



City of Tarpon Springs, Florida

324 East Pine Street
Post Office Box 5004
Tarpon Springs, Florida 34689-5004
(727) 938-3711
Fax: (727) 937-8199
www.ctsfl.us

July 27, 2016

To: The Citizens of Tarpon Springs

From: Mark G. LeCouris, City Manager

Re: Department of Business and Professional Regulations Investigation of the Building Director

I want the Citizens of Tarpon Springs to know that as City Manager, I stand by our Building Director, Anthony Mastracchio 100%. The news reports by Channel 8 do not portray the facts and circumstances of this situation. Please read the City's response to the Department of Business and Professional Regulations that is attached to this memorandum.

Some important facts to know are the following:

1. The time period for this alleged violation is only a two week period in January of 2016.
2. The only license in question involves the ability to sign Certificates of Occupancy, Appeals and Condemnations. None of Mr. Mastracchio's many other licenses are in question.
3. There were no approvals of this type signed by Mr. Mastracchio during this two week time period in question. In fact, there have only been approximately 35 Certificates of Occupancy signed during 2016 and another employee in the Building Department is licensed to sign these documents.
4. Mr. Mastracchio has been performing all other functions of his job as Building Director.
5. It is absolutely proper for the City Attorney to defend this case for our City employee. The City of Tarpon Springs has been in strict compliance with the Federal Americans with Disabilities Act to protect the rights of Mr. Mastracchio. This investigation by the Department of Business and Professional Regulation is

- inhibiting the rights of Mr. Mastracchio and the rights of the City to allow the necessary accommodation to comply with Federal labor law guidelines.
6. Mr. Mastracchio is a highly qualified and respected long time employee of the City of Tarpon Springs. He has greatly improved the public service of the Building Department and has assisted many of our citizens with resolving building issues. Once the City can resolve this issue with the Department of Professional Regulations, we will no doubt have one of the top building officials in the State of Florida.
 7. Any citizen who has any other questions is encouraged to call me at City Hall 727-938-3711.

Attachments:

1. Letter from the City Attorney to the Board of Commissioners
2. City's Response to the Florida Department of Business and Professional Regulation
3. Correspondence from the City's Labor Counsel regarding ADA regulations



THOMAS J. TRASK, B.C.S.*
JAY DAIGNEAULT
RANDY MORA
ERICA F. AUGELLO
JOHN E. SCHAEFER
DAVID E. PLATTE

** Board Certified by the Florida Bar in
City, County and Local Government Law*

MEMORANDUM

DATE: July 25, 2016

TO: Mayor Chris Alahouzos
Vice Mayor Townsend Tarapani
Commissioner David Banther
Commissioner Rea Sieber
Commissioner Susan Slattery

CC: Mark LeCouris, City Manager

FROM: Jay Daigneault, Esq.

RE: *Department of Business and Professional Regulation v. Anthony Mastracchio*,
Case No. 2016-003920

Dear Mayor, Vice Mayor, and Commissioners:

As you are aware, an anonymous complaint was filed in late January of this year with the Department of Business and Professional Regulation alleging that the City's Building Development Director, Anthony Mastracchio, was not properly licensed as a Building Code Administrator. The Department initiated an investigation, the findings of which were recently presented to a probable cause panel of the Florida Building Code Administrators and Inspectors Board. That probable cause panel determined that there was probable cause to believe that a license violation had occurred, and consequently issued an Administrative Complaint on July 1, 2016 against Mr. Mastracchio. Until the filing of the Administrative Complaint, the Department's investigation and associated documents were confidential and not subject to disclosure under Chapter 119, Florida Statutes. Those documents are now subject to disclosure, and this memorandum is intended to update you on the status of the matter.

As part of the Department's investigation, I responded to the allegations of the complaint in a lengthy memorandum dated February 27, 2016, which I have attached for your reference. In sum, I detailed Anthony's illness and absence from work that began in April, 2015 and extended into September, culminating with him verifying the status of his Provisional Building Code Administrator's license prior to resuming that role in January, 2016. The fundamental issue is this: Anthony's provisional license was issued in October, 2014 and provisional licenses have a term of one year, at which time it is expected that a standard license would be issued assuming that the

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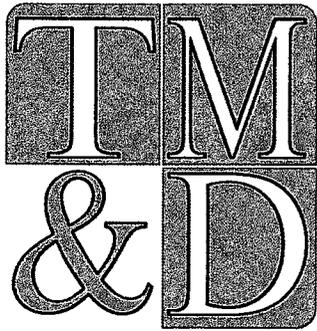
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provisional license holder passes the required examinations. Here, then, his provisional license expired in October, 2015, though he clearly was not in a position to prepare for or take the required tests for a standard license. But, Anthony made significant efforts to determine the status of his provisional license before resuming his Building Official duties in January. In fact, the Department's online portal indicated that his provisional license was valid as late as January 25, 2016, so the belief that his provisional license remained valid was certainly objectively reasonable. Further, the City at all times has had qualified, licensed personnel both on staff and contracted to review building permits both during Anthony's absence and during the pendency of this proceeding.

Upon the issuance of an Administrative Complaint, the respondent has a variety of options to choose from to bring the process to conclusion. Anthony and I have determined that the best option under the circumstances is to elect not to challenge the material facts alleged in the Administrative Complaint, but to present to the Board the significant mitigating factors that we are optimistic will be persuasive to the Board in considering any discipline to be issued. I expect that a hearing will occur within sixty days and that a final decision will be issued shortly thereafter.

As always, please do not hesitate to contact me with any questions you have regarding this matter.

/s/ Jay Daigneault, Esq.
City Attorney



T R A S K
M E T Z &
DAIGNEAULT
LLP
ATTORNEYS

THOMAS J. TRASK, B.C.S.*
ROBERT J. METZ, JR.
JAY DAIGNEAULT
RANDY MORA
REGINA KARDASH
ERICA F. AUGELLO

Of Counsel
MARK W. BRANDT

* Board Certified by the Florida Bar
in City, County and Local
Government Law

JAY DAIGNEAULT, ESQ.

February 27, 2016

Florida Department of Business and Professional Regulation
Attn: Jennifer Mangieri
Investigator, Division of Regulation
1313 North Tampa Street, Suite 915
Tampa, FL 33602
Jennifer.Mangieri@myfloridalicense.com

Re: ANTHONY MASTRACCHIO

Complaint #2016003920

Dear Ms. Mangieri:

Please accept this correspondence as Mr. Anthony Mastracchio's response to the complaint referenced above. Mr. Mastracchio and I look forward to your professional consideration of this response and appreciate your efforts in that regard.

In sum, the facts of Mr. Mastracchio's case are very unusual. He suffered a serious medical event approximately six months into the term of his one year provisional license, and did not return to work for nearly five months. When he did return, he returned on a part-time basis doing only plan reviews for which he held valid licenses. When he was physically able to resume his duties as the City's Building Official, he first contacted the Department of Business and Professional Regulation (the "Department") to validate his licensure, then took online continuing education to cure a deficiency in his licensure that he was told existed. In fact, the Department's website showed his Provisional Building Code Administrator license as "Current, Active" even past the date that this investigation was initiated. Based on the usual circumstances of this case, Mr. Mastracchio respectfully requests both that this complaint be dismissed and that his provisional license be extended.

THE COMPLAINT DOES NOT MEET THE LEGAL REQUIREMENTS FOR INVESTIGATION.

The Department is required to investigate, for boards under its jurisdiction such as the Building Code Administrators and Inspectors Board (the "Board") at issue here, any complaint that is "in writing, signed by the complainant, and legally sufficient." § 455.255 (1) (a), Fla. Stat. The Department may investigate anonymous complaints provided that three requirements are met:

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(1) the complaint is in writing and is legally sufficient; (2) if the alleged violation of law or rules is substantial; and (3) if the department has reason to believe, after preliminary inquiry, that the violations alleged in the complaint are true. *Id.* By its terms, these provisions are conjunctive. If any of them fail, then the Department may not investigate the complaint.

While the undersigned acknowledges that the Department may initiate its own investigations based upon reasonable cause to believe that a violation has occurred, the complaint in this case makes clear that it is based upon an anonymous complaint called in by a “concerned citizen” on January 22, 2016. The allegation of the concerned citizen was not reduced to writing as required, and it is neither independently sufficient to prompt an investigation nor to bootstrap an otherwise prohibited investigation based on “reasonable cause.” The complaint should be dismissed.

ALLEGATIONS OF THE COMPLAINT.

The complaint against Mr. Mastracchio alleges that he practiced or offered to practice beyond the scope of his licensure in violation of § 455.227 (1) (o), Fla. Stat. The complaint alleges that Mr. Mastracchio’s Provisional Building Code Administrator license (PBC341) was issued on October 28, 2014 and expired on October 27, 2015, and that City of Tarpon Springs permitting records indicate that Mr. Mastracchio issued permits after the expiration of PBC341.

Before explaining the unusual circumstances concerning Mr. Mastracchio’s Provisional Building Code Administrator license, I wish to note that Mr. Mastracchio possesses valid licensure as a Standard Plans Examiner (PX1592, issued 6/30/99 and expiring 11/30/17), a Standard Inspector (BN3555, with the same issuance and expiration dates as PX1592), and a Standard 1 and 2 Family Dwelling Plans SFP (SFP67, issued 1/10/01 and expiring 11/30/17). In light of this licensure, Mr. Mastracchio and I are unaware of the specific permits which are alleged to have been issued in violation as noted in the complaint, and none were attached thereto or specifically identified. Nevertheless, Mr. Mastracchio does not dispute that he functioned as the City’s Building Official after October 27, 2015, specifically between approximately January 4, 2016 and January 22, 2016.

1. The Expiration of PBC341.

Mr. Mastracchio does not dispute that PBC341 was issued on October 28, 2014. But, there are unusual and extenuating circumstances in this matter that I do hope are carefully considered in the investigation of this matter.

First, please be advised that Mr. Mastracchio suffered a serious health event, a stroke, on April 1, 2015, leaving him with a disability. He spent seven days in the intensive care unit of a local hospital, then three days in a step-down room. Mr. Mastracchio spent the next four plus months in and out of the hospital, and continues to the present time attending muscular and neurological therapy three times per week. As you can imagine, his rehabilitation has been intense and Mr. Mastracchio’s efforts during this difficult time have been focused on recovery,

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rehabilitation, and his family.¹ Of course, during this time he was not working with the City of Tarpon Springs or elsewhere and was not cleared by his doctors and specialists to return to work in any capacity until August 26, 2015.²

Sometime between mid-August and mid-September, 2015, Mr. Mastracchio telephoned the Department to inquire about his licensure status. He was informed over the phone that he could work for one year as a Provisional Building Code Administrator. He informed the representative of his medical condition, that he had not been working as a Building Official during the course of his illness, and that he would not be returning to work in that capacity until January or February, 2016. Unfortunately, Mr. Mastracchio did not memorialize this conversation in writing. Nevertheless, at the time of his stroke, Mr. Mastracchio had worked under his provisional license for a little more than five months (between October 28, 2014 and April 1, 2015).

Around August 26, 2015, Mr. Mastracchio returned to work at the City on a limited, part-time basis. At that time he was doing only plan reviews and building official functions were being handled by Mr. DaCosta or the M.T. Causley, Inc. representative mentioned below.

On December 28, 2015, now being released by his medical team to full-time status and able to resume his former duties, Mr. Mastracchio again contacted the Department to inquire about all of his licenses, including PBC341. The representative informed Mr. Mastracchio that all of his licenses were valid, though he was told that a continuing education class he had taken previously in Pinellas Park, Florida was not accepted. Accordingly, he was informed that he needed to take additional education in Laws & Rules and Ethics. Mr. Mastracchio completed online courses in those two disciplines immediately. I have attached copies of the Certificates of Completion evidencing same.

On January 4, 2016, Mr. Mastracchio visited the DBPR website to view the status of his licenses and to confirm the information he had been given over the phone on December 28, 2015. The website showed all of his licenses, including PBC341, as "Current, Active." So, on or about that same date, Mr. Mastracchio resumed his duties as the City's Building Official under PBC341, though Mr. DaCosta remained on staff and the City remained under contract with M.T. Causley, Inc. to fill in for him when he was at therapy or otherwise unavailable.

Though Mr. Mastracchio did not feel it necessary to print the page from the licensing portal at that time, the Department's website showed PBC341's status as "Current, Active" as late as January 25, 2016—I have attached a copy of same to this response. Thus, until the initiation of

¹ In consultation with my client and subject to the privacy rights afforded him concerning his medical records, I will provide documentation of Mr. Mastracchio's diagnosis and treatment should you find that information helpful to your handling of this complaint.

² I also wish to note that, in Mr. Mastracchio's absence, the City immediately contracted with M.T. Causley, Inc. to perform building related services, including building official services, for a period of two years on an as-needed basis. A copy of that contract has been provided to the Department through Mr. Timothy McGrath, though I am happy to provide another at your request. Further, James C. DaCosta (BU32) was originally licensed as a Building Code Administrator on March 11, 1994 and has been employed by the City since April, 1993. Though not germane to this investigation, I raise these matters only to emphasize that compliance with Florida Statutes and regulations governing the proper licensing of building department personnel has always been of paramount importance to the City and Mr. Mastracchio.

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this investigation, Mr. Mastracchio reasonably believed that PBC341 was current and active. He had confirmed that information over the phone and the Department's website appeared to confirm the same. He took the steps that he believed necessary to keep that license active by immediately completing the continuing education courses required of him. Moreover, as soon as the present investigation was initiated, Mr. Mastracchio ceased functioning as the City's Building Official pending the resolution of this complaint.

2. Analysis & request for extension/reinstatement.

I trust that the evidence set forth herein clearly shows that Mr. Mastracchio has been diligent in honoring the obligations of his professional licensure. When he returned to work following his stroke, he made every reasonable effort to ensure that his licensure was valid and that he could work without issue under PBC341. He relied on the assurances of Department technicians in believing that his license remained valid as the result of his illness and absence, and the Department's own website appeared to validate that reliance. When informed that his continuing education requirement was not satisfied, he immediately completed the necessary training. In sum, Mr. Mastracchio does not and cannot dispute that he functioned as the City's Building Official for a brief period of time in January, 2016, but he did so unaware that his provisional licensing had not been extended and, in fact, having been informed that it was. At all times relevant, both Mr. DaCosta and M.T. Causley, Inc. were engaged by the City to perform such services in Mr. Mastracchio's absence. Additionally, Mr. Mastracchio's other licenses remained valid during this time as discussed above. The unusual facts of this case do not warrant discipline against Mr. Mastracchio, and I respectfully request that the complaint against him be dismissed accordingly.

Finally, I note that there are at least two statutory provisions that might be applied in order to deal with these most unusual circumstances. First, § 455.271 (6) (b), Fla. Stat., provides that "the department may, at its discretion, reinstate the license of an individual whose license has become void if the department determines that the individual failed to comply because of illness or economic hardship." My client is in the process of submitting just such an application.

Second, under § 468.609 (7) (a), Fla. Stat., a provisional license may be renewed by the Board for just cause, but for no longer than a period of three (3) years. My thorough search of the relevant statute and regulations has revealed no formal process to request such an extension. So, I wish to formally request such an extension of PBC341 on behalf of Mr. Mastracchio. As noted herein, Mr. Mastracchio worked under his provisional license from October 28, 2014 to April 1, 2015, a period of five months and a few days. Then, he worked under a provisional license that he had been led to believe was valid for approximately three weeks in January, 2016. Thus, Mr. Mastracchio has had the benefit of less than six months of the full year conferred by a provisional license. I believe that the facts as stated herein demonstrate good cause shown justifying the extension of PCB341. Accordingly, Mr. Mastracchio respectfully requests that PCB341 be extended for a period of time beginning on October 28, 2015 and ending ninety (90) days from the final resolution of this complaint. This will provide Mr. Mastracchio with the time necessary to apply for and take the exams necessary to receive his standard Building Code Administrator's license while fulfilling his professional responsibilities to the City and his personal obligations to

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his family. Obviously, this has been a trying time in Mr. Mastracchio's life and he should be afforded every fair opportunity to pursue his licensure as indicated.

I trust that this response is fully responsive to the complaint. Please do not hesitate to contact me should you have any concerns regarding this correspondence.

Very truly yours,

TRASK · DAIGNEAULT, LLP

/s/ Jay Daigneault

Jay Daigneault, Esq.
jay@cityattorneys.legal

JD/jad
Encl.

CERTIFICATE OF COMPLETION

This certificate confirms that
ANTHONY MASTRACCHIO

LICENSE #(s): BN3555 PX1592 SFP67

has successfully completed the following Internet distance learning continuing education curricula with the CONTRACTORS INSTITUTE

"BCAI Laws and Rules 2 Hours"
Florida BCAI course 0007462 providing 2 hr Laws & Rules

» Curricula Completed: December 28, 2015 «

For applicable Florida State licenses, these continuing education credits are reported to the state electronically within 30 days of your completion date or by your license renewal date. THIS DOCUMENT SERVES AS YOUR PERMANENT CERTIFICATE OF COMPLETION. Please keep a copy for your records should you need it.

Rhonda E. Koning

Director of Distance Learning Continuing Education
Contractors Institute - a division of Koning Enterprises, Inc.
8301 Joliet St., Hudson FL 34667
Tel: 1-877-LICENSE (542-3673)
Locally: 727-861-7225
Fax: 727-869-6660



DBPR Provider 0001189

CERTIFICATE OF COMPLETION

This certificate confirms that
ANTHONY MASTRACCHIO
LICENSE #(s): BN3555 PX1592 SFP67

has successfully completed the following Internet distance learning continuing education curricula with the CONTRACTORS INSTITUTE

"FS 489 and CILB Rules"
Florida BCAI course CILB0010016 providing 1 hr General

» Curricula Completed: December 28, 2015 «
For applicable Florida State licenses, these continuing education credits are reported to the state electronically within 30 days of your completion date or by your license renewal date. THIS DOCUMENT SERVES AS YOUR PERMANENT CERTIFICATE OF COMPLETION. Please keep a copy for your records should you need it.

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Fax: 727-869-6660



DBPR Provider 0001189

9:52:07 AM 1/25/2016

Data Contained In Search Results Is Current As Of 01/25/2016 09:52 AM.

Search Results

Please see our [glossary of terms](#) for an explanation of the license status shown in these search results.

For additional information, including any complaints or discipline, click on the name.

License Type	Name	Name Type	License Number/ Rank	Status/Expires
Standard Inspector	<u>MASTRACCHIO, ANTHONY</u>	Primary	BN3555 Inspector	Current, Active 11/30/2017
	License Location Address*: Private			
	Main Address*: Private			
Standard Plans Examiner	<u>MASTRACCHIO, ANTHONY</u>	Primary	PX1592 Plans Examiner	Current, Active 11/30/2017
	License Location Address*: Private			
	Main Address*: Private			
Standard 1 and 2 Family Dwelling Plans SFP	<u>MASTRACCHIO, ANTHONY</u>	Primary	SFP67 Std 1&2 Fam Exa	Current, Active 11/30/2017
	License Location Address*: Private			
	Main Address*: Private			
Provisional Building Code Administrator	<u>MASTRACCHIO, ANTHONY</u>	Primary	PBC341 Provisional Bld	Current, Active 10/27/2015
	Main Address*: Private			
Provisional Mechanical Plans Examiner	<u>MASTRACCHIO, ANTHONY</u>	Primary	PMP257 Prov. Mech Plan	Null and Void, 06/13/2008
	Main Address*: Private			
Provisional Plumbing Plans Examiner	<u>MASTRACCHIO, ANTHONY</u>	Primary	PPP243 Prov. Plumb Pla	Null and Void, 06/13/2008
	Main Address*: Private			
Provisional Mechanical Inspector	<u>MASTRACCHIO, ANTHONY</u>	Primary	PMI250 Prov. Mech. Ins	Null and Void, 04/18/2005
	Main Address*: Private			
	<u>MASTRACCHIO, ANTHONY</u>	Primary		

Mark LeCouris

From: Erin Jackson <EJackson@tsglaw.com>
Sent: Tuesday, July 26, 2016 4:09 PM
To: Mark LeCouris
Cc: Jane Kniffen
Subject: ADA Reasonable Accommodations

Dear Mark,

You have asked me to provide an explanation regarding the City's duty to provide reasonable accommodations to employees with disabilities. As discussed, Title I of the Americans with Disabilities Act of 1990, as amended, (the "ADA") requires an employer to provide reasonable accommodation to qualified individuals with disabilities unless to do so would cause undue hardship. "In general, an accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities." There are various types of "reasonable accommodations," including such things as modifications or adjustments to the work environment or work schedule, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position, or modifications or adjustments that enable an employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities.

The duty to provide reasonable accommodation is a **fundamental** statutory requirement for qualified applicants and employees with disabilities. Reasonable accommodations must be provided to qualified employees regardless of whether they work part-time or full-time, or are considered "probationary."

There are a number of possible reasonable accommodations that an employer may have to provide in connection with modifications to the work environment or adjustments in how and when a job is performed. Examples of these are:

- making existing facilities accessible;
- job restructuring;
- part-time or modified work schedules;
- acquiring or modifying equipment;
- reassignment to a vacant position

With regard to Mr. Mastracchio, it is my understanding that he suffered from a serious health condition and was entitled to and was granted leave under the FMLA. Upon return from that leave, he was not able to fully perform his job duties for a period of time, and as a reasonable accommodation, his job was temporarily restructured. The City has complied with its obligations under the ADA to engage in the interactive process and to afford Mr. Mastracchio a reasonable accommodation.

Thank you!
Erin

Erin G. Jackson
Board Certified in Labor and Employment Law by The Florida Bar

Thompson, Sizemore, Gonzalez & Hearing, P.A.
201 N. Franklin St., Ste. 1600
Tampa, FL 33602
Tel: (813) 273-0050
Fax: (813) 273-0072
ejackson@tsglaw.com