magistrate**
Jim Young reviewed the Memo from former Building Director Charles Stephenson dated October 17, 2003, and the letter from former CEB Secretary Kim Pita dated July 12, 2007. Jim reiterated the matter of the letters and when it was determined that all Contractor Cases would go before the Special Magistrate. When a contractor is issued a

Stop Work Order, the case (if any) will go before the Special Magistrate first, and then go before the CEB. After further discuss between Jim, Ron, and City Manager Jim Scholl, it is the City's position to adhere to the subject Memo. Jim explained that 99% of the time when a Stop Work Order is issued, it's because the contractor's either doing work without a permit or exceeding the scope of the permit. To be brought before the Special Magistrate will ensure "compliance", safety and public welfare on a monthly basis. The function of the CEB, per Jim Scholl and City Ordinance is the examination and review of competency and discipline of the contractors, electricians and plumbers which are the individuals covered per the Ordinance. The first step is to ensure *compliance* with the code of ordinance, then equally important, this Board needs to examine the contractors that are issued stop work orders and recommend one (1) of the six (6) discipline recommendations this Board can issue. John Woodson stated he respectfully disagrees as he doesn't feel the memo has any legal standing. Paul Morrott felt the responsibility was to be put back on the city as the CEB doesn't know who is issued a red tag or not. Peter Pike wanted to discuss further about the roll of the CEB. Peter recalled when he was on the board at the time Mr. Stephenson changed the responsibility of the CEB. With the amount of board members present, Peter felt it would be a great opportunity to put this subject to rest and determine the responsibilities, duties and rolls as board members. Peter asked that John Woodson take the floor again to discuss his feelings about the Memo not being "binding". John said again, he respectfully disagrees and has all due respect, but doesn't feel where there is any legal standing from a memo from the Secretary of the CEB or a memo from a prior Building Official. One that's not been ratified through the City Commission and has not had any type of legal review that's he is aware of. He doesn't understand how a policy can be made that way. John feels the purpose of the board is to determine what they will and will not hear. Peter referenced section 2-322 as the "*Power and duties*" and mentioned items A-B which outline the duties and responsibilities. Peter read number three (3) of the section "*Appoint a city employee to investigate any complaints made against a licensed contractor*". Paul feels the person(s) actually writing the red tag should be the person(s) that investigates any complaints and should be the one making recommendations to the board. Nick Reeb asked the purpose of the board if they were not going to review the red tags. Jim stated the CEB will review every red tag issued to a licensed contractor. Prior to the boards review, Jim feels anyone has the ability to make a complaint with the board, CEB secretary or the chief building official before going to Code Compliance. Ron explained what the City Manager would like to see and stated the discipline options the board has. "After a red tag case is heard by the Special Magistrate it will come before the CEB. At that point, the CEB can find them not responsible for the allegation, reprimand, suspend, revoke or fine, *in addition* to what the Special Magistrate already imposed for compliance purposes. "There is compliance, which is making the property and/or issue safe, and then on the back-end is discipline and competency". Ron reiterated again that *all red tags* will be brought before the CEB after the same case is heard by the Special Magistrate, just with an additional stop involved. Norman Wood shared his concern that it sounds like "double punishment". Ron assured the board that was not the situation as it was two separate forums and two separate systems. Peter feels when dealing with guilt or innocence a person(s) should be brought before the CEB to make that determination. Paul agrees the case should go before the Special Magistrate first to determine compliance, and then being heard by the CEB which could determine if the contractor should keep his license and continue to pull permits or not. Paul stated "this is about determining the competence, not about guilt or innocence". Ron said he is not making any recommendation either way, and this was a deliberation on behalf of the City Manger who is directing his staff to continue the previous policy by the previous Building Official. Paul thought the CEB has not seen any red tags due to the memo. Jim informed the board that Code Compliance hasn't issued

any this year as given the opportunity, they came into compliance. John commented that his observation on a few occasions was that the Special Master doesn't have the expertise about life safety issues and it frustrates him. "When speaking about life safety issues, we need people that are experienced, like different trades". John is unsure if the Special Magistrate has that type of expertise and it concerns him as to what kind of decision he will make. John said he has been directed by his boss, Mark Finigan, that all life safety issues go directly to him personally, not Code Enforcement. Paul asked what decisions exactly does the Special Magistrate make in a typical case? John responded that he has seen cases on unsafe buildings when the Special Magistrate will continue to tell them that he will give 30 days and they come back and he'll give them another 60 days on a building that's falling down. John said at that point he has lost all control of doing anything to that building because the Special Magistrate has the case and made this decision. John referenced section 468 of the Florida Building Code, "Only the Building Official without the interference of any other person can make that decision". Does he take any weight of what you say or what anyone from your department says? Paul asked. John stated "He pretty much does what he wants; he lets you know he's in charge. I've seen staff be ridiculed by him." He's a good judge, but he doesn't have the expertise of life safety issues and we are powerless to do anything. Ron advised Mr. Vice Chair that if he wants to see any kind of change in the ordinance as they are written now, maybe the Chief Building Official could sponsor an ordinance change from his department to clarify the roll of the board. Ron explained that the legal department doesn't come up with ordinance changes; legal basically works with a department, the City Manager or a particular City Commissioner to effectuate what they want to get accomplished. Ron said there is a procedure to change the ordinance if it's the will of the Chief Building Officer, Code Manager or someone in a supervisory capacity. The legal department could help with the language they wanted to put before the City Commission.

Peter asked if there were any outstanding cases that needed to be brought before the CEB, not including red tags, as there is still the issue of open permits. Jim informed the board a certain contractor will be coming before them in the future so the board can decide if his privileges to pull permits should be suspended. This particular contractor was fined by the Special Magistrate and given a compliance period to get the proper permits, which was done. The second time he was found in violation, the Special Magistrate fined him as a repeat. Jim reminded the members that the Special Magistrate can fine them up to a certain dollar amount; however the CEB can suspend the privileges to pull permits which the Special Magistrate can not do. It was determined beginning January 2011, the CEB will start seeing cases for both open permits and red tags dating back to June 1, 2010. Before moving forward, Peter wanted to resolve the issue about the structure that was adopted from the Memo dated back to 2003. Peter asked Ron if the CEB has the power as a board to change this procedure. Ron reiterated the amount of construction cases the CEB will be hearing, however the City Manager wants the compliance aspect of a case to be fulfilled from a public safety perspective first. Norman asked if the CEB will hear evidence, go through the same procedure and follow the same flowchart. Ron assured him that would remain the same as is required under the code and the flowchart will not change.

Peter was concerned about "open end" issues at the bottom of the flowchart. When hearing a case and following the flow chart, Peter asked what steps can be taken. Ron directed them to the Ordinance 2-324; guilty, suspend, revoke, reprimand or fine (Ron stated there should be an "E" for fines). Peter requested to amend the Ordinance as far as the cost of fines. Ron agreed that if the CEB wanted to change the administrative fines, a revision would need to be made. **The "guidelines" to follow are listed in the Ordinance under 2-324.** Per Ron, if a contractor does not have a certificate of competency, they can not pull permits. All violations will be discussed on the open floor.

Paul requested that a motion be made for guidelines to list the state maximum. Ron reiterated it's in the Ordinance under 3-234. Unless speaking about a state certified building contractor because they do not need a certificate of competency to pull permits. However they can be regulated or just send a letter to the State of Florida. The CEB makes the determination about the length of time a license is suspended. Peter requested a cheat sheet. Ron believes John would sponsor the administrative cost and run it through the City Managers office, which would sponsor the Ordinance revision. Ron and Kathy will work together on a cheat sheet. **Keep in mind if the CEB should have any questions during court, Ron will assist.** Paul wanted to make sure the CEB had no problems revoking a contractor's ability to pull permits or suspension. No one had a problem if the violation was necessary and/or depending on the severity of the case.

4:16p.m. **Item 3: Reappoint reminder for Board Members**

The CEB members who are up for reappointment were reminded to turn the paper work into the mayor.

Additions

Paul requested the next board meeting October 28th be held at Habana Plaza due to Fantasy Feast.

4:20pm **Adjournment**