

MINUTES

OMAHA PLUMBING BOARD

Regular Meeting – Wednesday, December 12th, 2012
1:30 pm – City/County Building – 1819 Farnam Street
Jesse Lowe Conference Room – Third Floor

I. Roll Call

Members Present:

Brian A Barrett
Jeff O. Estabrook, Vice-Chairman
Brian Feyerherm
David W. Miller, Chairman
Christopher P. Reed
Terry Salem
Amy L. Schaap

Members Absent:

Others Present:

Jim Wonder, City of Omaha Planning Department
Reid Steinkraus, Douglas County Health Department

Mr. Miller called the meeting to order at 1:37 pm.

II. Approval of Minutes from November 28th, 2012

Motion by Mr. Estabrook to approve the minutes from the last meeting. Second by Mr. Salem.

AYES: Estabrook, Feyerherm, Miller, Reed, Salem, Schaap

ABSTAIN: Barrett,

Motion carried 6-0-1.

III. *Examination Reviews

Journeyman Plumber

Matt E Roth
15014 Ellison Av
Omaha NE 68116

JTM Plumbing Service
12616 S 218th Av
Gretna NE 68028-5985

Master Plumber

Jacob M Sargent
14921 Edna St
Omaha NE 68138

Sewer Layer

Charles M Kahl
50979 230th St
Glenwood IA 51534

Tab Construction
4153 S 67th St
Omaha NE 68117

Scott L Reimers Jr
3456 S 126 Av
Omaha NE 68144

Dave Janke Plumbing
15013 Grover St
Omaha NE 68144

IV. Apprenticeship Agreements

Matthew E. Nemec
3507 Walnut St
Omaha NE 68105

MMC Contractors
9751 S 142nd St
Omaha NE 68138

Matthew E. Nemec appeared before the Board with Bill Baker of MMC Contractors. Mr. Miller reviewed the file, and commented that the applicant was seeking a start date of December 12, 2012. During review of the file, it was determined that MMC Contractors needed to submit paperwork to establish their own apprentice program, as Mr. Nemec is not yet considered to be registered under Plumbers Local 16. Mr. Baker stated that he would work with Local 16 to get Mr. Nemec's registration paperwork sorted out.

Motion by Mr. Reed to hold this case over to the January 9th, 2013 meeting. Neither Mr. Nemec nor Mr. Baker need appear at this meeting, provided that the Board Secretary receives all necessary documentation from Plumbers Local 16. Second by Mr. Estabrook.

AYES: Barrett, Estabrook, Feyerherm, Miller, Reed, Salem, Schaap

Motion carried 7-0.

Jacob C. Riesgaard
7329 Grant St
Omaha NE 68134

Vincentini Plumbing
2308 S 16th St
Omaha NE 68108-3948

Jacob C. Riesgaard appeared before the Board with Pete Vincentini of Vincentini Plumbing. Mr. Miller reviewed the file and commented the file was missing the required ratio sheet. The Board Secretary stated that she had spoken with Mr. Vincentini's office; the ratio sheet would be mailed to her today.

Motion to approve Jacob C. Riesgaard as a registered apprentice with a start date of September 1, 2012, with the stipulation that Vincentini Plumbing submit a ratio sheet to the Board Secretary by Mr. Estabrook. Second by Mr. Salem.

AYES: Barrett, Estabrook, Feyerherm, Miller, Reed, Salem, Schaap

Motion carried 7-0.

V. *Cases

12-12-143

Bryan Manley
360 Swanson Dr
Syracuse NE 68446

REQUEST: Request for reinstatement of an expired sewer layer's license

49-212

Bryan Manley appeared before the Board to request reinstatement of an expired license. Mr. Miller reviewed the file and commented that all appeared to be in order with the request.

Motion by Mr. Estabrook to approve subject to quad fee as required by Code. Second by Mr. Salem.

AYES: Barrett, Estabrook, Feyerherm, Miller, Reed, Salem, Schaap

Motion carried 7-0.

12-12-144

Tom's Well Service
14438 County Rd P12
Blair NE 68008

REQUEST: Waiver to allow the installation of a private well for domestic use.

Location: 14014 N 108th St
49-1510

Angie Knutson-Smith, homeowner, appeared before the Board. Mr. Miller reviewed the file and commented that all appeared to be in order with the request. No objection was raised to the requested well waiver by either the Metropolitan Utilities District or the Douglas County Health Department.

Motion to approve by Mr. Reed. Second by Mr. Estabrook.

AYES: Barrett, Estabrook, Feyerherm, Miller, Reed, Salem, Schaap

Motion carried 7-0.

12-12-145

John Shramek
Arjay Builders Inc.
2604 S 158th Plaza
Omaha NE 68130

REQUEST: Variance of section 49-636, Table 5c as regards drinking fountains.

Location: 10365 Pacific St
49-636

John Shramek appeared before the Board. Mr. Miller read from the file that the location in question is a dentist's office. The business will provide a coffee and juice bar for customers; there is also a water cooler in the break room, and a refrigerator for bottled water. Each dental station also has access to drinking water.

Motion to approve by Mr. Reed. Second by Mr. Estbarook.

AYES: Barrett, Estabrook, Feyerherm, Miller, Reed, Salem, Schaap

Motion carried 7-0.

12-12-146
Eva Vachal
18735 F St
Omaha NE 68135

REQUEST: Variance of section 49-635, Right of use of toilet rooms in businesses by customers.

Location: 18735 F St
49-635

Eva Vachal appeared before the Board. Mr. Wonder explained that Ms. Vachal is opening a dog day care on their acreage. The business is limited in size; owners will pull up to the house and be met by Ms. Vachal's daughter, who handles operations for the business. The dogs will be housed in a large barn on the property. This barn has no plumbing save a water hydrant inside the building that was previously used for watering horses. Currently, Ms. Vachal stated that they intend to have no more than ten dogs staying with them at any time.

Mr. Estabrook inquired as to what would happen if a customer dropped off their animal and then needed to use the restroom. Ms. Vachal assured Mr. Estabrook that they would be directed to the bathroom in their house, which is located approximately 35 feet from the barn. Mr. Wonder suggested that the Board grant Ms. Vachal a waiver for one year; at that time, the Board could review this case again, confirming that it hasn't grown drastically or caused any problems.

After some discussion, Mr. Reed made a motion to grant a waiver for a period of one year. Ms. Vachal must contact the Board Secretary at the end of this term to schedule her appearance before the Board so that her waiver may be reviewed. Second by Mr. Estabrook.

AYES: Barrett, Estabrook, Feyerherm, Miller, Reed, Salem, Schaap

Motion carried 7-0.

12-12-147
Eugene Tredway
10035 Scott Circle
Omaha NE 68122

REQUEST: Waiver to allow unisex restroom

Location: 10035 Scott Circle
49-631

Eugene Tredway appeared before the Board. Mr. Wonder explained that this business provides golf instruction. Mr. Wonder stated that most of the 2,200 square feet is taken up with a putting green, golf simulators and other equipment; he postulated that approximately six people could be in the business at any one time. The space has an existing unisex restroom with a urinal that Mr. Tredway would like to continue to use. He is the sole employee in the business.

Motion to approve by Mr. Estabrook. This waiver is for this business and this business only. Second by Mr. Salem.

AYES: Barrett, Estabrook, Feyerherm, Miller, Reed, Salem, Schaap

Motion carried 7-0.

12-12-148
Angie Lewis
4432 Browning Place
Lincoln NE 68516

REQUEST: Waiver to allow unisex restroom

Location: 3157 Farnam St Suite 7108
49-631

Mr. Estabrook recused himself, appearing before the Board with Angie Lewis, applicant. Mr. Reed stated that he also would recuse himself from voting on this case. Ms Lewis operates The Corky Canvas, which teaches painting classes. They provide wine for sale to customers in their classes, and would like to operate with a unisex restroom. Ms. Lewis stated that she operates another location in Lincoln; she estimated that less than ten percent of their sales come from alcoholic beverages. When asked why she wants to operate with only a unisex restroom, Ms. Lewis cited space restrictions. There is a stage at the front of the room where the instructor stands, and each table has several easels on it. Installing a second restroom would severely limit the number of people who could fit in the space at any one time.

In response to Mr. Wonder's question, Ms. Lewis stated that their clientele is predominantly female, and there are typically ten to fifteen people in the space at one time. Classes at the Corky Canvas are no more than two hours long. Customers must be sixteen or older to take a painting class at their location.

Motion to approve requested waiver of unisex restroom at 3157 Farnam St Suite 7108 by Mr. Feyerherm. This waiver is for this business and this business only. Second by Mr. Miller.

AYES: Barrett, Feyerherm, Miller, Salem, Schaap

ABSTAIN: Estabrook, Reed

Motion carried 5-0-2

VI. Revocation Hearing

12-10-132

Joseph W. Greenwood Jr.
14601 Locust St.
Omaha NE 68116

REQUEST: Hearing for possible suspension or revocation of licenses

49-206, 220(d)

This case was first heard before the Board on 10/24/2012. Please see minutes for more information

Joseph W. Greenwood Jr. appeared before the Board with Michael Polk of Sena and Polk, LLP, attorney.

Mr. Wonder stated that this case was being heard again following Mr. Greenwood's appearance before the Administrative Board of Appeals on November 26, 2012 (please see minutes from case number 12-11-88 for more information). At that hearing, Mr. Polk attorney claimed that Mr. Greenwood did not receive adequate notice for the revocation hearing on October 24th, 2012 (see above). This case was remanded back to the Plumbing Board in order to allow Mr. Greenwood to appear before them with his legal representation.

Mr. Wonder read his sworn affidavit aloud to those present, which stated that Mr. Greenwood, while employed as the master plumber of record for Plumbing Specialties Inc., used this company's name on August 9, 2012 to take out a permit for use by A to Z Plumbing. Plumbing Specialties Inc generally takes out their permits online. This permit (#12-04872) was taken out at the permits counter and was used for a project at Yummy Super Buffet, 6553 Ames Avenue. A to Z Plumbing does not have a registered master plumber, and its owner, Dale Anderson, is a journeyman plumber. This permit was taken out without the permission of Jacob Sargent, the owner of Plumbing Specialties Inc. Mr. Wonder asserted that Mr. Greenwood is in violation of the following sections of the Omaha Municipal Code: 49-206 (Misuse of name) and 49-220(d) (License required).

Mr. Wonder stated that this issue came to light following a complaint by the owner of Yummy Super Buffet on September 17, 2012, who stated that A to Z Plumbing had failed to return to the jobsite. Upon researching this complaint, it was discovered that permit #12-04872 was issued under the name of Plumbing Specialties, Inc., Mr. Greenwood's employer. This permit was signed by Mr. Greenwood and was paid for at the permits counter. Mr. Wonder contacted Mr. Sargent, who informed him that he had no knowledge of this job, and was surprised when he was contacted by the owners of Yummy Super Buffet, who wished him to finish the work.

Mr. Wonder read section 49-220(d) of the Omaha Municipal Code aloud to those present: "...*A master plumber's license shall only be valid and in effect for one company, firm, or corporation for whom the license holder is a full time employee, and shall not be assignable to, or be available for use by any other company, firm, or corporation; provided, that if the license holder owns fifty percent or more of each company, firm or corporation he may use the license for that company, firm or corporation. This section shall not disqualify a master plumber from using his license on behalf of a corporation for which he is an officer, as of the effective date of this ordinance.*" Mr. Wonder then read section 49-206 of the Omaha Municipal Code aloud to those present: "...*No person engaged in business as a master plumber, water conditioning contractor, or lawn sprinkler contractor shall allow their name to be used by any other person, directly or indirectly, either to obtain a permit or to do any work under his license, under penalty of having his or their license revoked.*" Mr. Wonder stated that the last line of this section is particularly important, as it specifically states that the penalty for violation of this section is revocation of license.

Mr. Wonder continued, stating that the public expects that when the City licenses someone, that that person has a certain competency and knowledge as to how things should be done. He stated his doubt as to whether the owners of Yummy Super Buffet would have hired A to Z Plumbing to work for them if they had known that they were not properly licensed to pull permits. Mr. Wonder stated that the basic reason for licensing was violated by Mr. Greenwood; adding that licensing is not for the protection of the plumber; rather, it is for the protection of the public and for the health and safety of our water and sewage systems. Licensing exists so that if a plumber violates of the rules set forth under the Municipal Code, then the Plumbing Board, which was established by the State of Nebraska, can exercise their authority and revoke that person's license. Mr. Wonder concluded by stating that violation of section 49-206 of the Omaha Municipal Code goes right to the core of licensing.

Michael Polk, attorney, appeared before the Board. Mr. Polk disputed the statement that Plumbing Specialties Inc takes out their permits online, citing an email from Jennifer Sargent of Plumbing Specialties Inc (Exhibit #2) which stated that she had figured out why they were unable to pull permits online. He stated that in his preparation for today's hearing, he had asked for information regarding any and all license revocation hearings which occurred within the past year that were for issues other than failure to meet continuing education requirements. He discovered upon reviewing the supplied materials that there are no other instances in which the Board chose to revoke a license.

Mr. Polk stated that he had spoken with Mr. Dale Anderson, the owner of A to Z Plumbing. Mr. Anderson indicated in an affidavit that he had an oral agreement with Mr. Greenwood; at no time did Mr. Greenwood represent to him that A to Z Plumbing could use Plumbing Specialties, Inc.'s license, nor did Mr. Greenwood represent himself as a member or owner of A to Z Plumbing. Mr. Anderson confirmed that he did contract with Yummy Super Buffet, and that A to Z Plumbing was to work with Mr. Greenwood in a subcontractor capacity. Mr. Polk asserted that the owner of Yummy Super Buffet failed to allow access to the restaurant so that work could be completed. She was also difficult to work with. These reasons, combined with Mr. Anderson's unexpected illness and hospitalization, contributed to work not being completed. Mr. Polk stated that Mr. Greenwood was unaware that work had not been completed. Mr. Wonder protested that the City had not seen Mr. Anderson's affidavit; in response, Mr. Polk distributed copies of said affidavit to those present. (Exhibit #3).

Mr. Polk presented an affidavit from Mr. Greenwood (Exhibit #4) which stated that his client had thought himself to have the authority to work on separate jobs and pull permits on behalf of Plumbing Specialties Inc. Mr. Polk stated that Mr. Greenwood's contract with Plumbing Specialties Inc did not limit his authority to contract or work with other people. Mr. Polk stated that his client did not believe that he had misused Plumbing Specialties Inc.'s name, and concluded by stating that at most Mr. Greenwood may be guilty of "sloppy contracting".

After discussion of Exhibit #2 (see above), it was determined that Ms. Sargent was referring to an issue with her choice of web browser which may have temporarily prevented her from using the online permitting system; however, as a rule, Plumbing Specialties, Inc takes out all of their permits online.

In response to Mr. Polk's comments, Mr. Wonder stated that section 49-220(d) states that a license shall only be valid and in effect for one company. Although Mr. Greenwood may not have contracted directly with the business owner, his license was not valid for use for work done by A to Z Plumbing; thus, it is a clear violation of that section of the Municipal Code. Mr. Wonder added that "master plumber" is defined as: "...Any person who is engaged in the business of plumbing, or who does, or who sets himself out as willing to do personally, or through his employees, any work or service in connection with the installation, alteration, or repair of plumbing and drainage systems or parts thereof and who is registered, licensed, and bonded as provided for in this chapter." (Omaha Municipal Code, Section 40-400, Definitions, p.42). A to Z Plumbing and Dale Anderson were not employees of Plumbing Specialties Inc; Mr. Greenwood may also be considered to be in violation of this section of the Municipal Code.

Mr. Wonder countered that the matter at hand was the fact that Mr. Greenwood took out a permit for another company; Mr. Anderson's described illness is irrelevant. Mr. Wonder questioned Mr. Polk's statement regarding the owner of Yummy Super Buffet's cooperativeness; stating that the owner is guilty of nothing except possibly failing to check on whether or not the contractor they hired was properly licensed. Mr. Wonder again stated that the issue before the Board today is a very serious matter, and speaks to the core of licensing.

In regards to Mr. Polk's assertion that the Board has never revoked a license save for failure to complete continuing education (see above), Mr. Wonder replied that in all of his experience, the Board had never had a case identical to the one before them today. He admitted that the Board had taken licenses in the past for violations of the Municipal Code; however, in those cases, the sections that were violated did not specifically call for the revocation of a license if violated, as does Section 49-206. Mr. Miller agreed with Mr. Wonder's statement, adding that he has no recollection of any case before the Board that could be considered to be similar. Mr. Wonder commented that the Board members change approximately every three years; to attempt to limit the members of a current Board based on the actions of previous Board members is not logical. Mr. Polk stated that Mr. Greenwood was willing to come to an agreement with the Board, and accept penalties short of revocation. He suggested that if the Board would agree to vote to suspend Mr. Greenwood's license for a term of six months, his client would accept that verdict and make no further appeals.

Ms. Schaap asked Mr. Sargent as to the hardships experienced by his company as a direct result of Mr. Greenwood's actions. Jake Sargent, owner of Plumbing Specialties Inc, appeared before the Board. Mr. Polk objected to Mr. Sargent being allowed to testify before the Board, stating that Mr. Sargent had already provided an affidavit; to allow him to testify further would not be procedurally correct. Mr. Wonder suggested that the Board take a short recess so that a representative from the City Legal Department could be brought in to advise the Board.

Motion to go into recess by Mr. Estabrook. Second by Mr. Reed.

AYES: Barrett, Estabrook, Feyerherm, Miller, Reed, Salem, Schaap

Motion carried 7-0. Board entered recess at 2:32pm.

Board entered back into session at 2:41 pm, with RoseMarie Horvath, Assistant City Attorney, in attendance. Ms. Horvath stated that there is no prohibition disallowing Mr. Sargent to testify before the Board. She added that Mr. Polk would be able to ask Mr. Sargent questions if he desired.

Jake Sargent, owner of Plumbing Specialties Inc, appeared before the Board. In response to Ms. Schaap's question regarding the hardships suffered by his company as a result of Mr. Greenwood's actions, Mr. Sargent responded by saying that he had tried to work with the owners of Yummy Super Buffet, but was unable to come to an agreement. He was taken to small claims court by the owner of Yummy Super Buffet and the building landlord, who claimed property damage. Mr. Sargent stated that the court had ruled in his favor, due to the fact that they were found not to have been contractually obligated. He had no legal fees. Ms. Schaap stated that other than the hassle of having to go to court and appear before the Board multiple times, and the possibility of what might have happened, there appeared to be little impact on Plumbing Specialties Inc. Mr. Salem stated that it was indicated earlier that the owner of Yummy Super Buffet was difficult to work with; he asked Mr. Sargent whether he agreed with this assessment. Mr. Sargent stated that there had been somewhat of a language barrier; but he was able to communicate with the owner. He was unable to sustain the financial hit that would have been required in order to complete the work at Yummy Super Buffet, and this was the reason that he was unable to come to an agreement with the business owner.

Mr. Reed asked Mr. Polk whether Mr. Greenwood owned 50% of either Plumbing Specialties Inc or A to Z Plumbing. Mr. Polk replied that his client did not have 50% ownership in either company. Mr. Barrett inquired as to whether Mr. Greenwood's insurance or bond would cover the amount required to complete the work still needed at Yummy Super Buffet. Mr. Polk was not able to answer this question, citing that there were too many variables involved in such a situation.

Mr. Estabrook stated that Mr. Greenwood was a contracted employee of Plumbing Specialties Inc, and Municipal Code does not allow him to operate for another company. Mr. Polk asserted that if there were any problem, it was a matter of "sloppy contracting", and not something that should subject his client to a complete revocation of his license. Mr. Polk reviewed some of the other cases in the past in which individuals were brought before the Board for possible revocation of their licenses; he stated that in those cases, the Board did not vote to take away a license. Mr. Miller countered that the cases referenced by Mr. Polk were irrelevant, as the sections of the Municipal Code which were violated in those instances did not specifically call for the revocation of the contractor's license, as does Section 49-206. Mr. Miller stated that the penalty for violation of Section 49-206 of the Omaha Municipal Code is revocation of license.

Mr. Wonder summarized the City's position in this matter: that this issue goes to the core of licensing. There must be trust on the public's part that the City has done their best to ensure that contractors are licensed, competent, and will perform work. This trust was broken when Mr. Greenwood allowed his license to be used by another company. Mr. Wonder stated that he didn't think that the owner of Yummy Super Buffet would have contracted with A to Z Plumbing had they known that this company was not licensed to pull permits. Mr. Wonder stated that the Board has not had a similar case during his experience as a past Board member and later as Chief Plumbing Inspector. He asked that the Board vote to revoke Mr. Greenwood's master plumber license.

Mr. Polk summarized his client's position in this matter; that this is a case of potential "sloppy contracting". He stated that he did not agree with Mr. Miller's interpretation of section 49-206 of the Municipal Code; citing that this section states "under penalty of revocation" and does not include the phrase "shall be revoked". He argued that this section could be interpreted as having a penalty up to and including revocation, which would include suspension. Mr. Polk stated that the Board could uphold the violation of Section 49-220(d); but asked that the Board vote to suspend, rather than revoke, his client's license.

After some discussion as to the various options open to the Board for the resolution of this case, Mr. Reed made a motion to revoke Joseph W. Greenwood Jr.'s master plumber license for violations of sections 49-206 and 49-220(d) of the Omaha Municipal Code. Second by Mr. Miller.

AYES: Estabrook, Feyerherm, Miller, Reed

NAYS: Barrett, Salem, Schaap

Motion carried 4-3; license revoked.

VII. Approval of Apprenticeship Renewals (20)

Richard Crapser	Wonder Plumbing Inc	Metro
Joe Dervin	Micro Plumbing	Metro
Zack Durham	A. Raymond Plumbing	Completed
Andrew DeSoe	Micro Plumbing	Metro
Don Harrell	Plumbing & Elec. Contractors Inc.	ABC
Casey Jahns	Roto-Rooter	Metro
Rick Kalhorn	Butch the Plumber Inc	Completed
Michael Larson	Dave Janke Plumbing Inc	Completed
Mike Livingston	Thomas Plumbing	Completed
Vince Lohmeier	Simet Plumbing	Completed
Aaron Lyons	Backlund Plumbing	Metro
Ben Marshall	Roto-Rooter	Completed
Stephen McConnell	Plumbers Local 16	Local 16
Justin Osborne	Radden Plumbing	Metro
Phillip Ring	Roto-Rooter	Completed
Brian Robinson	Roto-Rooter	Metro
Tommy Smith	Southwest Mechanical Inc	Completed
Nicholas Waddell	Wonder Plumbing Inc	Metro
Jason Watkins	UNMC	Completed
Todd Wesely	Wonder Plumbing Inc	Metro

Motion to approve the above listed apprentice renewals by Mr. Estabrook. Second by Mr. Salem.

AYES: Barrett, Estabrook, Feyerherm, Miller, Reed, Salem, Schaap

Motion carried 7-0.

VIII. Discussion

- The Board Secretary reminded the Board members that beginning in 2013, ALL Plumbing Board meetings will take place at 1:30 (the Board has eliminated their 9:00 am meeting time).
- The Plumbing Board meeting scheduled for December 26th, 2012 has been cancelled due to the holidays. The Board will meet again on January 9th, 2013.

IX. Adjourn

Motion to adjourn by Mr. Estabrook. Second by Mr. Reed.

AYES: Barrett, Estabrook, Feyerherm, Miller, Reed, Salem, Schaap

Motion carried 7-0. Meeting adjourned at 3:01 pm.

*** = APPLICANT MUST BE PRESENT AT MEETING**

A full, continually current agenda is available for public inspection in Room 1110 of the Omaha/Douglas Civic Center during normal business hours.

The Omaha Plumbing Board reserves the right to modify the agenda at the public meeting.

If alternative (tape) to the agenda is needed, please advise Jim Wonder. A 72-hour notice is required.

Visit the Planning Department's Site on the Internet at <http://co.douglas.ne.us/omaha/planning/boards/plumbing-board>