



LICENSING NEWS

ARCHITECTURE ★ INTERIOR DESIGN ★ LANDSCAPE ARCHITECTURE

WINTER 2008, VOLUME XIII, ISSUE 2

CHAIRMAN'S COLUMN



Hitting the ground running

Just a few short months ago, I was thrilled to accept Governor Perry's appointment to chair the Texas Board of Architectural Examiners (TBAE). And since then, events have happened at what seems like the speed of sound.

But one topic deserves special attention, and it's one most registrants already know something about from reading the Board's Web site or newsletters from professional associations: the Board's recent ruling about the "overlap" of architecture and engineering.

In late August the Board listened to attorneys representing three engineers who practiced architecture, and to attorneys from agency staff. After asking many questions and carefully deliberating, the Board chose to issue a cease-and-desist order to each of the engineers to prevent each of them from engaging in the practice of architecture—or "comprehensive building design," as counsel for the engineers called it—without an architectural license.

The Board's decision that day marked a major event in the long-lived debate between engineers and architects, and each side is likely to interpret the decision's meaning in its own way. The Board's decision touched on four critical aspects of the longstanding debate:

(1) The Board rejected the engineers' argument that they (and an indeterminate class of Professional Engineers, or P.E.s) were entitled to engage in "comprehensive building design" by virtue of their status as P.E.s who had acquired experience in building design. "Comprehensive building design"—a term which appears *nowhere* in law—was the engineers' nomenclature to assert that they are entitled to engage in all of those activities which are defined by statute and regulation as the practice of architecture.

In other words, merely having an engineering license and experience in "comprehensive building design" isn't enough to practice architecture.

(2) The Board made it clear that there is a distinct and discernible subset of construction documents which are *always* "architectural plans and specifications." Said differently, *architectural plans and specifications are a distinct type of document, not just plans developed as a part of the building's design.*

(3) Regardless of whether an engineer or an architect is selected as the "prime design professional" for a public works projects [see Texas Administrative Code section 1051.703(b)], an architect is still required to issue architectural plans and specifications. The Board rejected the engineers' argument that an engineer who is chosen as the "prime design professional" by a project owner is thereby legally authorized to issue architectural plans and specifications.

Even if an engineer is the "prime design professional," an architect still must issue architectural plans and specifications.

(4) The Board also articulated that the practice of architecture centers upon structures which are primarily intended for human use and occupancy. As many know, the Texas Legislature amended the Architects' Practice Act in 2005 in order to explicitly state that the practice of architecture involves buildings "intended for human use and occupancy." The Board has now made it clear that it will take that legislative definition to heart in determining which structures require architectural plans and specifications.

Notwithstanding all other requirements for architectural design, human occupancy is a definitive test.

While it might be a reach to assume that this is the last we'll hear of the "overlap" issue, one thing is sure: our Board stood firm for something in which it believes strongly, and for that I am proud of each member and the 24 people who staff the agency. My tenure as chair is off to an adventurous start, and I'm excited to find out what comes next.

Alfred Vidaurri, Jr., AIA, AICP
Chair

READ MORE ABOUT THIS TOPIC ON PAGE 4.

INSIGHT FROM THE EXECUTIVE DIRECTOR



Looking back to drive forward

Since the mid 1990's I've had many chances to learn how to make reasonable decisions for this agency, for its registrants, and for the public served by design professionals. Two tools in particular have proven again and again to be immensely valuable in providing direction: the biennial Strategic Plan, and the Customer Service Survey such as the one released early this year for your input and commentary.

To those of you who took the time to submit a response to our in-depth Customer Service Survey, many thanks! Starting in early January, the board received a record number of responses.

With so many responses from registrants across the three professions, candidates for licensure, building officials, and members of the public, we know the survey results have provided a valuable window into the needs of those with whom we work.

While TBAE's overall approval rating is strong, it is confirmed that there are steps we can take to improve our service and reduce costs. The open-ended questions help us understand some of those issues, and we look forward to using those responses to improve our business practices (including how we conduct future surveys!).

Toward that end, the agency also recently finished its biennial Strategic Plan, also available on our Web site. Taking cues from customer service surveys of the past few years, and after in-depth consultation with stakeholders and subject-matter experts on staff, the 33-page document both assesses how the agency operates now, and how it can deliver services better in coming years.

The agency's latest Strategic Plan addresses several broad themes. Of paramount importance is staying focused on the agency's impact on all key constituencies, ranging from our own staff to our registrants, and ultimately to the people of Texas who live, work, and play in the built environment. In the coming months and years you will see a greater commitment to outreach; more efficient service delivery; more transparency via technology; stronger efforts to promote sustainability both within and without the agency; and more direct stakeholder input to inform the operations and regulatory functions of the board.

A few concrete examples will help demonstrate how we learn from the customer service survey and adapt quickly to cover a demonstrated need. First, communication issues were mentioned as an area for improvement. In 2008 and beyond, the agency is committed to growing our outreach and communications efforts by leaps and bounds. The number and frequency of staff presentations will increase, and we've expanded the scope of the audiences we will reach, such as students, local governments, and school boards. We also have begun stepping up our efforts to more effectively listen. One example: the "public comment" period of each Board meeting now happens at the beginning of the meeting, not the end. Another example is negotiated rulemaking, with increased opportunities for stakeholder participation in coming months.

Again, thanks to all who participated in the customer service survey, and keep your eyes (and email accounts) peeled for your next chance to tell us what we're doing well—and what we can do better.

Cathy L. Hendricks, RID/ASID/IIDA
Executive Director

Emeritus registration fees lowered

In 2007, TBAE was proud to announce that it was able to lower the fee for in-state registration renewals. Now that we're well into 2008, we're happy to announce yet another fee decrease.

The Board voted in August to reduce Emeritus status renewal fees to just \$10, down from the previous amount of \$25. The \$10 fee applies to all Emeritus registrants, both in-state and non-resident.

It is gratifying to observe how improved efficiency can result so directly in savings for our registrants, whom we consider our customers. In fact, since 2006 the agency has been able to reduce this particular fee by fully 80 percent!

Reminder: Watch for that postcard

As most of you know, many months ago TBAE began sending postcards to registrants with upcoming renewal dates. The postcards replaced the renewal "coupons" long-time registrants might remember, and urged registrants to log in to their accounts and renew online.

Just a reminder for those who might have forgotten: when you get that green and white postcard with the TBAE logo on it, it's not junk mail! That's your reminder to visit us online and get renewed before your registration expires, so don't throw it away and forget. Our login process is newly updated and more secure, and if you run into trouble just give us a call (512.305.9000) and we'll walk you through the process. Remember also that the process begins with your valid and unique email address, so if you've changed that or haven't entered one, just give us a call!

TBAE to launch online continuing education

You asked for it, and we're delivering. Stay tuned to our Web site for TBAE's first installment of affordable online continuing education.

Projected for launch in the next few months, *Practice and Procedures* will cover the regulatory aspects of your profession and count for continuing education credit in health/safety/welfare. The course will be offered for \$35, all of which will go to the course provider.

Practice and Procedures is TBAE's first foray into providing continuing education, but we hope it won't be the last. If the course proves as useful and popular as we hope it will, the agency plans to generate more content for subsequent courses on a variety of topics. In analyzing the responses to our customer service survey, discussed by Executive Director Cathy Hendricks elsewhere in this newsletter, it became clear that our registrants want more and better course offerings in health/safety/welfare. Our rededication to responsiveness and thoughtful strategic planning means we're taking our registrants at their word, and we think *Practice and Procedures* is a great start!

Windstorm inspectors needed on the coast

In the aftermath of Hurricane Ike in September, state and federal agencies were tasked with restoring basic services and helping return people's lives to normal. Among a great multitude of other repair and restoration projects is that of inspecting structures for windstorm damage—and many Texas architects are eligible to help.

On October 3, the Texas Department of Insurance (TDI) announced that certain classes of trained professionals can apply to become Temporary Qualified Windstorm Inspectors. Eligible professionals include a "Texas registered architect with construction, design or inspection experience on buildings or structures located in high wind areas," according to an October 6 notice from TDI.

Successful applicants will be authorized to perform residential inspections involving the replacement of roof coverings, exterior openings and exterior coverings in designated catastrophe areas along the affected region. Qualified inspectors are listed in a searchable database on TDI's Web site.

Applications to become a Temporary Qualified Windstorm Inspector are found on a special section of TDI's Web site, along with helpful FAQ documents and much more information. You can learn all the details at the location below. The leadership and staff of TBAE thank the many design professionals willing to help coastal Texans put their lives back in order, and we wish all the best for those affected by Ike.

www.tdi.state.tx.us/wind

Rhetoric Collides with Reality DEBUNKING THE MYTH OF “COMPREHENSIVE BUILDING DESIGN”

The argument: Comprehensive building design is a branch or subset of the practice of engineering which allows engineers to completely design every aspect of a building without an architect.

What the law says: There is no concept of “comprehensive building design” in the law. People who are not registered as architects (including engineers) are not permitted to practice architecture except on projects exempt from the Architects’ Practice Act. Generally, architecture is building design.

The argument: Engineers are exempt from the Architects’ Practice Act, which means engineers can design entire buildings without architects.

What the law says: Engineers are exempt from the Architects’ Practice Act *only to practice engineering*. The exemption is limited to engineered systems within buildings—structural, electrical and mechanical systems—and to the design of projects such as industrial facilities, hydro-electric works, and railroads.

The argument: Two Attorney General opinions and a policy advisory opinion by TBPE all concluded engineers can design buildings without architects.

What the opinions say: A recent Attorney General Opinion (GA-391) determined:

1. An earlier opinion (DM-161) did not state that engineers are licensed to design entire buildings (as has been asserted); and
2. A TBPE advisory opinion which stated that engineers are licensed to design buildings without architects was incorrect.

The argument: Nobody was ever harmed by an ugly building. This dispute has nothing to do with public health, safety, and welfare. Architects bring only aesthetics to the design of a building and are not necessary.

Response: The notion that an engineer is legally competent to completely design all aspects of any building regardless of size or complexity, without any other design professional, is obviously very dangerous. This is very much a matter of public health, safety and welfare. Architects are necessary to coordinate the integration of different building systems to create a cohesive, efficient, safe, healthy, accessible, and aesthetically pleasing environment for human habitation.

The accusation: TBAE is trying to put engineers out of business so architects will have a monopoly on building design.

Response: Neither TBAE nor anyone else has ever maintained that there is no role for an engineer in the design of a building. TBAE has publicly stated that both architects and engineers are necessary to properly design buildings. By contrast, the Texas Society of Professional Engineers has asserted “there may be a tendency to dispense with that which is not essential i.e. the architecture” in the design of a building. Full access by the disabled, energy efficiency, human functionality, and logical integration of building systems are “essential.”

Update: The Third Court of Appeals in Austin affirmed a lower court’s order dismissing the Texas Society of Professional Engineers’ lawsuit against TBAE. The engineers’ lawsuit argued that TBAE interferes with the engineers’ practice of “comprehensive building design.” According to the recent ruling, TBAE is to decide whether an engineer is practicing architecture and whether the engineer is subject to an exemption from the Architecture Practice Act. TBAE is very pleased with the decision, which affirms its jurisdiction.

New rules on landscape irrigation: are you exempt?

In response to several pieces of legislation passed in 2007, the Texas Commission on Environmental Quality (TCEQ) recently adopted a package of rules regarding landscape irrigation. Effective in January of 2009, the rules touch on aspects of irrigation ranging from newly required irrigation plans, to backflow device approval.

Most importantly, a TCEQ-issued license is now required, according to that

agency, to “sell, design, install, maintain, alter, repair, or service an irrigation system...”

The new TCEQ rules may have caught many off guard—but most TBAE registrants need not worry. TCEQ staff has informed TBAE that architects, engineers, and landscape architects are exempted from the TCEQ licensure requirement, provided that the work is related to the pursuit of those professions.

TCEQ was quick to note, however, that even TBAE registrants who are exempt from the licensure requirements must still comply with TCEQ’s landscape irrigation rules. You can find the specifics of those rules in Title 30 of the Texas Administrative Code, Chapter 344, and TCEQ also has devoted a wing of its Web site to landscape irrigation. You can find it at www.tceqirrigator.info.

Q and A: What you need to know about criminal background checks

By Jack Stamps, Managing Investigator

Q: My administrative assistant always does my license renewal. I didn’t even know there was a question about criminal convictions! Is that new?

A: No, the question about criminal convictions isn’t new—and neither is the question about whether you’ve completed your annual continuing education requirements. We take both of those matters seriously, and so should you! Remember that if either question is answered falsely, whether by you or by your assistant, as a registrant you’re the one held responsible.

Q: When is a registrant supposed to disclose criminal conviction information to the Board?

A: At a few different times. First, at the time you apply for registration. Then, each year you’ll need to certify on your renewal form that you haven’t been convicted in the preceding year. Finally, you’ll need to disclose any conviction within 30 days of the date the court enters it.

Q: What about minor traffic offenses?

A: Don’t worry about them! TBAE doesn’t require any kind of disclosure about minor traffic offenses.

Q: What can the Board do if it finds a registrant or applicant has been convicted?

A: The Board can:

- Suspend or revoke a registration
- Disqualify an applicant from receiving a registration, or
- Deny eligibility to take the licensing exam, if someone is convicted of a crime that directly relates to the duties and responsibilities of a registered architect.

Q: If I pled guilty to a crime and received probation or deferred adjudication, am I required to report this?

A: No. The successful completion of a probation or deferred adjudication sentence is not considered a conviction. Only convictions must be reported.

Q: Are there any circumstances resulting in automatic revocation?

A: Felony conviction resulting in incarceration, or revocation of a felony probation, parole, or mandatory supervision will result in revocation of a license. The registration is revoked by operation of law on the date the sentence is entered.

Q: I had a minor college-age indiscretion years and years ago. Should I be worried?

A: Probably not. The Board takes into account how long ago a conviction occurred, along with other factors like conduct and work activity before and since, steady employment and support of dependents, age at the time the crime was committed, and more.

Q: What’s the exact rule that applies to this topic, and where can I look it up?

A: It’s rule 1.149 for architects, 5.158 for interior designers, and 3.149 for landscape architects. All the rules can be accessed from www.tbae.state.tx.us. Just click on the Laws & Enforcement tab.

BONUS QUESTION

Q: Anything else a design professional (or future design professional) should know about the Board lately?

A: Yes! Registrants and applicants should note TBAE’s new and more secure login process to access their TBAE accounts online, pay renewal fees, and update contact information. The process starts with providing (and then verifying) a valid and unique email address for each site user, and now features enhanced security measures and useful self-help tools to retrieve lost username and password information. And of course, you can always call us at 512-305-9000 for help.

Disciplinary Action

The following enforcement cases were decided at the May and August 2008 Board meetings. Each case is based on the applicable rule in effect at the time of the violation, and was considered by Enforcement staff and the Board in light of its unique facts. Individual rules may change between the time a violation occurs and the case is publicized. The rules provided on TBAE's Web site (www.tbae.state.tx.us) include the adoption and amendment date(s) for each rule.

Cases involving registrants

EUGENE BOERDER (HOLLY LAKE RANCH, TX)

An Administrative penalty of \$700 for failing to submit the plans and specifications of the Ashley Furniture HomeStore located in Wichita Falls, Texas, for accessibility review no later than the fifth day after the plans and specifications were issued, in violation of § 469.102(b), Texas Government Code, and 16 TEX. ADMIN. CODE § 68.50 and in violation of Texas Occupations Code § 1051.752(2).

Continuing education violations

The following registrants were found to be in violation of the board's mandatory continuing education requirements set forth in the rules regulating the practice of architecture (Rule 1.69), landscape architecture (Rule 3.69) and interior design (Rule 5.79), and/or for failing to comply with 22 Tex. Admin. Code 1.171, 3.171, or 5.181 which requires an answer to an inquiry from the Board within thirty days, and were ordered to pay administrative penalties as shown.

- MELINDA B. CRADER (HOUSTON, TX)** \$1,250
- BLAINE M. D'ARMOND (ROUND ROCK, TX)** \$1,200
- JOHN W. DURFEE (SALT LAKE CITY, UT)** \$500
- JAMES R. EDWARDS (MATTHEWS, NC)** \$1,200
- KENT EDWIN JONES (DALLAS, TX)** \$500
- JAMES WILLIAM O'NEILL, JR. (HOUSTON, TX)** \$1,000
- RONALD L. SLADE (BOZEMAN, MT)** \$1,700
- AARON DAVID VOLLMER (AUSTIN, TX)** \$1,000

- MARTHA BURTON BUTE (HOUSTON, TX)** \$1,000
- DAVID L. CLOSSON (SANTA ANA, CA)** \$700
- JOHN COCHRAN (FORT WORTH, TX)** \$1,000

Cases involving non-registrants

TBAE has ordered the following engineers to refrain from practicing architecture in Texas. Cease-and-desist orders were issued in each case.

- BURL R. RICHARDSON (LUFKIN, TX)**
- JOHN R. ROGERS (WACO, TX)**
- JAMES R. WINTON (WACO, TX)**

TBAE ordered the following to refrain from practicing architecture and to refrain from using a form of the title "architect" to describe himself and/or his businesses in Texas until he became registered to practice architecture. He is presently registered and in good standing. Administrative penalty is listed.

- MICHAEL WALKER (EL PASO, TX)**
Administrative penalty of \$3,000

TBAE has ordered the following individual to refrain from using a form of the title "interior designer" to describe herself and/or her businesses in Texas.

- LYNN BOSTICK (FORT WORTH, TX)**
Administrative penalty of \$2,000

Correction: Due to a printer's error in the previous issue of Licensing News, the administrative penalty assessed to Ann Hunsaker of South Padre Island, Texas was incorrectly listed as \$5,000. The administrative penalty actually assessed was \$500.

Scholarship Awards

Congratulations to the recipients of the Architect Registration Examination Financial Assistance Fund (AREFAF) disbursements for the first half of 2008. Each received the maximum reimbursement of \$500.

- ALONZO ALSTON** – San Antonio, TX
- RACHEL DEBACKER** – Austin, TX
- TIMOTHY DERRINGTON** – Austin, TX
- JONATHAN RIVERA** – Corpus Christi, TX
- THOMAS RUSHER** – Arlington, TX
- JENNIFER WORKMAN** – Dallas, TX
- EVE TRESTER-WILSON** – Austin, TX
- CAMERON THAYER** – Cedar Park, TX
- BRIAN SAHRMANN** – Frisco, TX
- GEORGE DEJOHN** – Frisco, TX
- MARGARET GRAYSON** – Austin, TX
- ROBERT LEJEUNE** – Austin, TX
- GEORGINA BIENSKI** – Houston, TX
- MAN TAI** – Houston, TX
- JENNIFER JOSEPH** – Dallas, TX
- PATRICK OHRT** – Austin, TX
- DANA WILLIAMS** – Amarillo, TX
- LEONARA SCHILLING HAMILTON** – Dallas, TX
- YANG-HEE PIERCE** – Dallas, TX
- ANNE HAWKINS** – Houston, TX
- DIANIRA SANCHEZ** – Houston, TX
- JORGE MEKDESSI** – Houston, TX
- PHILIP CHAN** – Sugar Land, TX

NCARB passes six-month IDP documentation rule

After many months of lively discussion, the National Council of Architectural Registration Boards (NCARB) has adopted an amendment to its rules relating to documenting intern experience.

The rule requires interns to document and report Intern Development Program (IDP) training units after every six months of employment in a recognized training setting. Interns will have 45 business days in which to submit each report after the end of each six-month period.

NCARB hastens to note that the new rule applies most immediately to those who establish an NCARB record after the implementation date: July 1, 2009. For all other record holders, the reporting requirements become effective July 1, 2010.

The resolution is dependent on a "fully tested and operational" online reporting system. In the event that the system is not fully tested and operational by the end of this year, each implementation date will be pushed back to go into effect six months after the system is deemed fully operational.

Why the new rule? The intent is to get interns and supervisors together more regularly for better training, and also to ensure that interns are reporting more accurate information.

NCARB's IDP Director, Harry Falconer, Jr., AIA, says, "All too often interns will contact us to let us know they are done with IDP, but don't even have an NCARB record. Then, they will go back and document three years of work experience only to find they were not in an approved IDP training setting and they have lost three years of work. We want to prevent this."

NCARB's Web site has much more information for interns. See www.ncarb.org/idp for all the details.

Reminder: ARE transition timeline

By now, ARE candidates likely are well aware that ARE 3.1 is transitioning to ARE 4.0. But the National Council of Architectural Registration Boards (NCARB) wants to remind test-takers of their full range of options.

Candidates may be eligible to continue taking divisions in ARE 3.1 until June 30, 2009. However, NCARB cautions that if a candidate fails a division after January 1, 2009, that division will be transitioned to ARE 4.0 because of the 6-month waiting period required to retest. Find timelines and much more at www.ncarb.org/are.

LEGISLATIVE INFORMATION CLEARINGHOUSE

In January of every odd-numbered year, 181 Texans from every corner of the state convene for 140 days in Austin to create new laws and amend current ones. So get ready for the 81st Texas Legislative Session, underway January 13, 2009! As always, design professionals can expect legislation affecting—directly or otherwise, positively or not—their professions. Stay tuned to the TBAE Web site for news, developments, and legislative information of particular interest to design professionals like you. www.tbae.state.tx.us

FOR MORE INFORMATION

Texas Society of Architects
www.texasarchitect.org

American Society of Landscape Architects, Texas Chapter
www.texasasla.org

Texas Association for Interior Design
www.supporttaid.org

Texas Legislature Online
www.capitol.state.tx.us

Who Represents Me?
www.fyi.legis.state.tx.us/



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CHANGE OF ADDRESS

Please make sure that we have your current address so we may mail your renewal notice to you in a timely fashion. You may update your own record by logging in to your online account on our Web site, www.tbae.state.tx.us. You can also mail or fax **512.305.8900** the address change along with your signature. We will send renewal reminders to registrants at the e-mail address on file with TBAE, so be sure to keep your valid and unique email address updated.

NEXT BOARD MEETING SCHEDULE

The next Board meeting is scheduled for January 29-30, 2009. It will be held in the Hobby Building, 333 Guadalupe, Austin, Texas. The agenda for this meeting will be posted on TBAE's Web site approximately 7 to 10 days prior to the meeting. The following meetings scheduled for 2009 will take place June 25-26 and August 21.

It is the mission of the Texas Board of Architectural Examiners to ensure a safe built environment for Texas by regulating the professions of architecture, landscape architecture, and interior design.

EXECUTIVE DIRECTOR

Cathy L. Hendricks, RID/ASID/IIDA

BOARD MEMBERS

Alfred Vidaurri Jr., AIA—Chair, Architect Member,
Term ends 1/31/09

Peter L. Pfeiffer, FAIA—Vice-chair, Architect Member,
Term ends 1/31/09

Lew Vassberg, RID/AAHID—Secretary-Treasurer,
Interior Designer Member, Term ends 1/31/11

Chuck Anastos, AIA—Architect Member, Term ends 1/31/13

Rosemary A. Gammon, PAHM—Public Member,
Term ends 1/31/11

Kyle Garner—Public Member, Term ends 1/31/09

Brandon Pinson, Public Member, Term ends 1/31/13

Diane Steinbrueck, RLA—Landscape Architect Member,
Term ends 1/31/07

James S. Walker II, AIA—Architect Member, Term ends 1/31/11