

RHODE ISLAND DEPARTMENT OF LABOR & TRAINING

DIVISION OF PROFESSIONAL REGULATION

BOARD OF EXAMINERS OF HOISTING ENGINEERS

1511 Pontiac Avenue, Bldg 70, 2nd Floor Conference Room

Cranston, RI 02920

Tuesday, October 13, 2015

10:00am

In attendance: Joseph Graziano

Brian Iannuccillo

John Shaw, Designee

James Woloohojian, Chair

James White

Board member Ellery Wood, Jr. was not in attendance.

Also in attendance were David Rodrigues, Chief Hoisting Engineer Investigator and Valentino Lombardi, DLT Legal Counsel.

1. - Call to Order:

The meeting was called to order at 9:59 am by James Woloohojian.

2. – Minutes of September 8, 2015 Meeting:

James White made a motion to approve the minutes to the meeting September 8, 2015 as presented; seconded by Brian Iannuccillo. All were in favor. Motion carries.

3. - Conflict of Interest:

Valentino Lombardi, Legal Counsel, addressed the Board reminding board members that if they have any issues or conflicts with matters before the board and their obligation to disclose such conflicts and to recuse if necessary. Legal counsel is available for questions.

With regard to open meetings and conflict of interest, Counsel Lombardi also announced that there will be a seminar for all board members. The tentative date is November 30, 2015.

4. - Violation Appeal Hearings:

All parties participating in hearings were sworn in for testimony: David Rodrigues, Chief Hoisting Engineer Investigator; Kevin Sweet; Thomas Miozzi, President of T. Miozzi, Inc.; Todd Kumes; Tony Raposo, William Anthony Excavating; and Brenda Raposo, William Anthony Excavating.

Violation 5261 and 5262 are related pertaining to the same incident. Thomas Miozzi objects to the hearings being combined. The violations are heard separately.

Kevin J. Sweet – Violation 5261: Chair Woolojojian reads the violation.

LOCATION OF VIOLATION: Roadway resurfacing, Intersection of Waites Corner Rd. & South County Trail, South Kingstown, RI

VIOLATION: On Thursday, July 2, 2015, Mr. David M. Rodrigues, Chief Hoisting Engineer Investigator, witnessed Kevin J. Sweet, an employee of T. Miozzi, Inc., 75 Airport Rd., Coventry, RI 02816, operating a loader backhoe without a valid RI Hoisting Engineer's License, at the above job location. This is one (1) violation of RIGL 28-26-5 "License Required for Operation of Hoisting Machinery".

David Rodrigues, Chief Hoisting Engineer Investigator provides testimony. Mr. Rodrigues provides the test record for the hoisting license for Kevin J. Sweet, entered as Exhibit A.

Kevin J. Sweet provides testimony.

Board members questions both parties.

James White made a motion that violation 5261 did occur based on testimony given; seconded by Brian Iannuccillo. There was no opposition. Motion passed.

James White made a motion to uphold the recommended fine of \$1,500.00 for Violation 5261; seconded by Joseph Graziano. There was no opposition. Motion passed.

The recommendation will be forwarded to the Director's office.

T. Miozzi, Inc. – Violation 5262: Chair Woloohojian reads the violation

LOCATION OF VIOLATION: Roadway resurfacing, Intersection of Waites Corner Rd. & South County Trail, South Kingstown, RI

VIOLATION: On Thursday, July 2, 2015, Mr. David M. Rodrigues, Chief Hoisting Engineer Investigator, witnessed Kevin J. Sweet, an employee of T. Miozzi, Inc., 75 Airport Rd., Coventry, RI 02816, operating a loader backhoe without a valid RI Hoisting Engineer's License at the above location. According to RIGL 28-26-12 "Investigation and Prosecution of Violation", this is (1) one violation of RIGL 28-26-5 "License Required for Operation of Hoisting Machinery".

Board member, Brian Iannuccillo recused from the matter.

At the hearing held on September 8, 2015, the following exhibits were entered into evidence: Exhibit A, the hearing notice receipt for

September 8, 2015 hearing; and Exhibit B, letter from T. Miozzi submitted with request for appeal.

David Rodrigues, Chief Hoisting Engineer Investigator, and Thomas Miozzi, President of T. Miozzi, Inc., provide testimony.

Mr. Miozzi enters Kevin Sweet's employment application indicating his position as superintendent as Exhibit C.

The Board questions both parties.

James White, based on testimony given, made a motion that Violation 5262 did occur; seconded by Joseph Graziano. Motion passed unanimously. Brian Iannuccillo recused and did not participate.

James White moved to suspend the fine for one year, if T. Miozzi has any violation within that year the fine will be reinstated; seconded by Joseph Graziano. There is discussion. The motion passed with no opposition. Brian Iannuccillo recused and did not participate.

The recommendation will be forwarded to the Director's office.

Violations 5286 and 5287 are related (employee/employer) and pertain to the same incident. As there was no objection, testimony is heard

together. Chair Woloohojian reads the violations.

Chief Hoisting Engineer Investigator, David Rodrigues provides testimony. Mr. Rodrigues submits the following into evidence: Copy of Jeffrey Sisson (licensed operator on site) identification, photo of Todd Kumes operating, photo of the project and proximity of the equipment, and a copy of Mr. Kumes' application record from 2001; marked Exhibit A.

Todd Kumes, Tony Raposo and Brenda Raposo, of William Anthony Excavating, Inc., provide testimony.

Board questions all parties.

Todd J. Kumes – Violation 5286:

LOCATION OF VIOLATION: Dunkin Donuts (new construction), 1347 Diamond Hill Rd., Woonsocket, RI

VIOLATION: On Thursday, July 16, 2015, Mr. David M. Rodrigues, Chief Hoisting Engineer Investigator, witnessed Todd J. Kumes, an employee of William Anthony Excavating, Inc., 3666 Quaker Lane, North Kingstown, RI 02852, operating a hydraulic excavator without a valid RI Hoisting Engineer's License, at the above job location. This is one (1) violation of RIGL 28-26-5 "License Required for Operation of Hoisting Machinery".

Regarding Violation 5286, Todd J. Kumes, James White made a motion, based on testimony that a violation did occur; seconded by Joseph Graziano and passed unanimously by the Board.

Regarding the penalty for Violation 5286, Brian Iannuccillo made a motion to suspend the fine of \$1,500.00 for one year provided Mr. Kumes obtain a training license and successfully obtains a hoisting engineer's license; seconded by Joseph Graziano. There was no opposition. Motion passed.

The recommendation will be forwarded to the Director's office.

William Anthony Excavating, Inc. – Violation 5287:

LOCATION OF VIOLATION: Dunkin Donuts (new construction), 1347 Diamond Hill Rd., Woonsocket, RI

VIOLATION: On Thursday, July 16, 2015, Mr. David M. Rodrigues, Chief Hoisting Engineer Investigator, witnessed Todd J. Kumes, an employee of William Anthony Excavating, Inc., 3666 Quaker Lane, North Kingstown, RI 02852, operating a hydraulic excavator without a valid RI Hoisting Engineer's License at the above location. According to RIGL 28-26-12 "Investigation and Prosecution of Violation", this is (1) one violation of RIGL 28-26-5 "License Required for Operation of

Hoisting Machinery".

Regarding Violation 5287, William Anthony Excavating, Inc., James White made a motion based on testimony that Violation 5287 did occur; seconded by Joseph Graziano and passed unanimously by the Board.

Regarding the penalty for Violation 5287, Brian Iannuccillo made a motion to suspend the penalty of \$1,500.00 for one year pending no further violations; seconded by James White and passed unanimously by the Board.

The recommendation will be forwarded to the Director's office.

End of hearings

There is discussion of the recent increase in fines for hoisting violations and recommendations regarding today's hearings.

****After clarification, James White made a motion to include Public Comment on this and all future agendas; seconded by Brian Iannuccillo and passed unanimously by the Board. The agenda has been amended to allow public comment.**

Ron D'Ambruoso, former Board Member and former Acting Assistant

Director, addressed the board expressing his disappointment with the result of the latter hearings. Mr. D'Ambruoso states there has be some kind of adjustment on the law allowing the board to address those with other violations with the department. Chair Wolohoojian responds that based on what they are seeing in the violation, is that germane. Valentino Lombardi, Legal Counsel, addressed the board that issues before this board pertain to hoisting violations and those are the only issues that can be brought before the board. Discussion continued.

Relating to the recent increase in fines, Legal Counsel Lombardi inquires if a notice has gone out informing of the increase in fines.

Chief Hoisting Engineer Investigator David Rodrigues inquires of Legal Counsel if the board can reduce a fine from the \$1,500.00 threshold. Legal Counsel responded that the board can suspend a portion of the fine.

5.) - Adjournment:

Chair Woloohojian asks if there is any objection to the adjournment of the meeting. There being no objection, the meeting adjourned at 11:05am.