

## Michael B. Gustafson

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November 16, 2009

Elizabeth Duffy,

Assistant General Council of the State of Florida

Department of Business Professional Regulations

1940 North Monroe Street,

Tallahassee, Florida 32399-0720

Re: Case number 2008-051989

Robert Mahar, BU 1369

**Supplemental to the complaint against Robert Mahar by David Hodges P.E.  
written for Dayton:**

Additional information supplied by David Hodges P.E.

**Complaint:** Is a Provisional Building Code Administrator allowed to inspect and review plans under the provisional certificate, and can a Provisional Building Code Administrator have a Provisional Inspector or Provisional Plans Examiner working under their Provisional Certificate?

**Opinion:** The 2002 Florida Statutes does not regulate if a provisional licensed inspector or plan examiner can work for a Provisional Building Code Administrator. Paragraph 468.609 (7) (d) is dealing with the time frame of (90 days) that an application was made and submitted for a provisional license and if a newly employed or hired person can perform the duties under direct supervision and if the person is qualified. Once the applicant receives a provisional license, this paragraph does not apply.

468.609 Administration of this part; standards for certification; additional categories of certification.—

(7)(a) The board may provide for the issuance of provisional certificates valid for such period, not less than 3 years nor more than 5 years, as specified by board rule, to any newly employed or promoted building code inspector or plans examiner who meets the eligibility requirements described in subsection (2) and any newly employed or promoted building code administrator who meets the eligibility requirements described in subsection (3).

(d) A newly employed or hired person may perform the duties of a plans examiner or building code inspector for 90 days if a provisional certificate application has been submitted, provided such person is under the direct supervision of a certified building code administrator who holds a standard certification and who has found such person qualified for a provisional certificate. However, direct supervision and the determination of qualifications under this paragraph may be provided by a building code administrator who holds a limited or provisional certificate in any county with a population of less than 75,000 and in any municipality located within such a county.

Complaint: Michael Smithem was hired as a Building Inspector/Plans Examiner on 5/21/2001 while Mahar was in receipt of a provisional building code administrator's license and was employed as the Chief of Building Services (by agreement dated 4/05/2001). Smithem did not possess a provisional building inspector's license until PB1594 was issued on 10/09/2001. This shows Smithem was employed by COMI five months before he received the first license, and that was not the plan review license. In so doing, Mahar violated 468.609(7)(a),(d), as well as statutes and FAC 61G19-6.012(6).

Research: As described above, if Michael Smithem was working as a Building Inspector for five (5) months prior to receiving his provisional building inspector's license that would be a direct violation of the referenced licensing sections of law. There was no evidence submitted, except hiring date and issuance date of provisional license, that Michael Smithem was actually performing building inspection duties during the five (5) months that is more than the three (3) month period allowed by 468.609(7) (a), (d).

Complaint: For these and many other reasons, the plans for this house were never completely and properly reviewed. The plans were mainly approved because an architect submitted them. There were builder revisions, (the Hambro decking among them) which were never submitted for review nor approved by

Mahar nor the architect. There were inspections that were never done because the plans were different from construction and Mahar never stopped construction to make the plans amended. Mahar's lack of knowledge led to the abomination, which is now still incomplete (despite Mahar having issued a C.O.). In so doing, Mahar violated 468.604 (1, 2&3) and 468.601. This house built itself, and quite poorly as anyone can see from the results.

Research: There was no additional information submitted that is different from the original complaint.

Complaint: The Hambro deck plans require concrete at 3000psi. This was not installed by the builder and not inspected by COMI's Mahar or any of his inspectors.... By issuing a CO, he filed a false report that the structure met the minimum standards of the Florida Building Code and violated thereby 468.621(1) (f) and 455.227(1) (l).

Research: There was no additional information submitted that is different from the original complaint.

Complaint: Mahar allowed this project to sit with little going on and few inspection requests without taking action to spur the builder along towards completion.... On 12/7/2005, a note is typed on these records that a license holder needs to register with COMI prior to a CO being issued. Mahar allowed this house to proceed w/o any licensed contractor having responsibility for its construction and Mahar knew it and did nothing about it to inspect himself or stop construction. This violates most of 468 and 455, most notable gross and repeated negligence (468.621(1) (g)).

Research: There was no additional information submitted that is different from the original complaint.

Complaint: The plans called for ridge vents in the roof. None were installed at CO. Even a drive by inspection could determine the absence. A CO was issued. This constitutes failure to properly inspect, for which Mahar is responsible....

Violated the intent of 468 and 455, most notably gross and repeated negligence (468.621(1) (f)).

Research: There was no additional information submitted that is different from the original complaint.

Complaint: By filing a Certificate of Occupancy, Mahar filed a false statement that the house met minimum standards of the Florida Building Code, in violation of 468.621(1) (f) and 455.227(1) (l).

Research: There was no additional information submitted that is different from the original complaint.

**Issue at the Dayton House submitted by Fine Tooth Comb Investigation, Inc., David Hodges, P.I., F.C.I, dated September 28, 2009:**

Complaint: Licensure, Robert Mahar obtained the Provisional Building Code Administrator's license on April 4, 2001, which was over three months after he was appointed to the role of Acting Building Official on December 26, 2000. It is required by state statute that the provisional building code administrator license be in hand prior to assuming the duties of Building Official.

Research: The 2000 Florida Statutes below did not allow a person to hold the position as Building Official prior to holding a license as such. This is not related to the original complaint because the time for this occurrence was in 2001 and has no direct affect on the Dayton complaint. The Dayton house started construction in 2003.

Note: I would also like to give my opinion that this is a violation because Robert Mahar accepted the position of Acting Building Official prior to holding his provisional building code license.

**468.609 Administration of this part; standards for certification; additional categories of certification.—**

(4) No person may engage in the duties of a building code administrator, plans examiner, or inspector pursuant to this part after October 1, 1993, unless such person possesses one of the following types of certificates, currently valid, issued by the board attesting to the person's qualifications to hold such position:

(a) A standard certificate.

(b) A limited certificate.

(c) A provisional certificate.

7)(a) The board may provide for the issuance of provisional certificates valid for such period, not less than 1 year nor more than 3 years, as specified by board rule, to any newly employed or promoted building code administrator, plans examiner, or inspector.

(d) A newly employed or hired person may perform the duties of a plans examiner or inspector for 90 days if a provisional certificate application has been submitted, provided such person is under the direct supervision of a certified building code administrator who holds a standard certification and who has found such person qualified for a provisional certificate.

Complaint: It should be noted that provisional license were issued in error to COMI employees by DBPR staff prior to the time Robert Mahar received his Standard Building Code Administrators License (BU1369) on February 2, 2004. Collier County has long been above 300,000 in population.

Robert Mahar should have known that all these individuals were ineligible for provisional license because of his provisional license.... It is denoted here that any inspections performed by provisionally licensed inspectors prior to their receipt of their own standard licenses were suspect due to licensure issues, because they should not have been the recipient of the provisional licenses. The list includes Gary Konicek, Michael Smithem and Bruce Yakola.

Research: Provisional Licenses were obtained by employees of COMI while Robert Mahar held a Provisional Building Code Administrator License. The 2002 Florida Statutes does not regulate if provisional licensed inspectors or plan examiners can work for a Provisional Building Code Administrator. This paragraph 468.609 (7) (d) is only dealing with the time frame (90 days) that an application was made and submitted for a provisional license and if a newly hired or hired

person can perform the duties under direct supervision and if the person is qualified.

468.609 Administration of this part; standards for certification; additional categories of certification.—

(7)(a) The board may provide for the issuance of provisional certificates valid for such period, not less than 3 years nor more than 5 years, as specified by board rule, to any newly employed or promoted building code inspector or plans examiner who meets the eligibility requirements described in subsection (2) and any newly employed or promoted building code administrator who meets the eligibility requirements described in subsection (3).

(d) A newly employed or hired person may perform the duties of a plans examiner or building code inspector for 90 days if a provisional certificate application has been submitted, provided such person is under the direct supervision of a certified building code administrator who holds a standard certification and who has found such person qualified for a provisional certificate. However, direct supervision and the determination of qualifications under this paragraph may be provided by a building code administrator who holds a limited or provisional certificate in any county with a population of less than 75,000 and in any municipality located within such a county.

Complaint: The initials of both Smithem and Mahar appear on the set of retained plans at COMI but there is not a signature found which reflects the plans are approved and meet the 2001 Florida Building Code. Smithem has never been able to pass the test to obtain his standard plans reviewer license.

Research: The original complaint was that the plans were approved while missing many detailed items (see 1-7 of the original complaint), so how can the complaint now reflect that the plans were not approved?

Mahar and Smithem were properly licensed to review the Dayton construction plans, and if Smithem passed or did not pass the test for plan review has no bearing on this complaint.

Complaint: Additionally, there were several changes to the plans on which there where are no approval signatures. One of those changes involved the change to a Hambro deck system utilized on the second and third floors to replace the wooden deck in the original plans. These plans were not submitted to Architect of

Record LaMendola for review. They were created by a Hambro Professional Engineer and signed and sealed by him. They should have been signed off by Architect of Record LaMendola to assure the integrity of the structure was maintained. This Hambro deck system called for 3000-psi concrete which was not inspected by COMI and for which COMI has no idea if the concrete is of the proper strength. These plans also called for a membrane to be installed that was not installed by the contractor. These omissions led to failure of the Hambro deck system.

Research: There was no additional information supplied that is different from the original complaint.

Complaint: There are many areas of the inspections listed as a violation of the Florida Building Code: The footing inspection was called for twice and cancelled both times with no indication the footing inspection was ever approved. Backfill was brought in and not compacted nor tested. There was an elevation issue of at least 12" which caused the plumbing pipes to be exposed in the ceiling of the garage. There was no indication that the piles and pile caps were approved or inspected. The foundation plan has structural notations in hand writing without any approval signatures from the architect. There were three fill-cell inspections called for and no documentation they were ever approved. The air-conditioning condensing unit pad was to be part of the continuous pour of the second floor deck. The plans called for the pools motors and filtering system and pump to be installed under the open lanai at the northwest corner of the house. Impact glass was to be installed throughout the house, but was not. The plans called for shower pans in the two showers, per code. The plans called for flashing between the vertical walls and the Hambro deck systems to prevent water intrusion. The plans called for ridge vents to be installed near the apex of the roof which would have been visible from the street.

Research: There is no additional information supplied that is different from the original complaint.

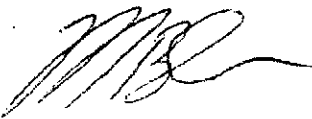
Note: One new item is the breakaway wall issue raised. The plans called for all four elevations to have breakaway walls to be constructed on the ground floor of

this ocean front house to minimize structural damages during a flood surge. The plans were changed after the fact, because of what was already constructed, without seeking approval of the State. The response from COMI is that the permit file contains a V-Zone Breakaway Wall Certificate signed and sealed by the Architect of Record.

**Complaint:** Building Official Mahar and Building Code Inspector Smithem knew that they did not inspect the Hambro deck system. There is no indication that anyone responded to Bob Devlin's remarks that the rear steps do not meet code. They knew that they did not inspect the piles or pile caps. Mahar, as the Building Official, knew that his signing of the C.O. would release the builder from responsibility for code compliance issues. Mahar knew that this house did not meet the minimum standards of the 2001 FBC yet he signed a knowingly false document stating that it did.

**Research:** There is no additional information supplied that is different from the original complaint.

**Opinion of Facts:** I read this complete supplemental file, and the majority of this additional information has not added any information to alter my original report. There is not an identified additional violation except the one licensing area that appears to be a violation that is not related to this complaint.



Michael B. Gustafson, CGC 059411, BU 14, BN 45, PX 379