

MINUTES
BOARD OF ARCHITECTURE AND INTERIOR DESIGN

TELEPHONE CONFERENCE CALL

August 23, 2007

10:00 a.m. Eastern Time

Toll Free 888.808.6959 conference code 9218690

Call to Order

Roll Call

Ms. Grigsby called the meeting to order at 10:06 a.m.

Board Members Present:

Eric Kuritzky
Joyce Shore
Garrick Gustafson
Mary Jane Grigsby, Chair
Rosanna Dolan
Sharon Del Bianco
Neil Hall
Rick Gonzalez
Wanda Gozdz

Board Members Absent:

Roymi Membiela, unexcused

Other Present:

Mary Ellen Clark, Board Counsel
David Minacci, Prosecuting Attorney
Juanita Chastain, Executive Director
Tim Vaccaro, Director of the Division of Professions
Terri Estes, Government Analyst
Vicki Long, AIA Florida
Emory Johnson
Fred Dudley
Kurtis Helin
Eli Woyke
Jim Krause
Daniel Pickett
William Pitts

Petition for Variance or Waiver

Marshall Erdman & Associates, Inc.

Kurtis Helin, Regan St. Pierre, an attorney with the business Eli Woyke, and they were represented by Fred Dudley.

Mr. Dudley commented that the application was presented at the meeting in July. There was not a quorum at the July meeting; however, Mr. Helin was present to answer questions. Mr. Dudley commented that Mr. Helin was sworn in at the July meeting and will continue to be under oath for the purposes of this meeting. He commented that they presented the application at the July meeting and it was determined that the applicant needed a waiver of Rule 61G1-12.001(3), Florida Administrative Code. Mr. Dudley read the last sentence of that rule which states an architectural firm may not offer services to the public under a firm name which contains only the name of an individual not licensed as a professional engineer or architect in any state.

Mr. Dudley commented that Marshall Erdman was the name of an individual that has been deceased for several years. He commented that the company was formed in 1951 and they have operated as a design build contractor in 48 states including Florida. He commented that the firm obtained a certificate of authorization from this board in 1986 however it expired in 1987 for lack of renewal. He commented that this was a hardship for the firm not to be able to obtain a new certificate of authority from this board because of the good will of the firm name that operates in the numerous states.

Mr. Dudley commented that Mr. Helin is a principle officer of the firm and is a Florida licensed architect. He commented that Mr. Helin would work as the qualifier and responsible supervisor of all architectural work. He commented that Mr. Helin would work directly and supervise another Florida licensed architect with the firm, Mark Stockman.

Mr. Dudley requested that the board consider the waiver and then review the application for certificate of authorization.

Mr. Kuritzky commented that the firm name was Marshall Erdman & "Associates" which no longer makes it a single name. Ms. Clark commented that the board's position has been when a proper name was in the name of a corporation the adding of the word "Associates" does not relieve the name from complying with this rule. Mr. Kuritzky commented that means that any firm that has been in existence a long time and the name does not comply with this rule they would have to change the name of the firm. Ms. Grigsby agreed and commented that the applicant could petition for a waiver of the rule.

Ms. Dolan commented that they were issued a license under this name in 1986 and she did not understand why this was a problem now. She commented that it may be helpful to understand the law or rule that was in effect in 1986 and how they were granted a license then. Ms. Clark commented that having the information from 1986 would be helpful but it did not relieve the board from evaluating the petition on it merits today. She commented that if the board had granted the petition in 1986 in error the board would not have the duty to grant again.

Ms. Dolan commented for clarification purposes that the reason the application was before the board was that Marshall Erdman was an individual that is deceased and never licensed as an architect or engineer in any state.

The board asked Ms. Clark when the rule in question was adopted. Ms. Clark replied that she had not researched when the particular language in question was adopted. Ms. Dolan asked if the board should continue the matter since they did not have the information about when the rule was put in place. The board continued.

Motion: Mr. Gonzalez moved that the petition be denied.
Second: Ms. Del Bianco seconded the motion.

Mr. Dudley commented that he was not able to find statutory authority for the rule. He commented that they were simply asking for a waiver of the rule based on the hardship this places on companies of a national scope. He commented that Marshall Erdman was deceased and he understood that the rule required the petition. He commented that he had not heard any basis for the denial of the petition and requested that the reason be included in the motion.

Mr. Kuritzky asked for a reason for the motion to deny. Mr. Gonzalez replied that he did not want to make an exception for someone that was not a licensed architect because it was confusing to him. He commented that he would call the firm and wonder where Mr. Erdman was and if he was an architect. He commented that he did not feel it was setting a good precedent. He commented that the firm held a license called MEA1 which probably stood for Marshall Erdman & Associates but thought that was a different issue and did not have a problem with the firm name. He commented that he did not understand the firm's desire to use the firm name Marshall Erdman. He commented that he had a serious problem with setting a precedent for other firms. He commented that is why he was recommending denial of the petition. Ms. Del Bianco commented that she agreed with Mr. Gonzalez.

Mr. Dudley commented that the issue was not just an application in Florida and that the firm was licensed in 47 states. He commented that Mr. Helin was licensed in 45 states including Florida. He commented that this was not the case of a Florida only company that just got started seeking to be licensed. He commented that this was a hardship to them because they were a nationally known firm. He commented that it would be a hardship for them to change the firm name. He commented that this was not about the law but a waiver from the law based on a legitimate hardship. He commented that it was not about what the law or rule said it was about fairness. He requested that the board base their decision on that fact.

Mr. Gonzalez commented that their interest was not the other 49 states of the country. He commented that their interest was to protect the citizens of the state of Florida. He commented that the firm name was confusing. He asked what was wrong with the firm name MEA1, Inc.? Mr. Dudley replied that they hold a certificate of authorization for that firm and they were a wholly owned subsidiary but that was not the name they want to contract in because that was not the nationally known name of 56 years. He commented that was the reason for the hardship waiver request.

Mr. Dudley commented that Mr. Helin was the qualifier for MEA1, Inc. and they held a certificate of authority for that firm. He commented that MEA1 was not the company with the 56 years of national reputation.

Mr. Gonzalez asked Ms. Clark if they could practice as MEA1, Inc. doing business as Marshall Erdman as an affiliate and as long as MEA1, Inc. was on the stationery. He commented that if they referenced the two together it would resolve some of the confusion. Ms. Clark commented that she was not sure that suggestion would resolve any confusion when an individual looked them up for licensure. Mr. Gonzalez commented that they were insisting that they need the name. Ms. Clark commented that the firm was making a reasonable argument that they need the name Marshall Erdman. Mr. Gonzalez suggested that they make it clear that this gentleman was the founder or deceased so it was clear to the public. Ms. Clark asked Mr. Gonzalez if they could put that on their web site. Mr. Gonzalez replied that they should do it on all advertisements. Ms. Clark commented that there was no requirement that they put that on every advertisement. Mr. Gonzalez commented that he still had a problem with this issue.

Ms. Dolan commented that this was not an issue as to whether Marshall Erdman was deceased or not. She commented that the issue was whether he was ever a licensed architect or engineer. Mr. Gonzalez commented that it was both.

Mr. Kuritzky commented that if the firm name was Frank Lloyd Wright & Associates the board would not hesitate at all. Mr. Hall agreed. Mr. Kuritzky commented that he understood the purpose of the rule but he felt this was a legitimate hardship if for no other reason than the history of the firm. Mr. Hall agreed and commented that the board had the right to entertain any hardship regardless of precedent. He commented that any new board member could make a decision based on the situation or argument presented. He commented that their situation and argument was a strong one and each individual board member was responsible for making the decision. He commented that it was not about precedent but waiving the rule based on a hardship.

Mr. Clark commented that the board did need to worry about precedent and what they do to address that is when they found a hardship then they should distinguish the facts. She commented that if the board approved the request they would specifically identify the fact that they have been in existence for 56 years and were licensed in numerous states. She commented that if in the future another firm made the waiver request they would have to meet similar requirements.

The question was called with Mr. Gonzalez, Ms. Del Bianco, and Ms. Dolan in favor to deny and Mr. Hall, Ms. Shore, Mr. Kuritzky, Ms. Grigsby, and Mr. Gustafson were opposed. The motion failed.

Motion: Mr. Kuritzky moved to approve the request based on the hardship that they were licensed in 47 states and were nationally known.
Second: Mr. Hall seconded the motion.

Mr. Gonzalez commented that they were setting a terrible precedent. Ms. Clark asked Mr. Dudley to clarify the number of states the firm was licensed. Mr. Dudley replied 47 states and asked Mr.

Helin to verify. The tape was inaudible for his response due to numerous individuals talking at the same time. Ms. Del Bianco asked if the firm was licensed in numerous states as an architectural firm. Ms. Dolan commented that they were a design build firm.

Mr. Dudley commented that the company operated in 48 states under the name of Marshall Erdman & Associates, Inc. and Mr. Helin was licensed in 45 of those states including Florida as an architect. Ms. Del Bianco asked again how many of those states was the firm name licensed to offer architectural services. Mr. Woyke replied that he did not have that information off of the top of his head because not all states require the firm to be licensed.

Ms. Dolan commented that she did believe that Florida was the only state that had this requirement and that there were reasons why this requirement was in place. She commented that she felt they would have the same problems in other states.

Ms. Grigsby asked why they wanted an architectural license rather than just the contractor's license. Mr. Dudley replied that his research and the position that the board's Prosecuting Attorney had taken was when any architectural services are provided, even under a design build contract, the firm must have the architectural certificate of authorization. Mr. Helin commented that the firm must have the license to practice architecture in Florida.

Mr. Hall asked what the percentage of revenue was derived from architectural services versus construction practice. Mr. Dudley replied that they were design build contracts. Mr. Dudley commented that he was not sure if there was a break down of the services by contract because they were design build contracts. Mr. Helin replied that they do not separate those. Mr. Hall commented that in most instances design build contracts were performed through the construction arm of a firm.

Mr. Hall commented that the firm pursued work as a contractor and the architectural work is a secondary entity to the firm. He commented that this firm was a compliment to the contracting firm for design build and that they were not seeking to offer architectural services in Florida. Mr. Helin commented that they were totally design build with all entities under one roof and they did not separately contract out to others. He commented that it was all MEA1, Inc. and Marshall Erdman & Associates. Mr. Woyke commented that they were an integrated process.

Mr. Hall commented that they were trying to protect the profession and the citizens of Florida. He commented that an architect should play a major role but with design build the role of the architect was diminished to the client and the construction industry. He commented that in this type of situation the architect is reduced to a drafting service and there was no role in protecting the interest of the client. Mr. Woyke commented that in this firm that was not the case.

Mr. Dudley commented that he thought the board wanted to have the ability to exercise jurisdiction over architectural services that were provided on Florida projects. He commented that was the reason for filing the petition and the firm was threatened with prosecution where the firm paid a \$1,000 citation. He commented that the citation was issued because the firm's web site reflected several projects that the firm had completed in Florida and the firm no longer had a valid certificate of authorization. He commented that if the board was willing to provide a declaratory statement

that the firm did not need to comply with the architectural laws of the state of Florida as long as they are doing design build contracts then he would accept that. He commented that if the board was going to take the position that the firm was going to be prosecuted for not having a certificate of authorization then he felt the client needed to move forward on the application which required the waiver.

The question was called to approve the petition. Mr. Gonzalez requested that the motion include that the petitioner is licensed in the specific number of states so this does not become a trend. Ms. Clark commented that the qualifier is licensed in 45 other states but the information regarding the number of states the firm is licensed as an architectural business was not available. Mr. Gonzalez commented that the firm was known as Marshall Erdman in all other states. Ms. Clark commented that the firm was operating in 48 other states. Mr. Gonzalez requested that that information be included in the motion because he felt that other firms were going to use this petition as a way to get licensed and create havoc.

Ms. Dolan suggested making a note that the board does not know how many states the firm Marshall Erdman & Associates is licensed to practice architecture. She commented that being a design build firm may not require licensure for architecture in the other states but only require a contractor's licensure.

Mr. Dudley commented that the firm was licensed to perform design build services in 47 states with the exception of Florida. He commented that it was the board's position that in order to offer design build services in Florida they needed a certificate of authorization and that was the reason for the application. He commented that they work in 48 states including Florida. Mr. Hall commented that design build firms do not have to have architects on staff. He commented that a design build firm contracts the design to another firm. He commented that if the services were in one house then they could say an architect was part of the entity.

The question to approve the petition was called. Mr. Kuritzky, Ms. Shore, Mr. Hall, and Mr. Gustafson were in favor of approving the petition with Mr. Gonzalez, Ms. Del Bianco, Ms. Dolan, and Ms. Grigsby opposed. The motion failed.

Mr. Dudley requested that the board approve the petition. Mr. Kuritzky commented that it appeared the board was deadlocked.

Motion: Mr. Hall moved to deny the petition for waiver.
Second: Mr. Gonzalez seconded the motion.

Mr. Kuritzky asked if this was all based on one architect qualifying the firm. Mr. Hall commented that there were eight engineers on staff. Mr. Kuritzky commented that the number of engineers did not mean anything to this request. Mr. Hall commented that it indicated where the architects stood in the firm. Mr. Kuritzky commented that he would like to think that the company knew if the architect changed then they would lose their certificate or make it part of the approval of the petition that if their qualifier changed they would have to reapply. Ms. Del Bianco commented that they could not do that because they could use any licensed Florida architect that was an officer of the firm. Ms. Clark commented that there were rules in place about qualifier changes.

The question to deny the petition for waiver was called. Mr. Hall, Mr. Gonzalez, Ms. Dolan, Ms. Del Bianco, Ms. Grigsby, and Ms. Shore were in favor of the denial with Mr. Kuritzky opposed. The tape was not clear as to Mr. Gustafson's vote.

Mr. Dudley requested that the board vote on the application.

Motion: Mr. Gonzalez moved to deny the application.
Second: Ms. Del Bianco seconded the motion.

The question to deny the application was called. Mr. Gonzalez, Ms. Del Bianco, Ms. Grigsby, Ms. Shore, Ms. Dolan, and Mr. Hall were in favor of the denial of the application with Mr. Kuritzky and Mr. Gustafson opposed.

Mr. Dudley thanked the board for their time reviewing the petition and application. He requested that the board provide guidance as to the status of the firm as a design build contractor in Florida. He commented that the board's Prosecuting Attorney has charged the firm with design build contracting and that was the reason for the petition and application. He commented that if it was the position of the board that they did not need a certificate of authorization to offer design build services and enter into contracts in Florida he would like that clarified. He commented that if it was not clarified then they were going to continue to face prosecution by the board.

Mr. Gonzalez commented that the board provided guidance and if they provided any architectural work in Florida it could not be under the name Marshall Erdman & Associates. He commented that it could be performed under MEA1, Inc. or another entity that does not have the name of a person that does not hold a license as an architect or engineer. He commented that how they got to that end was up to them to resolve. Mr. Kuritzky asked if it was acceptable for them to use or advertise MEA1, Inc. a wholly owned subsidiary of Marshall Erdman & Associates so that their nationally recognized name could be used in conjunction with MEA1, Inc. Mr. Dudley commented that the firm has been contracting to perform design build contracts under the name Marshall Erdman & Associates, Inc. He commented that they use MEA1, Inc. the wholly owned subsidiary currently and have always for design build for architectural design work. He commented that the contract with the owner or client was with Marshall Erdman & Associates, Inc. He commented that they do not disagree about using the wholly owned subsidiary (MEA1, Inc.) that holds the certificate of authorization to perform design work. He commented that was exactly what they were prosecuted for.

Mr. Dudley commented that was the reason for the petition and the application. He commented that they were trying to prevent being prosecuted for performing design work in Florida. Mr. Minacci commented that the basis for the prosecution was based on the web site offering architectural services through Marshall Erdman & Associates. Mr. Dudley disagreed and said that the web site gave a link to MEA1, Inc. for design services. Mr. Minacci commented that they never looked at any of their contracts and the citation was based solely on the web site.

Mr. Kuritzky asked what was the address of their web site. Mr. Helin replied www.erdman.com. Mr. Kuritzky asked where on the web site it referenced architectural services. Mr. Minacci replied

he was not sure at this time and asked Mr. Dudley if the web site had been updated since the citation. Mr. Woyke replied that the web site had been updated. He commented that they moved the reference to Florida projects and updated so other information not related to the subject today.

Ms. Del Bianco asked Mr. Minacci how other design firms operated in reference to architectural services, if they contracted directly for the architectural services. Mr. Minacci replied that a licensed contractor could enter into a design build contract but the statute specifically says that the architectural services must be offered or provided by a licensed architect. Therefore, if Marshall Erdman & Associates wanted to enter into a design build contract it must state in that contract that the licensed architectural subsidiary was going to perform the architectural services. He commented that he had not reviewed any of Marshall Erdman & Associates' contracts to see how they were set up in Florida. However, there was a disciplinary case opened because the Marshall Erdman & Associates' web site offered architectural services and referenced a Florida project in which architectural services were provided and that was the basis for the citation.

Ms. Del Bianco requested that Mr. Minacci explain how design build contracts should reference architectural services. Mr. Minacci commented that a general contractor could enter into a design build contract with a client as long as the contract specifically states who will provide the architectural services and that person or entity is licensed. Ms. Del Bianco asked who paid the architectural firm if it was the design build contractor or the owner. Mr. Minacci replied that the design build firm could pay the architectural firm. Mr. Kuritzky commented that would mean Marshall Erdman & Associates was providing architectural services indirectly. He commented that was the same as other non professionals hiring architects to perform work for them, it seemed the same to have construction companies selling architectural services.

Mr. Gonzalez commented that design build was addressed in the statutes and they needed to follow that methodology defined in the statutes. He requested to move on.

Ms. Grigsby thanked Mr. Dudley and all of the representatives present from Marshall Erdman & Associates.

Application

Hugo Araque

Mr. Araque was not present or represented by counsel. The application was being recommended for denial based on his architectural education. Ms. Dolan suggested that he apply for licensure as an architect based on his education and then gain licensure as an interior designer. Ms. Chastain commented that Mr. Araque was notified of the meeting today and the education requirements for licensure as an architect or interior designer.

Motion: Ms. Del Bianco moved to deny.

Second: Ms. Shore seconded the motion and it passed unanimously.

Discussion/For information

Request for Input – Budget Allotment and Preparation Process

Ms. Grigsby commented that she received a letter from the department requesting input on how to cut the budget by 10 percent. Ms. Chastain commented that every year the department sends a letter to the board chair requesting ideas on the budget. She commented that every year she submits a spending plan that includes travel. She commented the letter was requesting the board's input for the 2008-2009 budget. She commented that she will put forth a spending plan but the department was charged with reducing their spending which may impact the board's travel. She commented that the department created a list of ideas and areas that were submitted to the Legislature that could reduce the department's spending by 10 percent.

Ms. Chastain commented that it was not the department's desire to cut any of the programs. She commented that the department was moving forward as if there were no budget cuts. She commented that there was a list of 36 items sent to the Legislature which included the privatization contract. She commented that a special session was being held to discuss the budget cuts. She commented that the cuts were going to affect the 2007-2008 budget cycle.

Ms. Del Bianco requested that at least one representative from the board attend the national conferences. Ms. Chastain agreed that she would submit a spending plan for travel to cover at least one representative if not more. She commented that the cuts were for 2007-2008. Ms. Del Bianco commented that she had a problem with the possibility of the privatization contract being cut. Ms. Chastain commented that the department understood the importance of the privatization contract. She commented that the amount affected would be from October to July because there were monies that were already spent.

The board discussed the Legislative mandate was that every department throughout the state of Florida should reduce their budget by 10 percent. Mr. Hall commented that the boards could only cut spending through travel. Ms. Chastain reviewed the appropriation process for spending funds for the department or boards.

Mr. Minacci commented that the budget cut is more than 10 percent of his entire contract. Ms. Del Bianco commented that if the board cut the privatization contract there should be leeway as to how they spend the monies between license and unlicensed prosecution depending on the needs. Ms. Chastain commented that she would review their concerns with the General Counsel and with the Contract Administration Department.

Ms. Dolan asked if the money the board brought in covered the amount of the privatization contract. Ms. Chastain responded that the issue was not the amount of cash in their account but the spending authority and that the department was looking at fee waivers to reduce the amount of cash in the various boards accounts.

Ms. Dolan commented that she had a concern because this board was not like the other boards based on the privatization contract.

Ms. Chastain advised that she would know the Legislature's decision regarding the list of items proposed to be cut.

Ms. Dolan asked if there was a way to express the board's desire to send more than one representative to national conferences since there were funds. Ms. Chastain advised that she submits travel authorization to the Secretary's office and they decide how many attendees can travel. The travel budget and spending authority is department wide and Secretary decides how that money will be spent or shared throughout all of the boards and divisions within the department. Ms. Chastain commented that she would put forward the board's request for multiple attendees but she could not guarantee that number would be approved.

Mr. Vaccaro, Division Director of Professions, commented that there was a special session in September and the department was not sure what would be cut if anything.

Ms. Long commented that Florida AIA was working diligently for full funding and lobbying on behalf of the privatization contract.

Article – Illinois pulls Walter Netsch's license over CEUs
Mr. Kuritzky provided the article for the board's information.

New Business

Mr. Hall requested that green sustainability and unlicensed activity be placed on the September agenda as discussion items.

Old Business

No old business.

Adjourn

The meeting adjourned at 11:30 a.m.