

Pikes Peak Regional Building Department

2880 International Circle
Colorado Springs, Colorado 80910

BOARD OF REVIEW MINUTES

November 20, 2019

10:30 a.m.

MEMBERS PRESENT: Chairman Darin Tiffany, Engineer
Vice Chairman, Jeffrey Finn, Citizen-At-Large
Edward Pine, Building A, B or C Contractor
Vince Colarelli, Building A or B Contractor

MEMBERS ABSENT:

RBD STAFF PRESENT: Roger Lovell, Regional Building Official
Virginia Koulchitzka, Regional Building Counsel
Jay Eenhuis, Deputy Building Official – Plans
John Welton, Deputy Building Official - Inspections
Rebecca Mulder, Licensing Department Supervisor
Matt Matzen, Permit Supervisor
Linda Gardner, Executive Administrative Assistant

PROCEEDINGS:

Vice Chairman Darin Tiffany called the meeting to order at 10:30 a.m.

Jina Koulchitzka stated due to a vacancy in the Chairman position on the Board of Review, the Vice Chairman, Darin Tiffany, has automatically become the Chairman of the Board, and a new Vice Chairman must be elected for the remainder of this year to fill in the vacancy.

A motion was made by Vince Colarelli to elect Jeffrey Finn as the Vice Chairman of the Board of Review for the remainder of 2019, seconded by Edward Pine; the motion carried unanimously.

1. **CONSIDERATION OF THE OCTOBER 16, 2019 BOARD OF REVIEW MINUTES**

A motion was made by Edward Pine to **APPROVE** the October 16, 2019 Board of Review Minutes as written, seconded by Jeffrey Finn; the motion carried unanimously.

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

a) Technical Committee Minutes of November 6, 2019.

A motion was made by Vince Colarelli to **APPROVE** the November 6, 2019 Technical Committee Minutes as written, seconded by Edward Pine; the motion carried unanimously.

b) Licensing Committee Minutes of November 13, 2019.

A motion was made by Vince Colarelli to **APPROVE** the November 13, 2019 Licensing Committee Minutes as written, seconded by Edward Pine; the motion carried unanimously.

3. **DECISION APPEALS**

- a) Complaint against Kevin McGee, Licensee, and Karen McGee, President and Registered Agent, Decksrus, Inc.; and Kenneth Peterson, Owner, Licensee, Registered Agent, and Chris Poundstone, Owner, Innorev Home Solutions, LLC, by Michael and Michelle L'Hotta for performing work at 15624 Agate Creek Drive, Monument, Colorado prior to obtaining permit(s), in violation of Sections RBC105.1 and RBC201.11.3, Nos. 1, 5 and 6, 2017 Pikes Peak Regional Building Code. *Ken Peterson and Kevin McGee appeared for the October 9, 2019 Licensing Committee meeting, and the Committee made a motion to **REVOKE** the contractor licenses of Kevin McGee and Kenneth Peterson due to starting construction work prior to permits being obtained, creating life safety issues, and authorizing an unlicensed contractor to do construction consulting and construction work without the required license(s).*

Jina Koulchitzka read on the record the appeal hearing procedure(s). All parties testifying were sworn in. Ms. Koulchitzka stated it is the understanding of the Department that at least one of the parties may be contemplating introducing new evidence that was not presented during the Licensing Committee hearing. If that is the case, the Board must decide whether to hear the matter de novo or limit the appeal hearing to the issues appealed subject to the appeal record only. If the Board is not going to hear the matter de novo, meaning a new hearing allowing any and all testimony and evidence coming in, then the Board would not consider any new testimony or evidence being presented today by either party. Ms. Koulchitzka advised the Board that one of the issues on appeal is the administrative fines that the Department imposed against the licensees based on admissions and evidence presented during the Licensing Committee meeting. She stated that is an administrative decision by the Department that would generally require an appeal to the relevant advisory committee, which is the Licensing Committee, and then if any of the parties were dissatisfied with the decision or recommendation of the Licensing Committee, this Board would be hearing that matter. She stated procedurally this issue has been resolved by the parties with the appellants having waived the required hearing by the Licensing Committee. The Department, in order to expedite the proceeding, has stipulated to such waiver, so this Board is hearing all three issues, as appealed by the appellants.

In order to determine whether to hear the appeal de novo or not, the Board requested all parties to briefly talk about contemplated new evidence or testimony to be presented. Ken Peterson appeared and stated the appeal is to reinstate their licenses so they may complete their outstanding projects, to reconsider the amount of the administrative fines levied by the Department, and to reconsider the life safety determination by the Licensing Committee. He stated the new evidence is the inspector's notes from eight of their projects from the past year, and in no instance did the inspectors identify a life safety issue with any of their projects. He stated he is also presenting excerpts from the Licensing Committee's Minutes with regard to the fines levied by the Department in the past.

Charles Lawson appeared and stated he has a lawsuit against the appellants as a result of a construction project in Teller County. Ms. Koulchitzka stated this complaint is irrelevant and not part of the appeal matters before the Board today; as a result, Mr. Lawson would not be allowed to testify in the appeal hearings. Ms. Koulchitzka stated the Department does not have jurisdiction in Teller County for projects that are outside the City of Woodland Park.

Vince Colarelli stated he would recommend that the Board limit the information to that presented to the Licensing Committee, but as an exception consider the appellants' project history with inspector notes, if presented. Ms. Koulchitzka stated the Department will not oppose any informational evidence specific to administrative fines, but will oppose the admission of testimony or evidence related to other projects or inspectors' comments concerning such other projects outside of the scope of the specific matter being appealed. Seconded by Edward Pine, the motion carried unanimously.

Mr. Peterson stated Innorev Home Solutions, LLC ("Innorev") and Decksrus, Inc. ("Decksrus") are both under the Majestic Outdoor Environments, LLC ("Majestic") umbrella as the parent company. He stated Majestic is not a licensed company. Mr. Peterson presented his notes and/or excerpts from a number of Licensing Committee meeting minutes specific to administrative fines historically imposed by the Department. He admitted an understanding that not all administrative fines, as imposed by the Department, are of record in the Department's meeting minutes, as an administrative matter or remedy. He stated he is requesting that the Board consider reinstating the licenses for both himself and Mr. McGee, so they may complete their outstanding projects; reconsider the size of the administrative fines levied against Innorev and Decksrus; and define the life safety issues determined by the Licensing Committee. Mr. Peterson stated the life safety issues were brought up numerous times during the Licensing Committee meeting, but this issue has never been addressed by any of the inspectors that have done inspections on their projects. He stated caution tape was installed across the patio doors leading to the decks that were being replaced. He asserted that life safety and prevention tools are a matter of contract and negotiation(s) between the companies and the home owner(s), i.e., a lack thereof being a waiver by the home owner(s).

Mr. Colarelli asked if it was the responsibility of the Department's inspectors to point out and note life safety issues on a project. Mr. Welton stated the International Residential Code does not reference construction safeguards nor OSHA requirements; therefore, life safety issues are the contractor's responsibility.

Vince Colarelli stated the revocation was due to three violations: (a) starting construction work prior to permit being obtained; (b) creating life safety issues; and (c) authorizing an unlicensed contractor to do construction consulting and construction work without required license(s). Rebecca Mulder stated Majestic was the unlicensed contractor, noted in (c).

Mr. Peterson confirmed on the record that the appellants received a copy of the record of appeal from the Department. In response to questions, Mr. Peterson confirmed on the record that the following companies were all parties to the contract with the homeowner(s) on this specific project: Decksrus, Innorev, and Majestic dba Decksrus, dba Innorev.

A motion was made by Vince Colarelli, based on the additional information and evidence presented today, to **UPHOLD** the decision of the Licensing Committee on October 9, 2019, to revoke the appellants' licenses, seconded by Edward Pine; the motion carried unanimously.

- b) Complaint against Kevin McGee, Licensee, and Karen McGee, President and Registered Agent, Decksrus, Inc.; and Kenneth Peterson, Owner, Licensee, Registered Agent, and Chris Poundstone, Owner, Innorev Home Solutions, LLC, by Michael and Junko Clabough for performing work at 9204 Rock Pond Way, Colorado Springs, Colorado prior to obtaining permit(s), in violation of Sections RBC105.1 and RBC201.11.3, Nos. 1, 5 and 6, 2017 Pikes Peak Regional Building Code. *Ken Peterson and Kevin McGee appeared for the October 9, 2019 Licensing Committee meeting, and the Committee made a motion to **REVOKE** the contractor licenses of Kevin McGee and Kenneth Peterson due to starting construction work prior to permits being obtained, creating life safety issues, and authorizing an unlicensed contractor to do construction consulting and construction work without the required license(s).*

Ms. Koulchitzka confirmed on the record that the previously read appeal procedure(s) remain in effect for purposes of this appeal matter. All parties testifying were sworn in. Ken Peterson stated he does not have additional evidence other than that presented for 3.a) above. Mr. Clabough requested to introduce evidence regarding lack of credibility by the appellants during the Licensing Committee hearing. As such should have been presented and argued during the Licensing Committee hearing, the contemplated new testimony or evidence was not allowed to be introduced. Mr. Clabough stated, although he does not have any other new evidence, he would like this Board to see the photographs of his deck as it was left by Decksrus, and the safety issues he was left with. He stated his deck was left this way for ten months. Rebecca Mulder stated this deck was never permitted by Decksrus or Innorev. Mr. Clabough stated he hired another contractor to complete his deck.

Ken Peterson stated there was a change of management during the first part of 2019; he took more of the management role from Mr. Poundstone. He stated he was in the process of trying to rectify the projects that were in place, but it was an “uphill climb”, and he was still in the process of doing so when the licenses lapsed. Mr. Peterson stated he would like to incorporate the information presented in Item 3(a) above.

Ms. Mulder stated currently there are no open or administratively closed permits for Innorev or Decksrus. The open permits held by both licensees have been taken over by other licensed companies.

A motion was made by Vince Colarelli, to **UPHOLD** the decision of the Licensing Committee on October 9, 2019, to revoke the appellants’ licenses, seconded by Edward Pine; the motion carried unanimously.

The remaining issue for determination by the Board with regard to both Item No.’s 3.a) and 3.b) is the appeal of the administrative fines, as imposed by the Department.

Kevin McGee appeared and stated he owns Decksrus and when he teamed up with Innorev, Mr. Peterson also had a license. He stated they were not informed by their attorney that their umbrella company, Majestic, also was required to be licensed. Mr. McGee stated his goal was to complete the permits, but he does not have the financial means to now complete his outstanding projects.

Ms. Koulchitzka stated should Mr. Peterson or Mr. McGee, individually, or in any representative capacities, apply for a license in the future, a license will not be issued, even if granted, until all administrative fines have been paid. She stated the Department does not have jurisdiction over Chris Poundstone because he is not a licensee, except for legal remedies, including, but not limited to an injunctive relief proceeding to be considered by the Department for doing construction consulting and/or construction work without a license outside of the complaint being heard on appeal.

Vince Colarelli stated with “two companies, a maximum fine of \$4,000 is “double jeopardy”. Jeffrey Finn stated he would support a 50% reduction in the administrative fines for Mr. Peterson and Mr. McGee. A motion was made by Jeffrey Finn to modify the Department’s administrative fines from \$4,000 to \$2,000 each for Decksrus and Innorev; the motion **FAILED** due to lack of a second to the motion.

A motion was made by Edward Pine to **UPHOLD** the decision of the Department with regard to the Department’s administrative fines levied against Innorev Home Solutions, LLC and Decksrus, Inc. for performing work at 15624 Agate Creek Drive, Monument, Colorado prior to obtaining permit(s), seconded by Vince Colarelli; the motion carried 2:1. Jeffrey Finn opposed.

A motion was made by Edward Pine to **UPHOLD** the decision of the Department with regard to the Department's administrative fines levied against Innorev Home Solutions, LLC and Decksrus, Inc. for performing work at 9204 Rock Pond Way, Colorado Springs, Colorado prior to obtaining permit(s), seconded by Vince Colarelli; the motion carried 2:1. Jeffrey Finn opposed.

4. **UNFINISHED BUSINESS**

There was no unfinished business.

5. **NEW BUSINESS**

a) 2020 Board of Review Calendar

The proposed 2020 Board of Review Calendar was discussed and agreed to by the board members. No further action was required (since this is a non-voting item until January of 2020 for purposes of compliance with the Colorado Sunshine Act requirements).

The meeting adjourned at 12:08 p.m.

Respectfully submitted,



Roger N. Lovell
Regional Building Official

RNL/lfg

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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