

No. 4348

**Official Order  
of the  
Texas Commissioner of Insurance**

Date: MAR 10 2016

**Subject Considered:**

Texas Department of Insurance

v.

James A. Babb, P.E.

SOAH Docket No. 454-15-3902.C

**General remarks and official action taken:**

The commissioner of insurance considers the appointment of James A. Babb, P.E., (Babb) as a qualified inspector and the inclusion of his name on the list of qualified inspectors.

Following a hearing before the State Office of Administrative Hearings, the administrative law judge submitted a proposal for decision containing findings of fact and conclusions of law recommending that Babb's appointment as a qualified inspector should be revoked and his name removed from the list of qualified inspectors.

Babb, Texas Board of Professional Engineers (TBPE) staff, and Texas Department of Insurance (TDI) staff filed exceptions to the proposal for decision; Babb filed an addendum; TDI staff filed a reply to Babb's exceptions; and Babb filed a response to TDI staff's reply. The administrative law judge recommended changes to the proposal for decision, but maintained the recommendation that Babb's appointment as a qualified inspector should be revoked and his name removed from the list of qualified inspectors.

The commissioner accepts the amended proposed findings of fact, conclusions of law, and recommendation of the administrative law judge with nonsubstantive formatting and style changes, and with one amendment to a finding of fact to correct a technical error related to the facts contained in the proposal for decision.

## FINDINGS OF FACT

1. James A. Babb, P.E., a licensed professional engineer, is a qualified inspector appointed by TDI to perform windstorm inspections and to certify structures as eligible for windstorm and hail insurance coverage through the Texas Windstorm Insurance Association (TWIA).
2. On May 1, 2015, TDI sent Babb written notice, which he received, that it intended to seek revocation of his appointment as a qualified inspector.
3. On May 20, 2015, TDI sent Babb a written Notice of Hearing, which he received. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
4. Before the hearing, by agreement of the parties, this case was consolidated for hearing with Docket No. 460-15-4426, *Texas Board of Professional Engineers v. James A. Babb, P.E.*, which is an action filed by the staff of the TBPE against Babb based on the same facts alleged in this case.
5. The consolidated hearing was convened at the State Office of Administrative Hearings (SOAH) in Austin, Texas on August 10, 2015. Rachel Cloyd appeared for TDI Staff, Dewey Helmcamp and Morgan Cuming appeared for TBPE Staff, and Babb appeared on his own behalf. The hearing was adjourned on August 13, 2015.
6. All parties filed written closing arguments. The agency staffs filed their final responsive closing arguments on November 12, 2015. The record closed on November 20, 2015, with Consolidated Order No. 5, which denied the agency staffs' motions to strike Babb's written arguments on the basis that those arguments had not been filed on time.
7. TWIA is the residual insurer of last resort for windstorm and hail insurance in the seacoast territory of Texas.
8. TWIA relies on qualified inspectors, who are professional engineers appointed by TDI, to determine whether structures qualify for insurance under TWIA.
9. A qualified inspector is required to design, inspect, and prepare plans and structural calculations for a building or structure in accordance with the wind

- load requirements of the construction standards adopted by the commissioner of insurance (commissioner).
10. Although the plans and calculations are not routinely submitted to TDI, that agency may request them, along with other substantiating information, if it finds a building or structure may not meet the prescribed wind loads.
  11. The certification document submitted by a qualified inspector is an Inspection Verification Form, known as a WPI-2.
  12. When a qualified inspector signs and seals a WPI-2, he or she certifies to TDI that: (1) the qualified inspector has provided standard and customary construction review services including an inspection or inspections; (2) the structure was designed and inspected in compliance with the applicable building code standards; and (3) the qualified inspector understands and intends that TDI will rely upon the WPI-2 in determining whether to issue a Certificate of Compliance Form (WPI-8) for the structure and to notify TWIA that the structure is eligible for a windstorm and hail insurance policy.
  13. When signing and affixing his professional engineer's seal to the WPI-2, the engineer expressly states:

I understand and intend that the Texas Department of Insurance will rely upon this statement of compliance in determining whether to issue a Certificate of Compliance for the building/structure and to notify the Texas Windstorm Insurance Association that the building/structure is eligible for a windstorm and hail insurance policy.
  14. TDI issues a WPI-8 based on the qualified inspector's certification of the structure through the WPI-2. TWIA, in turn, relies on the WPI-8 to determine that a structure is eligible for a windstorm and hail insurance policy.
  15. Either a TDI certified inspector or a qualified inspector may perform inspections of a structure for windstorm certification. The certified inspectors are limited to outer components of the building, such as roof coverings and windows, while qualified inspectors such as Babb are not limited.
  16. The current applicable building codes adopted by TDI are the 2006 International Residential Code (IRC) and International Building Code (IBC), with Texas revisions.

17. A qualified inspector typically works with a homeowner or builder from the beginning of a project in order to inspect and document the various components of the structure as it is being built.
18. It is far more difficult to inspect a building properly after it has already been constructed, because some of the structural elements may be hidden and because the materials and techniques used in construction may not have been documented properly.
19. For a structure to qualify for a WPI-8, the products used in its construction must have been tested for wind resistance.
20. TDI may schedule oversights of the qualified inspector, requiring the qualified inspector to submit substantiating information for his or her inspections. That information may include sealed plans, calculations, product information, or inspection records.
21. The substantiating information should already have been created by the qualified inspector before or during the inspection and should be maintained in the qualified inspector's files.
22. Because of their inherent difficulty, post-construction inspections may prompt oversight by TDI.
23. Babb's area of expertise is in mechanical engineering.
24. At the time Babb was appointed as a qualified inspector, in 2008, approximately two percent of his work had been in the design of structures in high-wind areas.
25. TDI does not require a minimum amount of experience in the design of structures in high-wind areas, although most qualified inspectors are civil engineers.
26. In 2009, TDI found problems with four post-construction inspections performed and attested to by Babb.
27. In each case in 2009, TDI requested substantiating information, which Babb was unable to provide.
28. In 2009, TDI advised Babb that he must have and be able to provide documentation of his inspections in the form of plans, calculation, product

information, and inspection records. Babb indicated at that time that he understood the process and would not perform any more post-construction inspections.

## **1957 Austin Street, League City Texas**

29. Babb submitted an Application for Certificate of Compliance (WPI-1) for 1957 Austin Street, League City Texas (Austin Street property) on November 21, 2013. At the same time, he submitted a WPI-2-BC-2 (a form used for projects that commenced construction between September 1, 1998, and January 31, 2003), together with inspection notes, calculations, framing plans, and photographs.
30. The Austin Street property structure was a single-family residence built in 1999. Babb's inspections were conducted between June 2012 and July 2013.
31. TDI sent inquiries to Babb on March 27, May 27, and June 25, 2014, requesting that he provide substantiating information for the Austin Street property. The final deadline was extended to July 14, 2014, but Babb did not provide that information.
32. The Austin Street property did not comply with the TDI building code requirements when Babb submitted the WPI-2.
33. Babb's WPI-2 for the Austin Street property was false and inaccurate.
34. Babb failed to provide timely and adequate substantiating information to TDI for the Austin Street property.

## **12531 Manor Drive, Brookside Village, Texas**

35. On December 2, 2013, Babb simultaneously submitted three sets of forms to TDI for an addition and two other structures at 12531 Manor Drive, Brookside Village, Texas (Manor Drive property), which is a residence.
36. Babb submitted a WPI-1 and a WPI-2-BC-3 (a form used for construction between February 1, 2003, and December 31, 2004), together with inspection notes, calculations, a map, and truss framing plans for an entire wood-framed carport.

37. Babb submitted a WPI-1 and WPI-2-BC-3, together with inspection notes, calculations, a map, and a hand-sketched drawing, for a wood framed canopy or breezeway addition.
38. Babb submitted a WPI-1 and WPI-2-BC-3, together with inspection notes, calculations, a map, and a hand-sketched drawing for a wood framed patio with a steel roof.
39. Construction on those structures began August 17, 2004.
40. Babb inspected the structures in August, September, and October 2013.
41. Although Babb described the structures as freestanding, they were attached to each other and the host residence.
42. Because the patio cover, breezeway, and carport were all attached to one another as well as to the primary residence, they should have been submitted and designated as additions on a single WPI-1 and WPI-2-BC-3.
43. TDI sent inquiries to Babb on April 30, May 27, and June 25, 2014, requesting that he provide substantiating information to support his WPI-2s for the Manor Drive carport, breezeway, and patio cover. The final deadline was extended to July 14, 2014, but Babb did not provide that information.
44. The Manor Drive property did not comply with the TDI building code requirements when Babb submitted the WPI-2s.
45. Babb's WPI-2s for the Manor Drive property were false and inaccurate.
46. Babb failed to provide timely and adequate substantiating information to TDI for the Manor Drive property.

## **1719 Ridgewood, Alvin, Texas**

47. On December 11, 2013, Babb submitted a WPI-1 and WPI-2-BC-2 for an aluminum framed open patio cover addition at 1719 Ridgewood, Alvin, Texas (Ridgewood property).
48. Construction commenced on the property on February 1, 2013, and Babb inspected it on February 4 and 5, 2013.

49. On January 14, 2014, TDI requested that Babb provide substantiating information to support his WPI-2 for the Ridgewood patio cover addition.
50. Instead of submitting substantiating information for the existing patio cover set out in the WPI-2, Babb proposed that he would submit a single, standardized package for all metal roofing projects then under TDI oversight.
51. A standardized package was unacceptable to TDI because, unless the project is being constructed according to the prescriptive building code, which this was not, each project must be individually designed.
52. On May 19, 2014, Babb electronically submitted an analysis to TDI regarding the Ridgewood property. Although it provided some of the information requested by TDI, it was also unclear and, to some extent, unrelated to the Ridgewood patio cover addition.
53. Although Babb submitted additional materials to TDI on two more occasions after the engineer's site visit, those submissions included more possible retrofit measures rather than substantiation of the submitted WPI-2.
54. The Ridgewood property patio cover did not comply with the TDI building code requirements when Babb submitted the WPI-2.
55. Babb's WPI-2 for the Ridgewood property was false and inaccurate.
56. Babb failed to provide timely and adequate substantiating information to TDI for the Ridgewood property.

## **13753 Boondocks Road, Beaumont, Texas**

57. On December 7, 2013, Babb simultaneously submitted a WPI-1 and a WPI-2-BC-5 (a form used for projects that commenced construction on or after January 1, 2008), together with inspection notes, a manufacturer's drawing, and calculations for an alteration and partial re-roof of an existing sunroom at 13753 Boondocks Road, Beaumont, Texas (Boondocks Road property), which is a single-family residence.
58. On December 7, 2013, Babb submitted a WPI-1 and WPI-2-BC-5, together with inspection notes, load tables, and calculations for an alteration and an entire re-roof on an existing carport at the Boondocks Road property. Construction on both projects commenced on October 16, 2013, with inspections conducted on October 17 and 23, 2013.

59. In the WPI-2 forms, Babb stated that the Boondocks Road property is located in the Inland II wind zone in the designated catastrophe area. However, the Boondocks Road property is located in the Inland I zone, and thus requires design conditions of 3-second gusts of 120 mph winds, instead of 110 mph winds.

### **The Boondocks Road sunroom**

60. On the WPI-2, Babb characterized the Boondocks Road property sunroom construction as a re-roof and alteration.
61. In January of 2014, Babb submitted an addendum to his submission acknowledging that the patio had been enclosed by walls, windows, and doors.
62. TDI sought substantiating information from Babb regarding the Boondocks Road property sunroom on February 27 and April 3, 2014. The deadline was eventually extended to July 14, 2014, but Babb did not supply that information.
63. The Boondocks Road property sunroom did not comply with the TDI building code requirements when Babb submitted the WPI-2.
64. Babb's WPI-2 for the Boondocks Road property sunroom was false and inaccurate.
65. Babb failed to provide timely and adequate substantiating information to TDI for the Boondocks Road property sunroom.

### **The Boondocks Road carport**

66. In the WPI-2, Babb characterized the Boondocks Road property carport project as a restoration, consisting of a re-roof and alteration (replacement of posts).
67. Because carports typically consist only of a roof, posts, and horizontal beams that support the roof, carports are usually torn down and replaced.
68. Although Babb described the carport as freestanding in the WPI-2 and his supplemental materials, the carport was attached to the house.

69. At TDI's request, Babb provided substantiating information regarding the Boondocks Road property carport, although TDI disagreed with his wind pressure calculations and stated he had failed to make lateral calculations for the framework.
70. TDI requested additional substantiating information on July 25, August 18, September 15, and October 20, 2014, but Babb did not provide that information.
71. The Boondocks Road property carport did not comply with the TDI building code requirements when Babb submitted the WPI-2.
72. Babb's WPI-2 for the Boondocks Road property carport was false and inaccurate.
73. Babb failed to provide timely and adequate substantiating information to TDI for the Boondocks Road property carport.

## **207 Ka Me Ha, Tiki Island, Texas**

74. On February 4, 2014, Babb simultaneously submitted a WPI-1 and a WPI-2-BC-5 for an entryway at 207 Ka Me Ha, Tiki Island, Texas (Ka Me Ha property). Babb certified that the entryway complied with the 2006 IRC.
75. Construction commenced on the entryway on August 2, 2013, and inspections were conducted on August 2, August 16, and September 11, 2013.
76. The entryway was designed and constructed as a breakaway structure, which is required in that area by the National Flood Insurance Program to protect the integrity of the host structure in case a flooding. Babb informed TDI of the breakaway construction.
77. Breakaway structures are not compliant with the 2006 IRC and are not insurable by TWIA.
78. Babb's verification of the entryway at the Ka Me Ha property was improper and incorrect.

## **1520 Sealy Street, Galveston, Texas**

79. On August 11, 2014, Babb submitted a WPI-1 and WPI-2-BC-5 together with notes, calculations, and a design plan for an alteration at 1520 Sealy Street, Galveston, Texas (Sealy Street property), which is a residence.
80. Construction commenced on September 27, 2013, and Babb's inspections were conducted on that date and on several later dates, ending in May of 2014.
81. The Sealy Street property is located in the Seaward wind zone.
82. In response to TDI's inquiries, Babb submitted a photograph of plywood installed as debris protection and calculations on the adequacy of the plywood fasteners, or screws.
83. Screw-attached plywood shutters are not permitted in the Seaward zone under the amended 2006 IRC.
84. TDI requested additional substantiating information from Babb, on November 19 and December 10, 2014, and January 15, 2015, but Babb did not provide it.
85. The Sealy Street property did not comply with the TDI building code requirements when Babb submitted the WPI-2.
86. Babb's WPI-2 for the Sealy Street property was false and inaccurate.
87. Babb failed to provide timely and adequate substantiating information to TDI for the Sealy Street property.

## **624 Westfield Lane, Friendswood, Texas**

88. On August 22, 2014, Babb submitted a WPI-1 and WPI-2-BC-5 together with a street map for an entire asphalt re-roof on the residence at 624 Westfield Lane, Friendswood, Texas (Westfield Lane property).
89. Work commenced on the reroof on August 2, 2014, and Babb inspected the project on August 20 and 21, 2014, although he may have visited and taken some photographs of the site during construction.

90. TDI requested substantiating information from Babb regarding the Westfield Lane property on October 24 and November 25, 2014, and January 8, 2015, but Babb failed to provide that information.
91. The Westfield Lane property did not comply with the TDI building code requirements when Babb submitted the WPI-2.
92. Babb's WPI-2 for the Westfield Lane property was false and inaccurate.
93. Babb failed to provide timely and adequate substantiating information to TDI for the Westfield Lane property.

### **3014 Sugar Wood Drive, League City, Texas**

94. On August 22, 2014, Babb submitted a WPI-1 and a WPI-2-BC-5, together with comments, for an alteration consisting of 14 Ply Gem window replacements at 3014 Sugar Wood Drive, League City, Texas (Sugar Wood property), which is a residence.
95. Construction commenced on June 17, 2011. Babb's inspections occurred on August 18 and 19, 2014.
96. TDI requested substantiating information from Babb to support his WPI-2 on November 20 and December 10, 2014, and January 9, 2015, but did not receive that information.
97. The Sugar Wood Drive property did not comply with the TDI building code requirements when Babb submitted the WPI-2.
98. Babb's WPI-2 for the Sugar Wood property was false and inaccurate.
99. Babb failed to provide timely and adequate substantiating information to TDI for the Sugar Wood property.

### **CONCLUSIONS OF LAW**

1. The commissioner has jurisdiction over this matter under Texas Insurance Code §§ 82.051-82.052, 82.054, and 2210.2551-2210.256.
2. SOAH has jurisdiction over all matters relating to the conduct of a hearing in this proceeding, including the preparation of a proposal for decision with

findings of fact and conclusions of law, under Texas Government Code ch. 2003.

3. TDI staff has the burden of proof in this proceeding. 1 Texas Administrative Code (TAC) § 155.427.
4. Timely and adequate notice of the hearing was provided in accordance with Texas Government Code §§ 2001.051 - 2001.052.
5. The qualifications and duties of a qualified inspector are set out in Texas Insurance Code §§ 2210.254, 2210.256, and 28 TAC § 5.4604. The latter is generally known as the "Appointment Rule."
6. Under the Appointment Rule, a qualified inspector has two primary responsibilities: (1) to ensure that any structure or part thereof that he or she certifies is in strict compliance with the building standards adopted by the Commissioner and applicable to that structure; and (2) if requested by TDI, to provide substantiating documentation such as calculations, sealed plans, notes, and drawings, to support the certification that the structure meets all code requirements.
7. Texas Insurance Code § 38.001(c) allows TDI to request substantiating information from persons, including qualified inspectors, who hold an authorization from TDI. A qualified inspector must timely respond to a reasonable inquiry made by TDI not later than the 15th day after the date the inquiry is received, unless a 10-day extension of time is granted upon written request, although TDI may further extend that period at its discretion.
8. The commissioner has the authority to revoke an engineer's appointment as a qualified inspector. Tex. Ins. Code § 2210.256; 28 TAC § 5.4604(f).
  - 8a. Babb failed to design, inspect, and prepare plans and structural calculations for the structures he certified on each of those eight properties in accordance with the wind load requirements adopted by the commissioner, in violation of 28 TAC § 5.4604(g).
  - 8b. By failing to provide timely and adequate substantiating information for those seven properties, Babb violated Texas Insurance Code § 38.001 and 28 TAC § 5.4604(h).
9. Babb's appointment as a qualified inspector should be revoked and his name removed from the list of qualified inspectors.

James A. Babb, P.E.  
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## **Amendment of Finding of Fact No. 78**

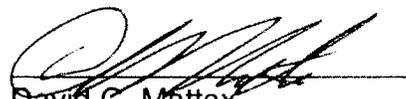
Finding of Fact No. 78 as contained in this order modifies Finding of Fact No. 78 as contained in the proposal for decision for SOAH docket no. 454-15-3902.C (proposal for decision) to correct a technical error related to the facts contained in the proposal for decision.

Finding of Fact No. 78 in the proposal for decision states "Mr. Babb's WPI-2 for the Boondocks Road carport was false and inaccurate when Mr. Babb submitted the WPI-2." However, this portion of the ALJ's findings of facts otherwise addresses the Ka Me Ha property, and Finding of Fact No. 78 in the proposal for decision repeats the finding addressed in Finding of Fact No. 73 in the proposal for decision, which states "Mr. Babb's WPI-2 for the Boondocks Road carport was false and inaccurate."

In the Discussion portion of the proposal for decision where the administrative law judge addresses the Ka Me Ha property, the administrative law judge notes "Mr. Harp testified, breakaway structures are not compliant with the 2006 IRC and are not insurable by TWIA, so Mr. Babb's verification was therefore improper and incorrect." This statement regarding the verification of the entryway at the Ka Me Ha property as improper and incorrect is incorporated into Finding of Fact No. 78 in this order.

The Commissioner's authority to modify findings of fact to correct technical errors is Tex. Government Code § 2001.058(e).

The commissioner of insurance orders that Babb's appointment as a qualified inspector be revoked and his name removed from the list of qualified inspectors.

  
David C. Mattax  
Commissioner of Insurance