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STATE CONTRACTORS BOARD

MINUTES OF THE WORKSHOP BEFORE THE NEVADA STATE CONTRACTORS BOARD HELD MARCH 11, 2004

The workshop was called to order at 10:00 a.m. on Thursday, March 11, 2004, at the offices of the State Contractors Board 2310 Corporate Circle, Henderson, Nevada. Exhibit 1 is the Notice of Intent to Act Upon a Regulation and a copy of the proposed regulation. Exhibit 2 is the sign-in log.

BOARD MEMBERS PRESENT:

Mike Zech
Jerry Higgins
J. Brian Scroggins

STAFF MEMBERS PRESENT:

Ms. Margi Grein, Executive Officer
Mr. George Lyford, Director of Investigations

COUNSEL PRESENT:

Laura Browning, Esq.
Dennis Haney, Esq

Ms. Grein called the workshop to order and explained the purpose of the workshop is to receive public comment on proposed amendments to Chapter 624 of the Nevada Administrative Code to implement NRS 40.6887 concerning questions or disputes brought before the Nevada State Contractors Board relating to constructional defects. NRS 40.6887 allows a claimant and any contractor, subcontractor, supplier and design professional to submit a question or dispute to the State Contractors Board concerning any matter which may affect or relate to a constructional defect, including, without limitation, questions concerning the need for repairs, the appropriate method for repairs, the sufficiency of any repairs that have been made and the respective rights and responsibilities of homeowners, claimants, contractors, subcontractors, suppliers and design professionals. The law further states that nothing in NRS 40.6887(2) authorizes the State Contractors Board to require the owner of a residence or appurtenance to participate in any administrative hearing which is held pursuant to this section and further declares that the response or decision of the Board is not binding; is not subject to judicial review nor is it admissible in any judicial or administrative proceeding brought pursuant to the provisions of this chapter.

The proposed regulation has been identified by the Legislative Counsel Bureau as LCB File No. R158-03.

Ms. Grein indicated that the notice of the workshop had been posted in compliance with NRS 233B at the Las Vegas City Hall, the Sawyer State Building, Clark County Library, Washoe County Courthouse, Washoe County Library, Reno City Hall and the offices of the State Contractors Board in Reno and Henderson.

Mr. Grein noted that a workshop was held on this regulation on November 7, 2003 and that several parties had offered comments on the proposed regulation. The regulation was amended to change

references to SB 241 to NRS 40.6887 and to simplify some of the sections of the regulation. She indicated the hearing would be held immediately following the workshop.

James Wadhams, Esq. representing the Southern Nevada Home Builders and the Coalition for Fairness in Construction stated his opinion that two basic problems exist with the regulation as it is proposed: (1) That there must be an agreement between parties before a request is submitted to the Board. Mr. Wadhams expressed his opinion that the legislative intent was that any individual could file a request under this provision; and (2) That the intent of the bill was that the process could be completed within 30 days and would not require a formal Board hearing; that "inspectors" would make job site visits and provide advice that would be non-binding.

Ms. Grein indicated that she had reviewed the legislative history and noted that Amendment 805 to SB 241 changed the Nevada State Contractors Board's role and at that time the language requiring a claimant and any contractor, subcontractor, supplier and design professional appeared.

Discussion ensued concerning the legislative intent of the language and whether the Board could interpret the word "and" to mean the word "or".

Mr. Haney explained that statutory construction of the law follows plain meaning of the language.

Bruce King indicated that he is frustrated with the regulation process and was under the impression when the law was being considered that the intent was to allow any party access to the Board under Chapter 40. He stated it is his belief that the contractors agreed to pay for administration of the law in order to implement a simple non-binding process to get questions answered and an opinion by personnel of the Board. He indicated his willingness to contact legislators to determine the legislative intent of the bill. He stated he was under the impression that a contractor could simply make a call and have an investigator come out and work through the process.

Mr. Zech indicated that the Board had nothing to do with the draft of the bill and that the role of the Board is to adopt a regulation to comply with the law as it was passed.

Mr. Haney added that the Board would need legislative history to adopt a regulation that changes "and" to "or".

Discussion focused on section 2 of NRS 40.6887 that states: "Nothing in this section authorizes the State Contractors' Board to require the owner of a residence or appurtenance to participate in any administrative hearing which is held pursuant to this section. Mr. Haney indicated that the language appears to contemplate a hearing and further noted that the homeowner must permit access to a residence. Mr. Wadhams again stated it was his opinion that the legislators wanted Board personnel to give non-binding advice and that no Board deliberations would be required.

Ms. Grein explained that the investigators employed by the Board are not similar to building inspectors. The Board's investigators conduct the investigations and report the findings. The Board is responsible for making decisions.

Mr. Scroggins indicated that he had spoken with Senators Townsend and Hardy concerning the matter and had been informed that they envisioned an easy process wherein a contractor would complete repairs; if there was a question an investigator would determine if the workmanship performed was within the industry standards. No determinations would be made regarding construction defects.

Scott Canepa on behalf of the Nevada Trial Lawyers Association expressed his agreement that the word "and" should be "or". He indicated that the process in no way is meant to impede the homeowner's vehicle for redress. He indicated if the homeowner wants to participate, the process would make sense, however, if the homeowner disagrees or intends to proceed to a legal proceeding there would be no value to the process. He also stated there appears to be as many disputes between general contractors and

subcontractors as there are between homeowners and contractors. He stated that based on the language in the law it appears that the Board is expected to make decisions after a staff investigation.

Sam McMullen stated that the goal is to adopt a regulation that is supported by legal opinion. He suggested that the parties meet with Legislative Counsel to discuss legislative intent. He provided his interpretation of statutory construction. He also indicated that he is in support of one party being authorized to bring a question or dispute to the Board and the use of an informal process to enable a party to receive non-binding advice.

Ms. Grein suggested that the wording "provided the homeowner consents" could be added to the current version of the proposed regulation to address the problem.

Bruce King again spoke about the contractor paying the fee and indicated he does not want to have any formal consent from the homeowner for a home site visit. Mr. King stated that a written formal consent would make the process too formal. He suggested the contractor call the Board's offices, schedule an appointment and then the contractor and the Board's representative would go to the door of the homeowner's residence and obtain the homeowner's consent for the inspection at that time. No prior notice to the homeowner would be required.

Mr. Scroggins advised the current normal procedure for the NSCB is to have the investigator contact the homeowner and schedule a time for the on-site inspection.

There being no further comments, the workshop was adjourned at 11:25 a.m.

Respectfully submitted,

Jeanne Reynolds
Recording Secretary

Approved:

Margi A. Grein, Executive Officer

**MINUTES OF THE HEARING
BEFORE THE NEVADA STATE CONTRACTORS BOARD
HELD MARCH 11, 2004**

The hearing was called to order at 11:30 a.m. on Thursday, March 11, 2004, at the offices of the State Contractors Board 2310 Corporate Circle, Henderson, Nevada. Exhibit 1 is the Notice of Intent to Act Upon a Regulation and a copy of the proposed regulation. Exhibit 2 is the sign-in log.

BOARD MEMBERS PRESENT:

Mike Zech
Jerry Higgins
J. Brian Scroggins

STAFF MEMBERS PRESENT:

Ms. Margi Grein, Executive Officer
Mr. George Lyford, Director of Investigations

COUNSEL PRESENT:

Laura Browning, Esq.
Dennis Haney, Esq

Ms. Grein called the hearing to order and explained the purpose of the hearing is to consider proposed amendments to Chapter 624 of the Nevada Administrative Code to implement NRS 40.6887 concerning questions or disputes brought before the Nevada State Contractors Board relating to constructional defects. NRS 40.6887 allows a claimant and any contractor, subcontractor, supplier and design professional to submit a question or dispute to the State Contractors Board concerning any matter which may affect or relate to a constructional defect, including, without limitation, questions concerning the need for repairs, the appropriate method for repairs, the sufficiency of any repairs that have been made and the respective rights and responsibilities of homeowners, claimants, contractors, subcontractors, suppliers and design professionals. The law further states that nothing in NRS 40.6887(2) authorizes the State Contractors Board to require the owner of a residence or appurtenance to participate in any administrative hearing which is held pursuant to this section and further declares that the response or decision of the Board is not binding; is not subject to judicial review nor is it admissible in any judicial or administrative proceeding brought pursuant to the provisions of this chapter.

The proposed regulation has been identified by the Legislative Counsel Bureau as LCB File No. R158-03.

Ms. Grein indicated that the notice of the hearing had been posted in compliance with NRS 233B at the Las Vegas City Hall, the Sawyer State Building, Clark County Library, Washoe County Courthouse, Washoe County Library, Reno City Hall and the offices of the State Contractors Board in Reno and Henderson.

Ms. Grein noted that a workshop was held on this regulation on November 7, 2003 and immediately preceding this hearing and that several parties had offered comments on the proposed regulation. Based upon those comments and pending clarification from Legislative Counsel, the hearing was continued at 11:31 a.m..

Respectfully submitted,

Jeanne Reynolds
Recording Secretary

Approved:

Margi A. Grein, Executive Officer