

**MECHANICAL, PLUMBING, ELECTRICAL, AND SWIMMING POOL
BOARD OF APPEALS
MINUTES**

April 10, 2007

Public notice having been posted, a public hearing of the MPE Board was held at 4:00 p.m., Tuesday, April 10, 2007, in the Council Chambers at City Hall, 555 Walnut, Abilene, Texas.

MPE BOARD MEMBERS PRESENT: Anthony McColum, Chairman
Phil Miller
James Wheeler
Jay Wyatt
Ron Smith
Terry Williams

STAFF PRESENT: David Sartor
Van Watson
Megan Santee
Glen Bailey
Alice Adams

GUESTS: Charlie Self
Frank Perez
Robert Trevino
Cary Hallum
Mikea Glen
Randy Glen
Jon McDonald
Ronnie Carlson
Dennis Watson
Bobby Gilbreth
Greg McMinn
Billy Boone
Sherry McColum
Russell Sullivan
Tommie Harendt
Dale Edwards
3 or 4 other visitors, not identified

1. The meeting was called to order by Anthony McColum, Chairman.
2. The next item to come before the Board was the approval of the March 13, 2007 minutes. A motion was made by Ron Smith, and seconded by Phil Miller, to approve the minutes as written. Said motion unanimously passed.
3. The next matter to come before the Board was consideration, with possible action, to change the City of Abilene, Swimming Pool Ordinance, Section 29.5 for licensing, bonding and

licensing exceptions. David Sartor, Building Official for the City of Abilene, addressed the Board, stating that the swimming pool licensing requirements came into place back in 1988, and an ordinance was passed, establishing swimming pool license provisions. He said the ordinance had been amended a couple of times, the first time being in 1993, when a provision was added requiring the swimming pool exam to be administered by BLOCK, a testing agency for various licensing. The licensing requirements were revisited again in 1999, and the "grandfather" provision established in 1988 that allowed anyone in the swimming pool business at the time the swimming pool ordinance was adopted, to be "grandfathered" in and not be required to have to take an exam, was removed and the parties "grandfathered" in were required to pass the swimming pool exam within a 12 month period. Everyone that held a license at that time did take and pass the swimming pool exam. Mr. Sartor went on to say that under Sec. 29.5-12(a)(2) an exception to the licensing requirement would allow any person not having a license the right to construct a swimming pool, as long as the pool was designed by an architect or engineer licensed by the State of Texas. Mr. Sartor said this is the current provision the City is under today and is part of what is in question before this Board.

Frank Perez, the General Manager for Southwest Pools, then addressed the Board, requesting the Board to set up a committee to review the exception in the current ordinance which allows persons not having a swimming pool license to build swimming pools by providing plans that are stamped by an architect or engineer. He said he feels this is a loophole for unlicensed persons to build swimming pools and this was not the intention of this exception when the ordinance was adopted.

Billy Boone, the attorney for Randy Glen, then addressed the Board advising them he has some problems with the current ordinance. He said he checked around and there is no other city in Texas, that he has contacted, which requires a swimming pool contractor to take an exam. He said one catch to the licensing provision is that it requires you to have three years experience in building swimming pools before you can take the exam, and you can't build pools without taking the exam and having a license so that makes it almost impossible for you to take the exam. The cities he contacted that do not require a license to build pools are: Midland, San Angelo, Wichita Falls, Lubbock, Fort Worth, Plano, Burleson, Denton, and Waco. He went on to say he proposes to do away with the licensing requirement, and raise the bond required to be \$100,000, instead of \$10,000, and require that all pool builders submit to the City the following: Pool design prepared by an architect or engineer, submit plans and specifications which include the site plan, the steel reinforcement plan, concrete specifications for the pool shell and deck, specifications on the ladders, steps and diving boards, the electrical pool equipment, the fencing and the gates. Mr. Boone said he understands that if you have a swimming pool license, you don't have to submit any of these items. He said the purpose of his proposal is just to level the playing field and to do away with these licensing requirements.

Charlie Self, an attorney representing Mr. Watson and a few others, addressed the Board, advising them that San Marcos also requires a swimming pool contractor to have a license. He further stated that he understands that the state legislation is reviewing the possibility of requiring all swimming pool builders to have a license. He said if pool contractors had to pay

an architect or engineer to design and submit specifications on pools, it would probably increase the cost of a pool anywhere from \$4,000 to \$8,000. He said he has no objection to raising the bond. Mr. Self went on to say that with the current exception, anyone can put a pool in without being licensed, and by just having plans designed by an architect or engineer, and is not required to have the knowledge, training and skill that it takes to pass the swimming pool test. Mr. Self said he would like a committee appointed to look into this exception.

Mr. Boone addressed the Board again stating that the legislation is probably looking at about 8,000 bills and the swimming pool license bill might or might not be passed. He said that requiring a swimming pool contractor to pass an exam is anti-competitive. He said that if only two or three people are licensed to build pools and are preventing competition in a market place, the ordinances are looked at differently. He said homes are the biggest investment we currently have and home builders are not required to have a license. Mr. Boone went on to say that if the City doesn't require home builders to have a license, why would they require pool builders to be licensed. He pointed out that plumbing, mechanical and electrical contractors are required to have a state license, but not a city license, and that pool builders are the only contractors required to be licensed by the City of Abilene. Mr. Boone said he feels this is discriminatory.

Frank Perez addressed the Board again, stating that the things talked about needing to be a part of what goes on to get a permit here doesn't begin to scratch the surface of information you need to legally build a swimming pool in the State of Texas or as far as the federal guidelines. He said \$100,000 bond will not cover the cost of someone's life if someone not aware of these policies builds a pool. Mr. McColum, the Board Chairman, asked Mr. Perez to elaborate on his statement earlier regarding a "loophole" in the current licensing requirements. Mr. Perez asked that Mr. Self, the attorney, respond to this. Mr. Self said that the exception which allows that anyone can install a swimming pool with a set of engineered or architectural drawings creates a loophole. He said this does not mean the person building the pool is competent to build a pool. Discussion was then had regarding exactly what inspections are done by the City during the process of building a pool. Some discussion was had regarding whether a site plan was "site specific" for each pool, and it was determined it was.

Russell Sullivan, of Pool Tex, addressed the Board saying he routinely has engineering plans drawn up for his projects and the cost is \$50 to \$100 from a pool engineering company out of California. He said he has built pools in Westlake and other cities in Texas, but has not built a pool in Abilene. He said he works on pools that have been installed by pool builders in Abilene and finds a common situation left by one of the major pool builders in Abilene, which is that if you turn the wrong valve, it can be very dangerous. He said he disables this problem whenever he finds it. He said there is a problem in Abilene, but it is not with the new pool builders, it is with the old pool builders. He said he is not licensed to build pools in Abilene.

Dennis Watson, one of the owners of Southwest Pools, addressed the Board saying he doesn't know what Mr. Sullivan is talking about, but if he is such a qualified individual, he should take the pool exam. Mr. Watson said they are not scared of competition, but would just like anyone wanting to build pools to take the test. Mr. Watson was asked what he had to submit to the City in order to build a pool and he said they just submit the layout of the pool, and not a complete set of plans and specifications.

Dale Edwards, who works for Southwind Group, which is a nation-wide general contractor, and are licensed in 32 states of the United States. He said his company has pulled permits in over 400 cities in the last 12 years. He said that Randy Glen built his (Randy Glen's) first pool at his (Dale Edwards) new house. He said Mr. Self had a copy of his pool plans and asked to borrow them and was curious as to how Mr. Self got the plans. Mr. Edwards said the only thing Mr. Self had was a site plan that did not have an engineer's seal, but Mr. Edwards knows the engineer that did the design of the pool. He said he didn't understand why people were picking on pool contractors to have a license, and not picking on general contractors or home building contractors. He said on any project his company does, they have to submit engineered drawings, not only for his protection, but for the protection of his client. He said as a homeowner getting a pool, he would have preferred to pay a couple of thousand dollars more and have a set of site specific drawings by a local engineer who knows the ground movements in Abilene, than he would have someone else build it that had a license. He said he was very happy with his pool and that it passed all inspections by the City.

Tommie Harendt, a home builder in Abilene, addressed the Board stating that in situations like this, compromise on the part of both parties is what it takes to settle the situation. He said he felt a compromise would be to waive the three year waiting period, and if someone can pass the test, they can start building pools.

Cary Hallum, owner of Paradise Pools, then addressed the Board, stating that her husband started Paradise Pools in 2002, and was deceased in October of last year. She said she has been trying to carry on the business to the best of her knowledge and ability. She said this is her livelihood. She said Mr. Watson stated earlier that he didn't mind competition, but when her husband went to work for Mr. Watson, he was asked to sign a "non-competitors" agreement, where Mike (her late husband) could not go in business for himself and Mr. Watson tried to fight that when her husband did start his business. She brought up that Southwest Pools had permits still open from 2004 and that West Texas Pools had an overdue permit from 1999. She said she was not licensed and had drawings done by engineers and architects.

Bobby Gilbreth, owner of West Texas Pools, addressed the Board stating he doesn't think this meeting is to point fingers at each other, he said he thought the purpose of this meeting was to try to eliminate the exception of using engineered or architectural drawings for building pools. He said the reason this exception was adopted was to allow people from out of town to come in and build motel pools with engineered drawings.

Discussion was then had among the Board members, with some questions from the Board members to Staff. The Board questioned Mr. Sartor about the exception to the licensing requirement that allows a homeowner to build their own swimming pool. Mr. Sartor said that before 1999, a homeowner was allowed to install their own above-ground swimming pool, but this was amended in 1999 to allow the current provision where homeowners can build their own in-ground swimming pools. He said the homeowners are required to sign an affidavit stating that they are aware of the minimum swimming pool requirements and that the work will be performed by the owner. Mr. Sartor said that the exam is currently given by Thompson Prometric, and is not proctored by the City, but by a representative provided by Thompson Prometric. Discussion was had regarding the requirement that a person has to work three years building swimming pools before they can take the swimming pool exam. Jay Wyatt, a Board member, suggested that no decision can be made today because of the strong feelings and different points of view, and suggested a committee be formed to look at these matters. A question was asked Megan Santee, Assistant City Attorney, how they would go about forming a committee to look into this matter and she said that the Chairman of the MPE Board can either form the committee or instruct Staff to form a committee of individuals to look at this matter. After discussion, James Wheeler made a motion that the Chairman of this Board, along with Mr. Sartor, appoint a sub-committee composed of no more than five people to study this, bring it back to the next meeting for approval by this Board and then forward to the City Council. The motion was seconded by Jay Wyatt. Mr. Williams, one of the Board members, stated it seems like there are too many people involved to appoint five people to bring back a motion to present, and feels like the committee should set up a meeting that the industry can attend and the people involved can present their arguments to the appointed committee. He said he felt the motion should be expanded to involve the public more than a five member committee. Ms. Santee said she would prefer that the motion be to form a committee to review, accept public input, consider, discuss and bring back its findings to this Board because she wouldn't want the committee's hands to be tied. She said that once the committee gets together, it is up to them to determine if and when they would hold public meetings, how many public meetings to have, how much public input to consider, and to also have the closed meetings they need in order to hash out verbiage and actual information and evidence they had presented to them. She said she would prefer a generic motion so there would not be restrictions on what the committee can and can not do. Mr. Wheeler said he was going to amend the motion to include that the appointed committee seek information from the community. The amended motion was seconded by Jay Wyatt and unanimously passed.

4. Upon motion made and seconded, the meeting adjourned.

Anthony McColum, Chairman

Alice Adams, Acting Secretary