

STATE OF FLORIDA  
FLORIDA BOARD OF PROFESSIONAL ENGINEERS

FLORIDA BOARD OF PROFESSIONAL  
ENGINEERS,

Petitioner,

v.

FEMC Case No. 2018046673, 2018007945

FRANK D. CUNNINGHAM, P.E.,

Respondent,

FINAL ORDER ADOPTING SETTLEMENT STIPULATION

THIS CAUSE came before the FLORIDA BOARD OF PROFESSIONAL ENGINEERS ("Board"), pursuant to Sections 120.569 and 120.57(4), Florida Statutes, on December 10, 2020 via Video Teleconference in Tallahassee, Florida, for the purpose of considering a Settlement Stipulation (attached hereto as "Exhibit A to Final Order") entered into between the parties in this cause. Upon consideration of the stipulation, the documents submitted in support thereof, and the arguments of the parties, it is hereby:

ORDERED AND ADJUDGED that the Settlement Stipulation as submitted be and is hereby adopted *in toto* and incorporated herein by reference. Accordingly, the parties shall adhere to and abide by all the terms and conditions of the stipulation.

This Final Order shall take effect upon being filed with the Clerk of the Department of Business and Professional Regulation.

DONE AND ORDERED this 14 day of January, 2021.

FLORIDA BOARD OF PROFESSIONAL ENGINEERS




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Zana Raybon, Executive Director  
For BABU VARGHESE, P.E., S.I., CHAIR

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing filed *Final Order Adopting Settlement Stipulation* has been furnished by U.S. First Class Mail and email to Frank D. Cunningham, P.E. at 810 SE 80<sup>th</sup> Avenue, Okeechobee, Florida 34974 this 19 day of January, 2021.



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Rebecca Valentine,  
Paralegal

STATE OF FLORIDA  
FLORIDA BOARD OF PROFESSIONAL ENGINEERS

FLORIDA BOARD OF  
PROFESSIONAL ENGINEERS

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FRANK D. CUNNINGHAM, P.E.,

Respondent,

SETTLEMENT STIPULATION

FRANK D. CUNNINGHAM, P.E. ("Respondent") and the Florida Board of Professional Engineers ("Board") by and through the Florida Engineers Management Corporation ("FEMC"), hereby stipulate and agree to the following joint stipulation and Final Order of the Board, incorporating this Stipulation in the above-styled manner.

STIPULATED FACTS

1. For all times pertinent hereto, Respondent was a licensed engineer in the State of Florida, having been issued license number PE 19665.
2. Respondent was charged by an Administrative Complaint ("Complaint") filed by FEMC, and properly served upon Respondent with violations of Chapters 471 and 455, Florida Statutes. A true and correct copy of the filed Administrative Complaint is attached hereto and incorporated by reference as "Exhibit A to Settlement Stipulation".

STIPULATED CONCLUSIONS OF LAW

1. Respondent, in his capacity as a licensed engineer, admits that in such capacity he is subject to provisions of Chapters 455 and 471, Florida Statutes, and the jurisdiction of the Department of Business and Professional Regulations ("Agency"), FEMC, and the Board.

2. Respondent admits that the facts set forth in the Complaint, if proven, constitute violations of Chapters 455 and 471, Florida Statutes, as alleged in the Complaint.

3. Petitioner hereby dismisses Counts I through Count V in the Administrative Complaint.

#### STIPULATED DISPOSITION OF LAW

1. Respondent shall, in the future, comply with Chapters 471 and 455, Florida Statutes, and the rules promulgated pursuant thereto.

2. Should Respondent fail to comply with the terms of the Final Order, an administrative complaint for failure to comply with final order will automatically be opened against Respondent.

3. Respondent's shall pay an ADMINISTRATIVE FINE of \$3,000 and COSTS of \$4767.93 to the Board One year (1 year) of the date that the Final Order adopting this Stipulation is filed with the Agency Clerk.

4. Respondent's license to practice engineering shall be REPRIMANDED.

5. Respondent shall APPEAR before the Board when this Stipulation is presented. Respondent must be prepared to discuss: how this situation occurred, what improvements and quality control measures Respondent plans to implement to improve Respondent's work product, and how Respondent intends to prevent this circumstance from occurring in the future.

6. Respondent shall be placed on PROBATION for two (2) years from the date the Final Order adopting this Stipulation is filed with the Agency Clerk., with the following terms:

a. Respondent shall successfully complete a Board-approved course in BASIC ENGINEERING PROFESSIONALISM AND ETHICS within one (1) year of the date the Final Order adopting this Stipulation is filed with the Agency Clerk. Prior to that date, Respondent shall submit to the Board a Certificate of Completion of the course. It is the Respondent's responsibility to notify the Board that he has completed the course in a timely

manner. Respondent may contact the Florida Engineering Society ("FES"), 125 South Gadsden St., Tallahassee, FL 32301, (850)224-7121, for information regarding the availability of such courses in Florida; however, if the FES provides any information regarding such a course to the Respondent, the Respondent must submit that course information to the FEMC for review and determination as to whether or not it will comply with the Board's requirements. Respondent may also elect to complete one of the following correspondence courses offered by:

Murdough Center for Engineering Professionalism  
Texas Tech University, PO Box 41023, Lubbock, Texas 79409  
**Engineering Ethics Basic**  
Telephone 806-742-3525; Fax 806-742-0444; E-mail: [engineering.ethics@ttu.edu](mailto:engineering.ethics@ttu.edu)

EPD Program  
Auburn University  
Engineering Extension Service  
217 Ramsay Hall, Auburn, Alabama 36849-5331  
Ethics and Professionalism  
Phone 800-446-0382 or 334-844-4370

An Accredited College or University course if that course information is first submitted to the FEMC for review and determination as to whether or not it will comply with the Board's requirements.

*Courses offered by Continuing Education Programs or Professional Business Programs (Exp: SunCam, Inc., C2Ed), are not Board Certified, and will not meet the requirements.*

b. Respondent shall successfully complete the **STUDY GUIDE** which has been prepared by the Board and which will be furnished to Respondent, regarding the Engineering Practice Act, Chapter 471, Florida Statutes, and the Rules of the Board. Respondent is required to provide a personal email address that will be used to access the on-line study guide. The study guide must be completed within thirty (30) days of the date on which the Final Order incorporating this Stipulation is filed with the Agency Clerk.

c. Respondent shall submit to the Board a detailed list of all completed projects (signed, sealed, and dated), by the Respondent for **PROJECT REVIEW** at six (6) and eighteen (18) month intervals from the date the Final Order adopting this Stipulation is filed with

the Agency Clerk. The projects shall include: all structural engineering projects and reports signed and sealed by Respondent.

d. A FEMC Consultant will select Two (2) projects from each submitted list for review. **Respondent is responsible for promptly furnishing any set of completed plans (signed, sealed, and dated), calculations, and any other supporting documentation requested by the Consultants.** The Respondent must sign, date, and seal all materials that are submitted for project review using a non-embossed, seal. Sealed project review materials may be copied and submitted electronically, if desired by the Respondent. Respondent is also responsible for the Consultant's fees for reviewing the projects, and shall remit payment in the amount of \$2,000.00 by check or money order made payable in the name of the Board's Consultant at the time that the project lists are submitted to FEMC. In the event that the project review cost exceeds \$2,000.00, then the Respondent is responsible for the deficiency. In the event that the cost of the reviews is less than \$2,000.00, then the unused portion will be refunded to respondent. Should the Consultant return an unfavorable report concerning Respondent's projects, that report shall be submitted to the Probable Cause Panel for determination of whether additional disciplinary proceedings should be initiated.

e. If the Respondent has not performed engineering services on a sufficient number of projects to make the submissions required by 6c., above, the initial or, if applicable, the subsequent submission required by the terms of probation shall be extended for a period of six (6) months to allow Respondent to perform the services necessary for the required review. **However, if, after the extension has expired, Respondent does not perform sufficient engineering services to meet the requirements of the terms of probation, Respondent's license will be placed on voluntary inactive status as defined in Section 455.227, Florida Statutes, by the Board, without any further necessity for action on the part of Respondent.** Respondent's

license shall remain on such status, provided Respondent meets the requirements of Section 455.227, unless and until Respondent notifies the Board that he wishes to recommence practice and obtains Board authorization to reactivate his license under such terms of probation that the Board deems appropriate at that time.

f. Should the FEMC Consultant return a favorable report after reviewing the plans submitted during the first year of probation, the requirements for the second year of probation may be waived and the probation may be terminated. A "favorable report" is herein defined as a report that, in the sole opinion of the Consultant with the concurrence of the Board, finds that the plans reviewed were considered to be free of any material deficiencies.

g. Should the Respondent fail to timely comply with the terms of the Final Order with regard to the Project Reviews discussed herein, this case will be submitted to the Probable Cause Panel for review and determination of whether additional disciplinary action should be taken.

8. Respondent acknowledges that neither Respondent's attendance at the Board Meeting when this Stipulation is presented, nor any continuing education or college level courses taken as a requirement of the terms of this Stipulation may be used to comply with the continuing education requirements of Chapter 61G15-22, Florida Administrative Code.

9. It is expressly understood that this Stipulation is subject to approval of the Board and FEMC and has no force and effect until the Board issues a Final Order adopting this agreement.

10. This Stipulation is executed by Respondent for the purpose of avoiding further administrative action with respect to this cause. In this regard, Respondent authorizes the Board to review and examine all investigative file materials concerning Respondent prior to or in conjunction with consideration of the Stipulation. Furthermore, should this joint Stipulation not be accepted by the Board, it is agreed that presentation to and by the Board shall not unfairly or

illegally prejudice the board or any of its members from further participation, consideration or resolution of these proceedings.

11. Respondent expressly waives all further procedural steps and expressly waives all rights to seek judicial review of or otherwise challenge or contest the validity of the joint Stipulation of Facts, Conclusions of Law, imposition of discipline and the Final Order of the Board incorporating said Stipulation.

12. Respondent waives the right to seek any attorney's fees or costs from the Board in connection with this disciplinary proceeding.

WHEREFORE, the parties hereto request the Board to enter a Final Order accepting and implementing the terms contained herein.



Signature

Frank D. Cunningham, P.E.

Respondent

Case No. 2018046673, 2018007945

Dated:

OCT 13, 2020

APPROVED this 20 day of October, 2020.

Zana Raybon, Executive Director  
Florida Board of Professional Engineers

  
BY: JOHN J. RIMES, III  
Prosecuting Attorney



STATE OF FLORIDA  
FLORIDA BOARD OF PROFESSIONAL ENGINEERS

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FEMC Case No. 2018046673

FRANK D. CUNNINGHAM, P.E.,

Respondent,

ADMINISTRATIVE COMPLAINT

COMES NOW the Florida Engineers Management Corporation (FEMC) on behalf of Petitioner, Florida Board of Professional Engineers, hereinafter referred to as "Petitioner," and files this Administrative Complaint against FRANK D. CUNNINGHAM, P.E., hereinafter referred to as "Respondent." This Administrative Complaint is issued pursuant to Sections 120.60 and 471.038, Florida Statutes. Any proceeding concerning this complaint shall be conducted pursuant to Section 120.57, Florida Statutes. In support of this complaint, Petitioner alleges the following:

1. Petitioner, Florida Board of Professional Engineers, is charged with regulating the practice of engineering pursuant to Chapter 455, Florida Statutes. This complaint is filed by the Florida Engineers Management Corporation (FEMC) on behalf of Petitioner. FEMC is charged with providing administrative, investigative, and prosecutorial services to the Florida Board of Professional Engineers pursuant to Section 471.038, Florida Statutes (1997).
2. Respondent is, and has been at all times material hereto, a licensed professional engineer in the State of Florida, having been issued license number PE 19665. Respondent's last known address is 810 SE 80th Avenue, Okeechobee, Florida 34974.

3. On October 21, 2016, Respondent sealed, signed and dated engineering design documents for a 1,600 Square Feet (SF) addition to an existing Baptist Church at 535 NE 28th Ave., Okeechobee, FL (Church Project). On March 01, 2018, Respondent sealed, signed and dated engineering design documents for an 11,978 SF Cattlemens Auction House and Restaurant at 1849 NW 160th Street, Okeechobee, FL (Auction House Project).

4. Section 471.033(1)(g), Florida Statutes, provides that an engineer is subject to discipline for engaging in negligence in the practice of engineering. Rule 61G15-19.001(4), Fla. Admin. Code, provides that negligence constitutes “failure by a professional engineer to utilize due care in performing in an engineering capacity or failing to have due regard for acceptable standards of engineering principles.”

5. The Board has adopted Responsibility Rules of Professional Engineers (“Responsibility Rules”). These Rules are contained in Chapters 61G15-30 to 61G15-36, Fla. Admin. Code. Professional Engineers who perform services covered by the Responsibility Rules are required to comply with the Rules.

6. Rule 61G15-19.001(4), Fla. Admin. Code, also provides that “[f]ailure to comply with the procedures set forth in the Responsibility Rules as adopted by the Board of Professional Engineers shall be considered as non-compliance with this section unless the deviation or departures therefrom are justified by the specific circumstances of the project in question and the sound professional judgment of the professional engineer.”

7. Rule 61G15-30.002(1), Fla. Admin. Code, mandates that Respondent, as the engineer of record for the Church and Auction House and Church Projects, is professionally responsible for the documents prepared. As such, Respondent is responsible for producing documents that comply with the applicable portions of the Responsibility Rules.

8. Respondent acted as the Structural, Life Safety, Electrical and Mechanical (Plumbing) Engineer of Record for the Auction House and Church Projects as that term is defined in Rules 61G15-30.002(1), 61G15-31.002(1), 61G15-33.002(1) and 61G15-34.002(1), Fla. Admin. Code. As such, all engineering documents prepared, signed, sealed and dated by Respondent must contain the information set out in Rule 61G15-30.003(1):

When prepared for inclusion with an application for a general building permit, the Documents shall meet all Engineer's Responsibility Rules, set forth in Chapters ...61G15-31, 61G15-33, and 61G15-34, F.A.C., and be of sufficient clarity to indicate the location, nature and extent of the work proposed and show in detail that it will conform to the provisions of the Florida Building Code[FBC], adopted in Section 553.73, F.S., and applicable laws, ordinances, rules and regulations, as determined by the Agency Having Jurisdiction (AHJ). The Documents shall include:

(a) Information that provides material specifications required for the safe operation of the system that is a result of engineering calculations, knowledge and experience.

(b) List Federal, State, Municipal, and County standards, codes, ordinances, laws, and rules, with their effective dates, that the Engineering Documents are intended to conform to.

(c) Information, as determined by the Engineer of Record, needed for the safe and efficient operation of the system.

(d) List engineering design criteria; reference project specific studies, reports, and delegated Engineering Documents.

(e) Identify clearly elements of the design that vary from the governing standards and depict/identify the alternate method used to ensure compliance with the stated purpose of these Responsibility Rules.

9. The Florida Building Code (2010) – Building (FBC-B) Section 107.2.1 “Information on construction documents” states: “Construction documents shall be of sufficient clarity to indicate the location, nature and extent of the work proposed and show in detail that it will conform to the provisions of this code and relevant laws, ordinances, rules and regulations,...” FBC-B Section 2701.1 “Scope” states: “This chapter governs the electrical components, equipment and systems used in buildings and structures covered by this code. Electrical components, equipment and systems shall be designed and constructed in accordance with the provisions of the NFPA 70, National Electrical Code (NEC).” FBC-B Section 2801.1 “Scope,” states: Mechanical appliances, equipment and systems shall be constructed, installed and maintained in accordance with the Florida Building Code, Mechanical (FBC-M). FBC-B Section 2901.1 “Scope,” states: Plumbing systems and equipment shall be constructed, installed and maintained in accordance with the Florida Building Code, Plumbing (FBC-P).

10. Rule 61G15-33.001 “Responsibility Rules of Professional Engineers Concerning the Design of Electrical Systems” “General Responsibility” states in material part that: “Electrical Engineering documents shall be prepared in accordance with applicable technology and with the requirements of the authority having jurisdiction. The documents shall identify the Engineer of record for the electrical systems project. Electrical Engineering documents shall demonstrate compliance with the requirements of the applicable codes and standards . . . .”

11. Rule 61G15-33.003(2) “Design of Power Systems,” requires in material part that “Electrical Engineering Documents applicable to the design of electrical power systems shall, at a minimum, indicate the following: (a) Power Distribution Riser Diagram. (b) Conductor sizes (AWG or kcmil) and insulation type, . . . ; (c) Circuit interrupting devices, ratings and fault current interrupting capability. (e) Main and distribution equipment, control devices, locations and ratings. (f) Circuitry of all outlets, equipment and devices. (i) Grounding and bonding requirements.. (k)

Engineering documents applicable to power systems filed for public record shall also contain information required by the Florida Building Code.

12 Rule 61G15-33.004(2) Design of Lighting Systems, requires that Electrical Engineering Documents applicable to the design of lighting systems shall, at a minimum, indicate the following: (a) Lighting fixture performance specifications and arrangements. (b) Emergency lighting, egress lighting, and illuminated exit markings and their ancillary equipment such as inverters and batteries.

13. Rule 61G15-34.001 “Mechanical Systems” states that construction documents shall . . . define the required mechanical systems components, processes, equipment and material . . . be prepared in accordance with the applicable technology and with the requirements of the authority having jurisdiction. The documents shall identify the Engineer of Record for the mechanical systems project. Mechanical Engineering documents shall demonstrate compliance with the requirements of the applicable codes and standards . . . .”

14. Rule 61G15-34.003(4) “Design of Heating, Ventilation and Air Conditioning (HVAC) Systems,” requires that Mechanical Engineering Documents pertaining to HVAC systems . . . . shall indicate the following: (a) Demonstrate and provide adequate information for the AHJ to determine compliance with codes and ordinances. (e) Cooling coil requirements based on sensible heat, latent heat and total heat gains. (g) Outside and inside design dry and wet bulb conditions. (k) Condensate discharge piping layout with pipe sizes. (n) All data needed to complete the Florida Energy Code calculations as applicable.

15. Rule 61G15-34.007(2) “Design of Plumbing Systems,” requires that “Mechanical Engineering Documents applicable to Plumbing Systems shall when applicable, include but are not limited to the following: (a) Equipment schedules for all plumbing fixtures, water heaters, boilers, pumps, grease traps, septic tanks, storage tanks, expansion tanks, compression tanks and

roof and floor drains. (c) Potable Water isometric diagrams with pipe sizes and total water fixture units. (d) Sanitary riser diagrams with pipe sizes and total sanitary waste fixture units. (e) Storm riser diagrams with pipe sizes and cumulative drain area square footages. (f) Cold water, hot water, sanitary, and storm drainage piping layouts. (h) Design data for septic tank, grease trap(s), drain field sizing, when applicable. (i) List of ASHRAE, ASME, ASPE, ANSI and other applicable codes, design standards and requirements. (l) All plumbing fixtures, valves, pumps, tanks, accessories, specialties, enclosures, and such equipment shall be described and located on the drawings. (m) Materials for tall plumbing systems shall be specified.

16. FBC-B Section 3601.1 “Scope,” states: Provisions of this chapter shall govern the design, construction and arrangement of elements to provide a safe means of egress from buildings and structures and to minimize hazard to life and property due to fire and panic. FBC-B Section 3601.2 “Scope,” states: In addition to the provisions of this code, buildings shall comply with the 6th Edition (2017) Florida Fire Prevention Code as adopted by the Florida State Fire Marshal.

17. Rule 61G15-31.001 “General Responsibility” states:

The Engineer of Record is responsible for all structural aspects of the design of the structure including the design of all of the structure’s systems and components. As noted herein the engineer of record may delegate responsibility for the design of a system or component part of the structure to a delegated engineer. In either case the structural engineering documents shall address, as a minimum, the items noted in the following subsections covering specific structural systems or components. The Engineer of Record’s structural engineering documents shall identify delegated systems and components. Both the Engineer of Record for the structure and the delegated engineer, if utilized, shall comply with the requirements of the general responsibility rules, Chapter 61G15-30, F.A.C., and with the requirements of the more specific structural responsibility rules contained herein. The Engineer of Record for the

Structural System(s) shall provide design requirements in writing to the delegated engineer if one is used and shall review the design documents of the delegated engineer for conformance with his written instructions in accordance with Rule 61G15-30.005, F.A.C. When information collected from the engineer or the engineer's authorized representative from a site visit is part of the engineer's deliberative process, the engineer is responsible for the accuracy of such information.

18. Rule 61G15-31.002(5) "Structural Engineering Documents" states:

The structural drawings, specifications and other documents setting forth the overall design and requirements for the construction, alteration, repair, removal, demolition, arrangement and/or use of the structure, prepared by and signed and sealed by the engineer of record for the structure. Structural engineering documents shall identify the project and specify design criteria both for the overall structure and for structural components and structural systems. The drawings shall identify the nature, magnitude and location of all design loads to be imposed on the structure. The structural engineering documents shall provide construction requirements to indicate the nature and character of the work and to describe, detail, label and define the structure's components, systems, materials, assemblies, and equipment.

**ELECTRICAL DESIGN DOCUMENTS- Church Project**

19. Respondent's Electrical Engineering Design Documents for the Church Project are materially deficient as follows:

a) Drawing Sheet EP1 contains a partial Electrical Riser Diagram which does not include the existing 200 Amp Panel that serves the existing Fellowship Hall and Classrooms. Additionally, the partial riser diagram shows an existing 600 Amp MDP panel while the Electrical Plan shows an existing 400 Amp service. This clearly reflects a lack of coordination

by the designer and reviewer, the EOR. These omissions constitute violations of Rule 61G15-33.003(2), paragraphs (a) and (e).

(b) Drawing Sheet EP1 contains no circuit interrupting devices, ratings and no fault current interrupting capability, no conductor sizes and insulation types, and no circuitry of devices and equipment. The lack of specification of current interrupting capacity (circuit breakers), the absence of addressing fault current interrupting capability, the absence of specifying wire sizes and insulation, and the lack of circuitry for outlets, equipment and devices constitutes a violation of Rule 61G15-33.003(2), paragraphs (b), (c) and (f).

(c) Sheet EP1 contains no specifications and no requirement for grounding and bonding of the electrical systems. This constitutes a violation of Rule 61G15-33.003(2)(i).

(d) The electrical drawings do not contain complete information as required by the FBC. FBC-B Section 107.3.5 "Minimum plan review criteria for buildings" states: The examination of the documents by the building official shall include the following minimum criteria and documents: Electrical. 1. Wiring, feeders and branch circuits, overcurrent protection, grounding, wiring methods and materials, . . . 4. Emergency Systems. The absence of information required by the FBC-B constitutes a violation of Rule 61G15-33.003(2)(k).

(e) The drawings contain no specifications for any lighting fixture, even though the Legend (Sheet EP1) contains five different lighting symbols. The absence of lighting fixture specifications violates Rule 61G15-33.004(2)(a).

(f) The Electrical drawing (Sheet EP1) contains no exit or egress lighting fixtures at any of the three exits, and no egress light in the restroom. The absence of exit and egress lighting in the project constitutes a violation of Rule 61G15-33.004(2)(b).



## **ELECTRICAL DESIGN DOCUMENTS- Auction House Project**

20. Respondent's Electrical Engineering Design Documents for the Auction House Project are materially deficient as follows:

(a) The Electrical drawing Sheet E1 contains an Electrical Riser Diagram but the riser diagram contains an error in the specification of conductor sizes serving the two 200 amp panels through 3 #2/0 THHN copper, 1 #4 THHN Ground, 2" PVC. The National Electrical Code (NEC) Table 310.15(B)(16) requires #3/0 THHN copper for 200 Amps of load. Thus the riser diagram violates the requirements of NEC Table 310.15(B)(16). This error constitutes violation of Rule 61G15-33.003(2), paragraphs (a) and (e).

(b) Electrical Sheets E1 and M2/E2 contain no circuit interrupting devices (circuit breakers), ratings and fault current interrupting capability, no conductor sizes and no insulation types (except for two instances on the Electrical Riser Diagram), and no circuitry for outlets, equipment and devices. The lack of specification of current interrupting capacity (circuit breakers), the absence of addressing fault current interrupting capability, the absence of specifying wire sizes and insulation (except for two instances on the Electrical Riser Diagram), and the lack of circuitry for outlets, equipment and devices constitutes a violation of Rule 61G15-33.003(2), paragraphs (b), (c) and (f).

(c) The electrical drawings do not contain complete information as required by the FBC. FBC-B Section 107.3.5 "Minimum plan review criteria for buildings" states: The examination of the documents by the building official shall include the following minimum criteria and documents: Electrical. Wiring, feeders and branch circuits, overcurrent protection, wiring methods and materials, . . . 2. Equipment. The absence of FBC – required information constitutes a violation of Rule 61G15-33.003(2)(k).

(d) The drawings contain specifications for the recess canister lighting fixtures, but no specifications for any other lighting fixtures, even though the Legend (Sheet E1) contains six additional lighting symbols. The absence of lighting fixture specifications for all lighting fixtures violates Rule 61G15-33.004(2)(a).

#### **MECHANICAL (HVAC) DESIGN DOCUMENTS-Church Project**

21. Respondent's Mechanical (HVAC) Engineering Design Documents for the Church Project are materially deficient as follows in that the documents do not comply with FBC-B Section 2801.1 "Scope," which states: Mechanical appliances, equipment and systems shall be constructed, installed and maintained in accordance with the Florida Building Code, Mechanical (FBC-M). The Church Project drawings contain no HVAC systems, designs, specifications or requirements, except for showing four ceiling fans.

#### **MECHANICAL (HVAC) DESIGN DOCUMENTS- Auction House Project**

22. Respondent's Mechanical (HVAC) Engineering Design Documents for the Auction House Project are materially deficient as follows:

(a) The HVAC drawings (M1 and M2/E2) do not contain adequate information for the AHJ (Authority Having Jurisdiction) to determine compliance with codes and ordinances. FBC-B Section 107.3.5 "Minimum plan review criteria for buildings" states: The examination of the documents by the building official shall include the following minimum criteria and documents: Mechanical 1. Energy calculations, 2. Exhaust systems: Kitchen equipment exhaust, 9. Combustion air. The HVAC drawings (Sheets M1 and M2/E2) contain no Energy calculations, no specifications or designs of a kitchen equipment exhaust system, and no combustion air calculations. These omissions constitute violations of FBC-B 107.3.5 and Rule 61G15-34.003(4)(a).

(b) Air conditioning equipment schedule, shown as “Notes” on Sheet M1 is incomplete. The drawing does not contain cooling coil requirements based on sensible heat, latent heat and total heat gains, nor outside and inside design dry and wet bulb conditions. Additionally, Mechanical Note 1 on Sheet M2/E2 requires the HVAC units to have a SEER Rating of Min. 16. This requirement is not met by the American Standard/Trane unit specified on Sheet M1, which has a SEER Rating of 14.75. These omissions constitute violations of Rule 61G15-34.003(4)(e) and (g).

(c) Condensate discharge piping layout is not shown on the drawings. The omission of condensate discharge piping layout violates Rule 61G15-34.003(4)(k).

(d) The mechanical drawings do not contain all data required to complete the Florida Energy Code calculations, as required by the FBC-B, Chapter 13 and the Florida Building Code – Energy Conservation. The absence of all data required to complete the Florida Energy Code calculations constitutes a violation of Rule 61G15-34.003(4)(n).

#### **MECHANICAL (PLUMBING) DESIGN DOCUMENTS-Church Project**

23. Respondent’s Mechanical (Plumbing) Engineering Design Documents for the Church Project are materially deficient as follows:

(a) The Church drawings contain no plumbing specifications, systems, designs or requirements other than a partial plumbing isometric riser. The absence of plumbing schedules, specifications, systems, designs and required diagrams, layouts and applicable codes and standards violates Rule 61G15-34.007(2), paragraphs (a),(c),(e),(f) and (i).

(b) The Church drawings contain only a sanitary waste isometric riser diagram with pipe sizes, but without the total flow waste fixture units. The omission of total flow waste fixture units constitutes a violation of Rule 61G15-34.007(2)(d).

## **MECHANICAL (PLUMBING) DESIGN DOCUMENTS- Auction House Project**

24. Respondent's Mechanical (Plumbing) Engineering Design Documents for the Auction House Project are materially deficient as follows:

a) No equipment schedule is provided. Sheet M2/E2 contains only a sanitary riser diagram, but no specifications for fixtures, valves, accessories, enclosures and such equipment, and no specifications for plumbing system materials. This omission of a complete plumbing fixture schedule and material/equipment specifications constitutes violations of Rule 61G15-34.007(2), paragraphs (a), (l) and (m).

(b) No potable cold or hot water service riser diagrams are shown on the drawings. Total water fixture units are not shown on the drawings. The omission of water riser diagrams and the omission of total water fixture units constitutes a violation of Rule 61G15-34.007(2)(c).

(c) A sanitary waste isometric diagram is shown; however, total flow waste fixture units are not shown on the drawing. The omission of total water fixture units constitutes a violation of Rule 61G15-34.007(2)(d).

(d) No storm water riser diagrams are shown on the drawings. No area drainage calculations are shown on the drawings. The omission of a storm water riser diagram and area drainage calculations constitutes a violation of FAC 61G15-34.007(2)(e).

(e) Sheet M2/E2 contains sanitary drainage riser diagram, but no cold water, hot water sanitary drainage, or storm drainage piping layouts. The omission of cold water, hot water, sanitary drainage and storm drainage piping layouts constitutes a violation of Rule 61G15-34.007(2)(f).

(f) The sanitary drainage isometric on Sheet M2/E2 shows drains going to a grease trap and to a septic tank. However, the drawings contain no design data for a septic tank,

grease trap, or drain field sizing and no reference to a possible design in the civil drawings, which are not included in the case file. The absence of design data for a septic tank, grease trap, or drain field sizing constitutes a violation of Rule 61G15-34.007(2)(h).

(g) No list of applicable plumbing codes, design standards or requirements appears on the drawings. The omission of applicable codes, design standards and requirements constitutes a violation of Rule 61G15-34.007(2)(i).

### **LIFE SAFETY-Auction House Project**

25. Respondent's Life Safety Engineering Design Documents for the Auction House Project are materially deficient as follows:

(a) The Plans do not include Assembly Occupancy for the 2nd Floor Tiered Seating or the 1st Floor Food Court. FBC-B Section 303 classifies the 2nd Floor seating to be Assembly A-3; Food Court should be classified as Assembly A-2. Type of storage under the seating is not classified. Such storage for food items should be classified as Low-Hazard, Group 2, per FBC-B 311.3. The omission of classifications of Occupancies constitutes violations of FBC-B Section 303, Assembly Group A and FBC-B Section 311, Storage Group S.

(b) Sheet 2. Typical Hallway Section calls for walls to be "Fire Wall." The walls shown are not in compliance with the definition of Fire Walls in FBC-B Chapter 2, which reads as follows: A fire-resistance-rated wall having protected openings, which restricts the spread of fire and extends continuously from the foundation to or through the roof, with sufficient structural stability under fire conditions to allow collapse of construction on either side without collapse of the wall. The use of the term Fire Wall to identify walls which do not comply with the FBC-B definition of Fire walls violates FBC-B Chapter 2.

(c) Sheet 2. Per FBC-B Table 1020.1, the Hallway should be rated with Fire Partitions in unsprinklered Assembly and/or Mercantile occupancies with an occupant load

greater than 30. With an occupant load of 372 (reference Sheet LS1), the Corridor/Hallway walls are required to be fire-resistance- rated. Assembly and Mercantile Occupancies require one hour rated corridors. Thus, the central Hallway/Corridor should have rated doors opening onto the Hallway/Corridor as required by FBC-B Table 716.5. However, the drawings contain no door schedule to allow for verification of compliance with FBC-B Table 716.5. As stated in Paragraph - (b) above, the hallway walls do not comply with the FBC-B definition of Fire Walls.

(d) A rated assembly (designated Design No. G505) is shown on Sheet 2. But the testing agency which created the assembly is not identified. Drawings shall identify the testing agency for a rated assembly used in design drawings. The drawings do not clearly show where this rated assembly (G505) is referenced and/or specified to be used.

(e) Sheet LS1. Double doors from 2nd Floor shall not swing over steps. FBC-B 1010.1.6 requires a landing minimum of 44 inches deep (in direction of travel) at same elevation on both sides of the door (FBC-B 1010.1.5.). The design of the double doors from the 2nd Floor Tiered Seating area, without the required landings, violates FBC-B 1010.1.6 and FBC-B 1010.1.5.

(f) Sheet LS1. The 10 feet wide stairs from the 2nd Floor Tiered Seating area shall have one intermediate handrail along the center of the stairs as required by FBC-B 1014.9. The omission of a center handrail on the 10 feet wide stairs from the 2nd Floor Tiered Seating Area creates a violation of FBC-B 1014.9.

(g) Sheet LS1. Handrails are required on both sides of the Hallway Stairs (per FBC-B 1011.11) with proper extensions at Top and Bottom of stairs (per FBC-B 1014.6). Handrail extension at bottom of the stairs may need more room to not interfere with the door swinging into rest room foyer. Stairs without the required handrails and proper extensions violate the requirements of FBC-B 1011.11 and FBC-B 1014.6.

(h) Sheet LS1. 2nd Floor Plan does not show IES (Illuminated Exit Sign)

Light from the 2nd Floor Exit through double doors down the stairs to the 'Hallway' to the exit. (IES is shown on Sheet E1). Failure to install IES on the Life Safety Plan constitutes a violation of FBC-B 1013.1.

(i) Sheet LS1. Occupant Load for Food Court (should be classified as A-2) is noted as 85 occupants. The Food Court should have two exits or two exit access (per FBC-B 1006.2.1). Although there are three doors leading from the Food Court, all lead to one exit (door to the exterior) from that space. One additional door leading directly to the outside is required. The design drawings, showing only one exit from the Food Court, violate FBC-B 1006.2.1.

(j) Sheet LS1. Any door from the Food Court marked with an exit sign shall swing in direction of egress travel (per FBC-B 1010.1.2.1). Not all the double doors need to swing out, but at least one door into the Hallway shall swing in direction of egress travel. A required second door to exit from the Food Court, to be provided directly to exterior (per FBC-B 1006.2.1), shall also swing in direction of egress travel per FBC-B 1010.1.2.1. Failure to specify that pivot or side-hinged doors swing in the direction of egress travel where serving a room containing an occupancy load of 50 or more persons violates FBC-B 1010.1.2.1

(k) Sheet S-6. Occupancy separation between Storage below and 2nd Floor Tiered Seating above shall be one hour (per FBC-B Table 716.5). The 3.5" deck may provide one hour of protection per Tables in chapter 7, but the supporting structure shall be protected the same as the rating it is supporting (per FBC-B 707.5.1), which states: The supporting construction for a fire barrier shall be protected to afford the required fire-resistance-rating of the fire barrier supported. The drawings contain no certified calculations, which creates doubts that compliance with FBC-B 707.5.1 could be achieved by this design.

(l) Sheet S-6. Section 1: The permanent risers for the tiered seating are illustrated, but the drawings contain no design information for the steps to comply with minimum riser and tread dimensions as required by FBC-B 1011.5.2. Omission of design requirements for riser and tread dimensions for the stair steps violates FBC-B 1011.5.2.

(m) Sheet S-6. Section 1: Seating not shown to assure a 12" minimum clear aisle access way. FBC-B 1029.12.2 "Clear width of aisle access ways serving seating in rows" states: Where seating rows have 14 or fewer seats, the minimum clear aisle access way width shall be not less than 12 inches measured as the clear horizontal distance from the back of the row ahead and the nearest projection of the row behind. The absence of dimensions to assure a 12" minimum clear aisle access way constitutes a violation of FBC-B 1029.12.2.

(n) The drawings show no elevator, no lift, or otherwise no method for handicap accessibility to the 2nd Floor. Omission of providing handicap accessibility to the 2nd Floor constitutes a violation of the basic premise of the Accessibility Codes.

#### **STRUCTURAL ENGINEERING DOCUMENTS-Church Project**

26. Respondent's Structural Engineering Design Documents for the Church Project are materially deficient as follows:

- (a) The design loads in accordance to the 2014 Florida Building Code (FBC) 1603.1 were not given.
- (b) The wind loading information Vult, Vasd, Internal Pressure Coefficient, Components & Cladding Pressures in accordance with FBC 1603.1.4 were not present.
- (c) No roof live load was given (FBC 1603.1.2)
- (d) No soil bearing information was given (FBC 1603.1.6)
- (e) No structural analysis was shown (FBC 1604.4).



- (f) The mean roof height is incorrect (ASCE 7-10, 26.2).
- (g) The grade of the reinforcing steel to be used is not indicated (FBC 2101.3.1.)
- (h) The masonry wall control joints are not shown (FBC 2101.3.4).
- (i) The loads used for the design of the masonry are not shown (FBC 2101.3.5).
- (j) The compressive strength of masonry used is not shown (FBC 2101.3.6).
- (k) Pre-engineered wood roof truss loading was not provided (Rule 61G15-31.001).

## **COUNT I**

### **ELECTRICAL DESIGN DOCUMENTS- Church Project**

27. Petitioner realleges and incorporates Paragraphs One (1) through Twelve (12) , and Nineteen (19) as if fully set forth in this Count One.

28. Respondent's electrical engineering drawings for the Church Project contain deficiencies including; but not limited to, those set forth in Paragraph Nineteen (19). As a result of those deficiencies, Respondent violated the provisions of Section 471.033(1)(g), Florida Statutes, and Rule 61G15-19.001(4), F. A. C., by sealing and signing electrical engineering documents that were issued and filed for public record when such documents were materially deficient in that Respondent: (1) did not exercise due care in the preparation of the final engineering documents for the Church Project and (2) the final engineering documents for the Church Project were not issued in compliance with acceptable engineering principles.

29. Based on the foregoing, Respondent is charged with violating Section 471.033(1)(g), Florida Statutes, and Rule 61G15-19.001(4), F. A. C., by being negligent in the practice of engineering.

## **COUNT II**

### **ELECTRICAL DESIGN DOCUMENTS- Auction House Project**

30. Petitioner realleges and incorporates Paragraphs One (1) through Twelve (12), and Twenty (20) as if fully set forth in this Count Two.

31. Respondent's electrical engineering drawings for the Auction House Project contain deficiencies including; but not limited to, those set forth in Paragraph Twenty (20). As a result of those deficiencies, Respondent violated the provisions of Section 471.033(1)(g), Florida Statutes, and Rule 61G15-19.001(4), F. A. C., by sealing and signing electrical engineering documents that were issued and filed for public record when such documents were materially deficient in that Respondent: (1) did not exercise due care in the preparation of the final engineering documents for the Auction House Project and (2) the final engineering documents for the Auction House Project were not issued in compliance with acceptable engineering principles.

32. Based on the foregoing, Respondent is charged with violating Section 471.033(1)(g), Florida Statutes, and Rule 61G15-19.001(4), F. A. C., by being negligent in the practice of engineering.

## **COUNT III**

### **MECHANICAL (HVAC) DESIGN DOCUMENTS- Auction House Project**

33. Petitioner realleges and incorporates Paragraphs One (1) through Nine (9), Thirteen (13), Fourteen (14) and Twenty-Two (22) as if fully set forth in this Count Three.

34. Respondent's mechanical (HVAC) engineering drawings for the Auction House Project contain deficiencies including; but not limited to, those set forth in Paragraph Twenty-Two (22). As a result of those deficiencies, Respondent violated the provisions of Section 471.033(1)(g), Florida Statutes, and Rule 61G15-19.001(4), F. A. C., by sealing and signing mechanical (HVAC) engineering documents that were issued and filed for public record when

such documents were materially deficient in that Respondent: (1) did not exercise due care in the preparation of the final engineering documents for the Auction House Project and (2) the final engineering documents for the Auction House Project were not issued in compliance with acceptable engineering principles.

35. Based on the foregoing, Respondent is charged with violating Section 471.033(1)(g), Florida Statutes, and Rule 61G15-19.001(4), F. A. C., by being negligent in the practice of engineering.

#### **COUNT IV.**

##### **MECHANICAL (HVAC & Plumbing) DESIGN DOCUMENTS- Church Project**

36. Petitioner realleges and incorporates Paragraphs One (1) through Nine (9), Thirteen (13) through Fifteen (15), Twenty-One (21) and Twenty-Three (23) as if fully set forth in this Count Four.

37. Respondent's mechanical (plumbing & HVAC) engineering drawings for the Church Project contain deficiencies including; but not limited to, those set forth in Paragraph Twenty-Three (23). As a result of those deficiencies, Respondent violated the provisions of Section 471.033(1)(g), Florida Statutes, and Rule 61G15-19.001(4), F. A. C., by sealing and signing mechanical (HVAC & plumbing) engineering documents that were issued and filed for public record when such documents were materially deficient in that Respondent: (1) did not exercise due care in the preparation of the final engineering documents for the Church Project and (2) the final engineering documents for the Church Project were not issued in compliance with acceptable engineering principles.

38. Based on the foregoing, Respondent is charged with violating Section 471.033(1)(g), Florida Statutes, and Rule 61G15-19.001(4), F. A. C., by being negligent in the practice of engineering.

## **COUNT V**

### **MECHANICAL (Plumbing) DESIGN DOCUMENTS- Auction House Project**

39. Petitioner realleges and incorporates Paragraphs One (1) through Nine (9), Thirteen (13), Fifteen (15) and Twenty-Four (24) as if fully set forth in this Count Five.

40. Respondent's mechanical (plumbing) engineering drawings for the Auction House Project contain deficiencies including; but not limited to, those set forth in Paragraph Twenty-Four (24). As a result of those deficiencies, Respondent violated the provisions of Section 471.033(1)(g), Florida Statutes, and Rule 61G15-19.001(4), F. A. C., by sealing and signing mechanical (plumbing) engineering documents that were issued and filed for public record when such documents were materially deficient in that Respondent: (1) did not exercise due care in the preparation of the final engineering documents for the Auction House Project and (2) the final engineering documents for the Auction House Project were not issued in compliance with acceptable engineering principles.

41. Based on the foregoing, Respondent is charged with violating Section 471.033(1)(g), Florida Statutes, and Rule 61G15-19.001(4), F. A. C., by being negligent in the practice of engineering.

## **COUNT VI**

### **LIFE SAFETY ENGINEERING DOCUMENTS-Auction House Project**

42. Petitioner realleges and incorporates Paragraphs One (1) through Nine (9), Sixteen (16), and Twenty-Five (25) as if fully set forth in this Count Six.

43. Respondent's life safety engineering drawings for the Auction House Project contain deficiencies including; but not limited to, those set forth in Paragraph Twenty-Five (25). As a result of those deficiencies, Respondent violated the provisions of Section 471.033(1)(g), Florida Statutes, and Rule 61G15-19.001(4), F. A. C., by sealing and signing life safety engineering documents that were issued and filed for public record when such documents were

materially deficient in that Respondent: (1) did not exercise due care in the preparation of the final engineering documents for the Auction House Project and (2) the final engineering documents for the Auction House Project were not issued in compliance with acceptable engineering principles.

44. Based on the foregoing, Respondent is charged with violating Section 471.033(1)(g), Florida Statutes, and Rule 61G15-19.001(4), F. A. C., by being negligent in the practice of engineering.

## **COUNT VII**

### **STRUCTURAL ENGINEERING DOCUMENTS- Church Project**

45. Petitioner realleges and incorporates Paragraphs One (1) through Nine (9), Seventeen (17), Eighteen (18) and Twenty-Six(26) as if fully set forth in this Count Seven.

46. Respondent's structural engineering drawings for the Church Project contain deficiencies including, but not limited to, those set forth in Paragraph Nineteen (19). As a result of those deficiencies, Respondent violated the provisions of Section 471.033(1)(g), Florida Statutes, and Rule 61G15-19.001(4), F. A. C., by sealing and signing structural engineering documents that were issued and filed for public record when such documents were materially deficient in that Respondent: (1) did not exercise due care in the preparation of the final engineering documents for the Church Project and (2) the final engineering documents for the Church Project were not issued in compliance with acceptable engineering principles.

47. Based on the foregoing, Respondent is charged with violating Section 471.033(1)(g), Florida Statutes, and Rule 61G15-19.001(4), F. A. C., by being negligent in the practice of engineering.

WHEREFORE, the Petitioner respectfully requests the Board of Professional Engineers to enter an order imposing one or more of the following penalties: permanent revocation or

suspension of the Respondent's license, restriction of the Respondent's practice, imposition of an administrative fine, issuance of a reprimand, placement of the Respondent on probation, the assessment of costs related to the investigation and prosecution of this case, other than costs associated with an attorney's time, as provided for in Section 455.227(3), Florida Statutes, and/or any other relief that the Board deems appropriate.

SIGNED this 23 day of January, 2020.

Zana Raybon  
Executive Director

BY: John J. Rimes, III  
Prosecuting Attorney

COUNSEL FOR FEMC:

John J. Rimes, III  
Prosecuting Attorney  
Florida Engineers Management Corporation  
2639 North Monroe Street, Suite B-112  
Tallahassee, Florida 32303  
Florida Bar No. 212008  
JR/rv  
PCP DATE: January 08, 2020  
PCP Members: MATTHEWS, FLEMING & DRURY

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was furnished to Frank D. Cunningham, P.E. at 810 SE 80<sup>th</sup> Avenue, Okeechobee, Florida 34974, by certified mail and First Class U. S. Mail, on the 23 of January, 2020.

Rebecca Valentine  
Rebecca Valentine, Paralegal

STATE OF FLORIDA  
FLORIDA BOARD OF PROFESSIONAL ENGINEERS

FLORIDA BOARD OF PROFESSIONAL  
ENGINEERS,

Petitioner,

v.  
FRANK D. CUNNINGHAM, P.E.,

FEMC Case No. 2018007945

Respondent,

**ADMINISTRATIVE COMPLAINT**

COMES NOW the Florida Engineers Management Corporation (FEMC) on behalf of Petitioner, Florida Board of Professional Engineers, hereinafter referred to as "Petitioner," and files this Administrative Complaint against FRANK D. CUNNINGHAM, P.E., hereinafter referred to as "Respondent." This Administrative Complaint is issued pursuant to Sections 120.60 and 471.038, Florida Statutes. Any proceeding concerning this complaint shall be conducted pursuant to Section 120.57, Florida Statutes. In support of this complaint, Petitioner alleges the following:

1. Petitioner, Florida Board of Professional Engineers, is charged with regulating the practice of engineering pursuant to Chapter 455, Florida Statutes. This complaint is filed by the Florida Engineers Management Corporation (FEMC) on behalf of Petitioner. FEMC is charged with providing administrative, investigative, and prosecutorial services to the Florida Board of Professional Engineers pursuant to Section 471.038, Florida Statutes (1997).
2. Respondent is, and has been at all times material hereto, a licensed professional engineer in the State of Florida, having been issued license number PE 19665. Respondent's last known address is 810 SE 80th Avenue, Okeechobee, Florida 34974.

3. On June 18, 2014, September 25, 2015 and March 29, 2016, Respondent sealed, signed and dated engineering design documents for 9,600 Square Feet (SF) new commercial building for Walpole Feed (Walpole Project), a 2,438 SF build-out of an existing structure for an Anchor Dental Clinic (Anchor Dental Project), and a 7,946 SF restaurant (5,666 SF of indoor space and 2,280 SF of outdoor space) for Lightsey's Seafood (Lightsey's Project).

4. Section 471.033(1)(g), Florida Statutes, provides that an engineer is subject to discipline for engaging in negligence in the practice of engineering. Rule 61G15-19.001(4), Fla. Admin. Code, provides that negligence constitutes "failure by a professional engineer to utilize due care in performing in an engineering capacity or failing to have due regard for acceptable standards of engineering principles."

5. The Board has adopted Responsibility Rules of Professional Engineers ("Responsibility Rules"). These Rules are contained in Chapters 61G15-30 to 61G15-36, Fla. Admin. Code. Professional Engineers who perform services covered by the Responsibility Rules are required to comply with the Rules.

6. Rule 61G15-19.001(4), Fla. Admin. Code, also provides that "[f]ailure to comply with the procedures set forth in the Responsibility Rules as adopted by the Board of Professional Engineers shall be considered as non-compliance with this section unless the deviation or departures therefrom are justified by the specific circumstances of the project in question and the sound professional judgment of the professional engineer."

7. Rule 61G15-30.002(1), Fla. Admin. Code, mandates that Respondent, as the engineer of record for the Walpole Project, Anchor Dental Project and Lightsey's Project, is professionally responsible for the documents prepared. As such, Respondent is responsible for producing documents that comply with the applicable portions of the Responsibility Rules.



8. Respondent acted as the Structural Engineer of Record for the Walpole Project, Anchor Dental Project and Lightsey's Projects as that term is defined in Rules 61G15-30.002(1), 61G15-31.002(1), Fla. Admin. Code. As such, all engineering documents prepared, signed, sealed and dated by Respondent must contain the information set out in Rule 61G15-30.003(1): When prepared for inclusion with an application for a general building permit, the Documents shall meet all Engineer's Responsibility Rules, set forth in Chapter ...61G15-31, F.A.C., and be of sufficient clarity to indicate the location, nature and extent of the work proposed and show in detail that it will conform to the provisions of the Florida Building Code[FBC], adopted in Section 553.73, F.S., and applicable laws, ordinances, rules and regulations, as determined by the Agency Having Jurisdiction (AHJ). The Documents shall include:

(a) Information that provides material specifications required for the safe operation of the system that is a result of engineering calculations, knowledge and experience.

(b) List Federal, State, Municipal, and County standards, codes, ordinances, laws, and rules, with their effective dates, that the Engineering Documents are intended to conform to.

(c) Information, as determined by the Engineer of Record, needed for the safe and efficient operation of the system.

(d) List engineering design criteria; reference project specific studies, reports, and delegated Engineering Documents.

(e) Identify clearly elements of the design that vary from the governing standards and depict/identify the alternate method used to ensure compliance with the stated purpose of these Responsibility Rules.

9. Rule 61G15-31.001 “General Responsibility” states: The Engineer of Record is responsible for all structural aspects of the design of the structure including the design of all of the structure’s systems and components. As noted herein the engineer of record may delegate responsibility for the design of a system or component part of the structure to a delegated engineer. In either case the structural engineering documents shall address, as a minimum, the items noted in the following subsections covering specific structural systems or components. The Engineer of Record’s structural engineering documents shall identify delegated systems and components. Both the Engineer of Record for the structure and the delegated engineer, if utilized, shall comply with the requirements of the general responsibility rules, Chapter 61G15-30, F.A.C., and with the requirements of the more specific structural responsibility rules contained herein. The Engineer of Record for the Structural System(s) shall provide design requirements in writing to the delegated engineer if one is used and shall review the design documents of the delegated engineer for conformance with his written instructions in accordance with Rule 61G15-30.005, F.A.C. When information collected from the engineer or the engineer’s authorized representative from a site visit is part of the engineer’s deliberative process, the engineer is responsible for the accuracy of such information.

10. Rule 61G15-31.002(5) “Structural Engineering Documents” states: The structural drawings, specifications and other documents setting forth the overall design and requirements for the construction, alteration, repair, removal, demolition, arrangement and/or use of the structure, prepared by and signed and sealed by the engineer of record for the structure. Structural engineering documents shall identify the project and specify design criteria both for the overall structure and for structural components and structural systems. The drawings shall identify the nature, magnitude and location of all design loads to be imposed on the structure.

The structural engineering documents shall provide construction requirements to indicate the nature and character of the work and to describe, detail, label and define the structure's components, systems, materials, assemblies, and equipment.

#### **STRUCTURAL ENGINEERING DOCUMENTS- Walpole Project**

11. Respondent's Structural Engineering Design Documents for the Walpole Project are materially deficient as follows:

a. Section 1603.1.4 of the 2014 Florida Building Code (FBC) states "The following information related to wind loads shall be shown, regardless of whether wind loads govern the lateral force resisting system of the structure. Paragraph (1) requires both the ultimate and allowable wind speeds be shown. Paragraph (4) requires the applicable internal coefficient be shown, and Paragraph (5) requires the design wind pressures to be used for exterior component and cladding materials not specifically designed by the registered design professional responsible for the design of the structure be shown in psf (kN/m<sup>2</sup>).

b. On the Walpole Project the component & cladding, the allowable wind speed, the applicable internal pressure coefficient, and the component and cladding wind pressures are not shown on the documents.

#### **STRUCTURAL ENGINEERING DOCUMENTS- Anchor Dental Project**

12. Respondent's Structural Engineering Design Documents for the Anchor Project are materially deficient as follows:

a. Section 1603.1.4 of the 2014 Florida Building Code (FBC) states "The following information related to wind loads shall be shown, regardless of whether wind loads govern the lateral force resisting system of the structure. Paragraph (1) requires both the ultimate and allowable wind speeds be shown. Paragraph (4) requires the applicable internal coefficient

be shown, and Paragraph (5) requires the design wind pressures to be used for exterior component and cladding materials not specifically designed by the registered design professional responsible for the design of the structure be shown in psf (kN/m<sup>2</sup>).

b. On the Anchor Dental Project the component & cladding, the allowable wind speed, the applicable internal pressure coefficient, and the component and cladding wind pressures are not shown on the documents.

#### **STRUCTURAL ENGINEERING DOCUMENTS- Lightsey's Project**

13. Respondent's Structural Engineering Design Documents for the Lightsey's Project are materially deficient as follows:

a. Section 1603.1.4 of the 2014 Florida Building Code (FBC) states "The following information related to wind loads shall be shown, regardless of whether wind loads govern the lateral force resisting system of the structure. Paragraph (1) requires both the ultimate and allowable wind speeds be shown. Paragraph (4) requires the applicable internal coefficient be shown, and Paragraph (5) requires the design wind pressures to be used for exterior component and cladding materials not specifically designed by the registered design professional responsible for the design of the structure be shown in psf (kN/m<sup>2</sup>).

b. On the Lightsey's Project the component & cladding, the allowable wind speed, the applicable internal pressure coefficient, and the component and cladding wind pressures are not shown on the documents.

#### **COUNT I**

#### **STRUCTURAL ENGINEERING DOCUMENTS- Walpole Project**

14. Petitioner realleges and incorporates Paragraphs One (1) through Ten (10), and Eleven (11) as if fully set forth in this Count One.

15. Respondent's structural engineering drawings for the Walpole Project contain deficiencies including; but not limited to, those set forth in Paragraph Eleven (11). As a result of those deficiencies, Respondent violated the provisions of Section 471.033(1)(g), Florida Statutes, and Rule 61G15-19.001(4), F. A. C., by sealing and signing structural engineering documents that were issued and filed for public record when such documents were materially deficient in that Respondent: (1) did not exercise due care in the preparation of the final engineering documents for the Walpole Project and (2) the final engineering documents for the Walpole Project were not issued in compliance with acceptable engineering principles.

16. Based on the foregoing, Respondent is charged with violating Section 471.033(1)(g), Florida Statutes, and Rule 61G15-19.001(4), F. A. C., by being negligent in the practice of engineering.

## **COUNT II**

### **STRUCTURAL ENGINEERING DOCUMENTS- Anchor Dental Project**

17. Petitioner realleges and incorporates Paragraphs One (1) through Ten (10), and Twelve (12) as if fully set forth in this Count Two.

18. Respondent's structural engineering drawings for the Anchor Dental Project contain deficiencies including; but not limited to, those set forth in Paragraph Twelve (12). As a result of those deficiencies, Respondent violated the provisions of Section 471.033(1)(g), Florida Statutes, and Rule 61G15-19.001(4), F. A. C., by sealing and signing structural engineering documents that were issued and filed for public record when such documents were materially deficient in that Respondent: (1) did not exercise due care in the preparation of the final engineering documents for the Anchor Dental Project and (2) the final engineering documents

for the Anchor Dental Project were not issued in compliance with acceptable engineering principles.

19. Based on the foregoing, Respondent is charged with violating Section 471.033(1)(g), Florida Statutes, and Rule 61G15-19.001(4), F. A. C., by being negligent in the practice of engineering.

### **COUNT III**

#### **STRUCTURAL ENGINEERING DOCUMENTS- Lightsey's Project**

20. Petitioner realleges and incorporates Paragraphs One (1) through Ten (10), and Thirteen (13) as if fully set forth in this Count Three.

21. Respondent's structural engineering drawings for the Lightsey's Project contain deficiencies including; but not limited to, those set forth in Paragraph Thirteen (13). As a result of those deficiencies, Respondent violated the provisions of Section 471.033(1)(g), Florida Statutes, and Rule 61G15-19.001(4), F. A. C., by sealing and signing structural engineering documents that were issued and filed for public record when such documents were materially deficient in that Respondent: (1) did not exercise due care in the preparation of the final engineering documents for the Lightsey's Project and (2) the final engineering documents for the Lightsey's Project were not issued in compliance with acceptable engineering principles.

22. Based on the foregoing, Respondent is charged with violating Section 471.033(1)(g), Florida Statutes, and Rule 61G15-19.001(4), F. A. C., by being negligent in the practice of engineering.

WHEREFORE, the Petitioner respectfully requests the Board of Professional Engineers to enter an order imposing one or more of the following penalties: permanent revocation or suspension of the Respondent's license, restriction of the Respondent's practice, imposition of an

administrative fine, issuance of a reprimand, placement of the Respondent on probation, the assessment of costs related to the investigation and prosecution of this case, other than costs associated with an attorney's time, as provided for in Section 455.227(3), Florida Statutes, and/or any other relief that the Board deems appropriate.

SIGNED this 21 day of September, 2020.

Zana Raybon  
Executive Director

BY: John J. Rimes, III  
Prosecuting Attorney

COUNSEL FOR FEMC:

John J. Rimes, III  
Prosecuting Attorney  
Florida Engineers Management Corporation  
2639 North Monroe Street, Suite B-112  
Tallahassee, Florida 32303  
Florida Bar No. 212008  
JR/rv  
PCP DATE: September 09, 2020  
PCP Members: MATTHEWS, FLEMING & DRURY

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was furnished to Frank D. Cunningham, P.E. at 810 SE 80<sup>th</sup> Avenue, Okeechobee, Florida 34974, by certified mail and First Class U. S. Mail, on the 23 of September, 2020.

Rebecca Valentine  
Rebecca Valentine, Paralegal