

**TEXAS BOARD OF ARCHITECTURAL EXAMINERS**  
**Minutes of August 16, 2017 Board Meeting**  
William P. Hobby Jr. Building, 333 Guadalupe Street  
Tower III, Room 102  
Austin, TX 78701  
11:00 a.m. until completion of business

**AGENDA ITEMS**

**DESCRIPTIONS**

**1A. Call to Order**

Ms. Dockery called the meeting to order at 11:00 a.m.

**1B. Roll Call**

Ms. Walker called the roll.

Present Board Members

Debra Dockery	Chair, Architect FAIA
Michael (Chad) Davis	Vice-Chair, Landscape Architect
Jennifer Walker	Architect, Secretary/Treasurer
Charles (Chuck) Anastos	Architect
Chase Bearden	Public Member
Sonya Odell	Registered Interior Designer

**1C. Excused and  
unexcused absences**

Paula Ann Miller	Public Member
Robert (Bob) Wetmore	Architect

A MOTION WAS MADE AND SECONDED (Anastos/Odell) TO APPROVE THE EXCUSED ABSENCE OF PAULA ANN MILLER AND ROBERT (BOB) WETMORE. THE MOTION PASSED UNANIMOUSLY.

**1D. Determination of a  
Quorum**

A quorum was present.

**1E. Recognition of  
Guests**

Ms. Dockery acknowledged the following guests and members of TBAE staff: Julie Hildebrand, Executive Director; Lance Brenton, General Counsel; Kenneth Liles, Finance Manager; Glenn Garry, Communications Manager, Mike Alvarado, Registration Manager; Jack Stamps, Managing Investigator; Dale Dornfeld, IT Manager; Glenda Best, Operations Manager; Christine Brister, HR Program Specialist; Katherine Crain, Legal Assistant; Julio Martinez, Systems Analyst; Donna Vining, Texas Association for Interior Design.

**1F. Chair's Opening  
Remarks**

Ms. Dockery welcomed the audience and thanked them for coming to the meeting. She stated that each year she has attended the NCARB Annual Meeting they have had some really interesting keynote speakers which are usually educational and inspirational. This year the keynote speakers were very much on topic for what the regulatory agencies in the U.S. currently face today. The two keynote speakers were Malcolm Sparrow and David C. King. Mr. Sparrow is a Professor of the Practice of Public Management at Harvard's John F. Kennedy School of Government and the Faculty Chair

of the school's executive program "Strategic Management of Regulatory and Enforcement Agencies." Mr. King is a Senior Lecturer in Public Policy at Harvard's John F. Kennedy School of Government and directs a program for the senior executives of sustainable government. Ms. Dockery stated that Professor Sparrow shared some thoughts that really resonated with her. He presented a graphic in which one side of the picture is a circle labeled "illegal" and the other side is one labeled "harmful." The outer edges of illegal are nitpicky, overreach, capricious and the outer edges of harmful are grabbing turf. But where the two circles of illegal and harmful intersect is the place where regulators should be focusing their attention. One thing that made an impression on her is that regulators should be framing their message on what is harmful and not just illegal. On the other hand, Professor Sparrow noted that if harm cannot be identified, the regulatory agency should reconsider whether it is time to retire that regulation. Ms. Dockery encouraged the Board to consider the Board's activities and message with this perspective in mind.

**1G. Public Comments** None.

**2. Approval of June 8, 2017 Board Meeting Minutes** A MOTION WAS MADE AND SECONDED (Davis/Walker) TO APPROVE THE JUNE 8, 2017 BOARD MEETING MINUTES. THE MOTION PASSED UNANIMOUSLY.

**3. Executive Director's Report** Ms. Hildebrand provided the Board with the Executive Director's report as follows:

**A. Summary of Executive Accomplishments** Ms. Hildebrand presented and discussed the summaries of executive, registration, and enforcement accomplishments as described on pages 14-16 of the Board materials. Ms. Hildebrand also discussed the upcoming audit by the State Auditor's office.

Mr. Dockery asked Ms. Hildebrand whether the conference that she attended on building codes was useful. Ms. Hildebrand stated that she did the course online and it was taught by a landscape architect. She stated that it was very helpful to learn more about the structure of the code, and how the thresholds differ with the Architects' Practice Act.

Mr. Davis noted that the agency had recently been audited, and shared his concerns about the expenses of redundant work. Ms. Hildebrand stated that the agency had recently gone through a post-payment audit by the Comptroller's office, which looks at expenditures. This audit will look at expenditures and revenues, as well as other issues, such as performance measures and enforcement cases.

Mr. Anastos expressed his concerns about the \$50,000 cost of the audit, as well as the amount of staff time that would be consumed. Mr. Davis shared this concern, as well as Ms. Dockery, who noted that this cost could

be enough to accelerate the need to increase fees by a year earlier than what would otherwise be necessary.

**B. Operating  
Budget/Scholarship  
Fund: Presentation on  
3<sup>rd</sup> Quarter 2017  
Expenditures/Revenues**

Ms. Hildebrand directed the Board to pages 17 and 18 for updates on the FY2017 operating budget and FY2017 Scholarship Fund. She stated that these figures are updated through July 31, 2017. At the next Board meeting she will be presenting the full budget.

**C. Discussion of Office  
Rental/SWCAP**

Ms. Hildebrand directed the Board to page 19 of the notebook regarding the allocation of SWCAP and office rental. The SWCAP payment includes reimbursement of costs for support the agency receives from other agencies, including accounting and payroll. The agencies that provide these services report to the Governor's office directly, and then the total amount of these costs are allocated to agencies for payment under SWCAP. She said that TBAE pays SWCAP and rent together as one payment. She stated that the amount attributed to rent and SWCAP fluctuates considerably, but that the overall amount of the two is relatively stable. In the future, these items will be reported together as one line-item on the budget.

**D. Report on  
Conferences and  
Meetings**

Ms. Hildebrand presented information on conferences and meetings as follows:

**I. NCARB Annual  
Business Meeting –  
June 22-24**

She and Chase Bearden attended the annual NCARB Meeting and the members were pleased that a public member from our board attended the conference. The board members asked Mr. Bearden to become a member of the Credentials Committee, which he accepted. Ms. Hildebrand congratulated Mr. Bearden on this appointment. She added that the meeting was relatively quiet as there were no contested elections or resolutions.

**II. NCARB Licensing  
Advisors Summit – Jul  
27-29**

Mike Alvarado and Jackie Blackmore attended the Licensing Advisors Summit in Chicago this summer. Ms. Hildebrand stated that this meeting is a good opportunity for board representatives and school representatives to get together.

**III. METROCON17 –  
Aug 10-11**

Ms. Hildebrand stated that METROCON was last week and Glenn Garry did a great presentation for the Board. In addition, Sonya Odell and Donna Vining made presentations at the conference. Board staff members Jessica Ramirez and Jackie Blackmore also attended the conference.

**E. Report on upcoming  
conferences and  
meetings**

Ms. Hildebrand presented information on upcoming conferences and meetings as follows:

- I. 2017 CLARB Annual Meeting – Sep 14-16** Ms. Hildebrand stated that Chad Davis and she will be attending the CLARB Annual Meeting in September.
- II. 2017 LRGV-AIA BCC Conference – Sep 28-30** Ms. Hildebrand stated that Jack Stamps will be attending the Lower Rio Grande Valley Conference and he will have a booth representing the agency. Additionally, he will make a presentation at the conference.
- III. TxA Conference – November 9-11** Ms. Hildebrand stated that the TxA Conference will be held in Austin on November 9-11 and Jack Stamps will be making two presentations and Glenn Garry will be making one presentation. Additionally, most of the registration staff will attend.
- IV. 2017 CIDQ Council of Delegates Meeting – Nov 10-11** Ms. Hildebrand stated that she will be attending the CIDQ Meeting this year and will therefore be unable to attend the new licensee ceremony at the TxA Conference.
- 4. Approval of the Fiscal Year 2018 Budget** Ms. Hildebrand presented information regarding the proposed operating budget for FY2018, as described on page 20 of the Board materials. She stated that the first draft was presented at the last Board meeting and at a Budget Committee meeting. However, a few items have changed since that meeting. For instance, the professional fees and services were increased from \$25,000 to \$75,000 due to the upcoming audit. In turn, the projected draw on the reserve balance has been increased by \$50,000 to \$140,000. Also, the projected budget for IT upgrades has been increased from \$40,000 to \$45,000 because of issues with the server room. To address this increase, other budget items have been decreased, including printing, postage, and microfilming.

A MOTION WAS MADE AND SECONDED (Davis/Bearden) TO APPROVE THE PROPOSED BUDGET FOR FY2018. THE MOTION PASSED UNANIMOUSLY.

**The Board took a break at 12:07 p.m. and reconvened at 12:33 p.m.**

- 5. General Counsel Report** Mr. Brenton provided the General Counsel's report to the Board, as follows:
- A. Draft Rules for Proposal relating to Registration as Registered Interior Designer by Examination – Implementation of Senate Bill 1932, 85<sup>th</sup> Regular Session (2017)** Mr. Brenton presented information on the draft rules for proposal as described on pages 21 through pages 24 of the Board materials. Mr. Brenton noted that the Rules Committee had addressed this issue at the morning meeting, and had recommended that the Board propose the draft rules, with changes to draft rule 5.33. The recommendation is as follows:
- Rule 5.33(c) at line 19, line 19 is amended to read: "an application for (insert "TBAE") registration by examination must include." Additionally, on page 33, line 22: strike "acceptance" and insert "approval."

Therefore, any discussion on Rule 5.33(c) or motion to adopt this particular rule would be made with those changes included.

Mr. Brenton continued his discussion by providing a summary of each draft rule change.

**Amendments to Rules 5.5, 5.31, 5.32, 5.33, 5.35, 5.36, 5.37, 5.51, 5.52, 5.53, and 5.55, and Repeal of Rules 5.54, 5.201, 5.202, and 5.203 Relating to Eligibility Requirements for Registration as an Interior Designer**

A MOTION WAS MADE AND SECONDED (Anastos/Odell) TO APPROVE THE DRAFT AMENDMENTS TO 22 TEX. ADMIN. CODE §§ 5.5, 5.31, 5.32, 5.33, 5.35, 5.36, 5.37, 5.51, 5.52, 5.53, AND 5.55 AND REPEAL OF §§ 5.54, 5.201, 5.202, AND 5.203 FOR PUBLICATION AND PROPOSAL IN THE TEXAS REGISTER, WITH AUTHORITY FOR THE GENERAL COUNSEL TO MAKE EDITORIAL CHANGES AS NECESSARY TO CLARIFY RULE AND BOARD INTENT AND TO COMPLY WITH THE FORMATTING REQUIREMENTS OF THE TEXAS REGISTER. (CORRECTION NOTED ON 5.33). THE MOTION PASSED UNANIMOUSLY.

**B. Discussion of Agency Informal Conference Procedures**

Mr. Brenton stated that this will be a discussion and opportunity for the Board to provide staff with guidance to determine which procedures to use in conducting Informal Conferences in the future. Mr. Brenton provided information to the Board as summarized on page 47 of the Board materials.

Ms. Dockery opened up the topic for discussion among the Board members.

Ms. Odell stated that she thought it was very important to have someone with expertise at informal conferences along with staff. She stated that it is good to have that expertise provided by Board members, because Board members come from a unique perspective of protecting the health and safety of the public, and not the professions. She also noted the cost savings to the agency by having a Board member present as opposed to a paid expert, provided that the Board member feels competent in the particular subject area.

Mr. Anastos stated that he is opposed to staff selecting a single Board member to participate in informal conferences. Mr. Anastos noted that the Board rules dealing with informal conferences state that the Executive Director can designate attendees, but there was no mention of the Board or Board members. This is notable because the Board or members of the Board are mentioned throughout the Board rules, but not in the informal conference rule. Mr. Anastos noted that the board training manual, which does address Board member attendance at informal conferences, has not been reviewed or approved by the Board. Mr. Anastos stated that materials need to be approved by the Board before being presented to new Board members. With respect to the two most recent informal conferences, Mr. Anastos felt that the first one was acceptable because

the Chair was involved in selecting the Board member for participation. However, with respect to the second informal conference, Mr. Anastos felt it was problematic for staff to contact a Board member directly without going through the Chair. He noted that he has been a Board member for 9 years and had never seen that happen before. Rather, in previous cases the Chair selected members for participation in informal conferences and the Board approved them. Mr. Anastos also noted that, as shown on page 62 of the Board materials, many informal conferences had been held without any Board member present. Mr. Anastos also expressed concern that if a Board member participated in an informal conference, the Board could be left without the input of the Board member when the settlement is considered at Board meeting. For landscape architects and registered interior designers, this is particularly concerning because we only have one Board member each to represent these professions, and the Board needs to be able to rely upon these Board members to answer questions. Mr. Anastos also expressed concern that participation in an informal conference could give an appearance of ex-parte communications. Mr. Anastos also expressed concern about only a single Board member participating in an informal conference, which could be fraught with problems. He noted that informal conferences could be stressful and difficult situations with pushback from Respondents and opposing counsel, and that it could be helpful to have more than one Board member present. Finally, Mr. Anastos referenced the Board's penalty matrix, which provides a guide for penalty assessment. He shared his faith in staff's ability to use the matrix to settle cases appropriately, and therefore does not see the need for a single Board member to attend informal conferences.

Ms. Dockery thanked Mr. Anastos and asked the Board if they had further comments. Ms. Odell stated that if she were the person with a case before the Board, she would want someone who could understand the profession. She noted that this could be one or more Board members. As a service to our registrants, we should allow them that opportunity so that they feel heard if nothing else. As far as who selects the Board member to participate, she would suggest that the Chair be copied on the decision, and if the Chair wants to weigh in, she can. She stated that the Board had hired a competent staff and Executive Director and in her opinion the Board needs to rely upon their employees to exercise delegated authority.

Mr. Bearden asked whether a Respondent would have already turned down the first round of settlement negotiations if an informal conference was being requested. Mr. Brenton answered in the affirmative. Mr. Bearden noted that the goal of an informal conference is to reach an agreement that can then be presented to the Board to decide whether to accept it or not. He stated that he agreed that Board member participation constitutes a service for those sitting at the table to see that the Board cares enough to consider the case and explain the position of



the agency. He was also in favor of Board members providing expertise at the informal conferences. However, he shared Mr. Anastos' concern about the possibility of losing the participation of the landscape architect or registered interior designer at the Board meeting if that Board member had participated in an informal conference, and suggested that the Board could hire an expert in these situations. He agreed with Ms. Odell regarding the possibility that the Chair should be copied on a request for Board member participation in an informal conference.

Mr. Davis stated that he had a few things to mention. He shared the concern about the loss of participation in the Board decision by an informal conference participant. He also stated that it was important to remember that the informal conference is not the final negotiation; it is an opportunity to settle the case subject to Board approval. Mr. Davis stated that he was in favor of whatever mechanisms and tools that will help to settle cases and prevent this agency from going to SOAH. He was also in favor of having the Board Chair involved in the selection of Board members to participate in informal conferences, and wanted Ms. Dockery's opinion on that.

Ms. Dockery shared her observations. For many years, she stated that the Executive Director came from a design background so there was already an understanding of the cases the Board hears. Secondly, she shared her awareness that the Board members already donate a lot of time to serving on this board, so she wants to be very careful about requesting additional time from Board members. She also wants to avoid an expectation that a Respondent can force the presence of a Board member at an informal conference. Ms. Dockery acknowledged there are cases which are significant that could be headed to SOAH which might benefit from some expertise on the front end. She stated her preference for staff to consider this issue in the future and asked how a Board member might really help to avoid a SOAH case or a mediation. Ms. Dockery stated that the Board Chair should be involved in selecting Board members for participation in informal conferences. Ms. Dockery encouraged staff to consider the Board's comments and draft guidelines to govern future informal conferences. Ms. Dockery also recommended that the board training manual be presented to current Board members.

Mr. Anastos stated that he was not trying to eliminate informal conferences, and recognized the potential value of these processes to settle cases before they get to SOAH. His concern is not Board participation in informal conferences, but staff not going through the Board Chair to get authority to contact a Board member for participation. Mr. Anastos reiterated his concern that the Board would miss out on the benefit of a Board member's participation in the approval of a settlement if the Board member was required to recuse following participation in an informal conference.

Mr. Bearden suggested that a participant in an informal conference be asked to sign an agreement that would waive any objection to a Board member participating in the approval of a settlement if the Board member had previously participated in an informal conference.

Mr. Brenton said that he had contacted the Office of the Attorney General (hereafter "OAG") to get advice on this matter. Our OAG representative recommended recusal, but also suggested that it would be acceptable for the Board member to give the reasons why they support the settlement, and to answer any questions regarding their expertise.

Ms. Odell supported this solution, and suggested it could be the best of both worlds. Mr. Anastos voiced support for Mr. Bearden's proposal that the Respondent be asked to sign a waiver which would allow the participating Board member to give input and vote on the settlement at the Board meeting. Mr. Anastos asked staff to inquire about this solution with the OAG.

The Chair asked staff to consider the Board's comments and draft a policy regarding informal conferences. Mr. Brenton provided a summation of his understanding of the Board's discussion, which indicated that some participation by Board members at informal conferences could bring value to the process, and the Chair should be involved in the selection of Board members for participation in informal conferences. Mr. Brenton stated that he would follow up with OAG for additional guidance regarding Board member participation in the approval of a settlement agreement following an informal conference. Mr. Anastos asked staff to address Ms. Odell's proposed solution, which would allow a Board member to answer questions for other Board members at the meeting, but not vote. Mr. Anastos suggested that if this was possible, it might be a good way to do it. Mr. Brenton asked whether there was consensus about multiple Board members versus a single Board member attending an informal conference. Ms. Hildebrand suggested to the Board that this determination could be left to the discretion of the Board Chair at the time the informal conference is being set up: who it should be, how many it should be, etc.

Ms. Dockery suggested that Mr. Brenton contact the OAG for further clarification and stated that the Board would look forward to addressing the matter in the future.

**C. Update on Attorney General Collections in Case No. 144-14N**

Mr. Brenton presented an update of a previous disciplinary action taken by the Board, as discussed on page 69 of the board materials. The case had been heard at the State Office of Administrative Hearings and the ALJ had entered a default against the Respondent for the unauthorized practice of architecture due to his failure to appear at the hearing. At the hearing, the agency requested that the ALJ award an administrative



penalty against Respondent in the amount of \$26,000, which was recommended by the ALJ and accepted by this Board. An Order of the Board was entered and sent to Respondent; however, Respondent failed to pay the administrative penalty. Therefore, the agency referred the case to the Office of the Attorney General (hereafter "OAG") for collection. The OAG took a default judgment in District Court and the judgment will be in effect for twenty (20) years. Mr. Brenton explained the procedures that are used by the OAG to collect these debts.

**The Board took a break at 2:04 p.m. and reconvened at 2:20 p.m.**

## **6. Enforcement Cases**

The Board considered the following enforcement cases:

### **A. Registrant/Non-Registrant Cases**

#### **Freeman, Charles E. (#244-17A)**

Mr. Brenton presented a summary of this matter as described on page 80 of the Board materials.

A MOTION WAS MADE AND SECONDED (Bearden/Davis) TO ACCEPT STAFF'S RECOMMENDATION OF A \$1,000 ADMINISTRATIVE PENALTY IN THE CASE AGAINST CHARLES E. FREEMAN (#244-17A). THE MOTION PASSED UNANIMOUSLY.

#### **Lobb, Chuck (#166-17N)**

Mr. Brenton presented a summary as described on page 81 of the Board materials.

A MOTION WAS MADE AND SECONDED (Davis/Anastos) TO ACCEPT STAFF'S RECOMMENDATION OF A \$1,000 ADMINISTRATIVE PENALTY IN THE CASE AGAINST CHUCK LOBB (#166-17N). THE MOTION PASSED UNANIMOUSLY.

#### **Steinberg, Sanford P. (#209-17A)**

Mr. Brenton presented a summary of this matter as described on page 82 of the Board materials.

A MOTION WAS MADE AND SECONDED (Bearden/Odell) TO ACCEPT STAFF'S RECOMMENDATION OF A \$2,000 ADMINISTRATIVE PENALTY IN THE CASE AGAINST SANFORD P. STEINBERG (#209-17A). THE MOTION PASSED UNANIMOUSLY.

### **B. CE Cases**

Mr. Brenton stated that the Board would hear the following cases with the exception of the case involving Peggy J. Zadina regarding continuing education violations and vote on them together.

#### **Bailey, Amy S. (#259-17I)**

#### **Hunter, Zachry M. (#256-17L)**

#### **Krupa, Laurence (#257-17A)**

**McGaughy, Peggy (#291-17I)**  
**Mink, Marcia L. (#262-17I)**  
**O'Keefe, Oscar (#290-17A)**  
**Palis, Douglas W. (#208-17A)**  
**Powell, Raymond D. (#206-17A)**  
**Qualls, Curtis L. (#293-17A)**  
**Rios, Gabriela (#173-17I)**

A MOTION WAS MADE AND SECONDED (Davis/Walker) TO APPROVE STAFF'S RECOMMENDATION AND PENALTIES FOR THE FOLLOWING CASE NUMBERS: (#259-17I), (#256-17L), (#257-17A), (#291-17I), (#262-17I), (#290-17A), (#208-17A), (206-17A), (#293-17A), AND (#173-17I). THE MOTION PASSED UNANIMOUSLY.

Ms. Odell recused herself from consideration of the following matter:

**Zadina, Peggy J. (#258-17I)**

A MOTION WAS MADE AND SECONDED (Davis/Anastos) TO APPROVE STAFF'S RECOMMENDATION AND PENALTY FOR THE CASE INVOLVING PEGGY J. ZADINA (#258-17I). THE MOTION PASSED UNANIMOUSLY, WITH MS. ODELL IN RECUSAL.

**7. Board's Review and Consideration of CLARB's Revised Draft Model Law and Regulations**

Ms. Hildebrand presented information regarding CLARB's revised draft model law and regulations as summarized on page 94 of the Board materials. Ms. Hildebrand explained that the Board would make a motion to give Chad Davis authority to vote on the resolutions and give him discretion in case there are changes to the amendments.

Ms. Dockery asked Mr. Davis if he had anything to add. Mr. Davis stated that this is a model law, and that it doesn't affect Texas unless the legislature adopts the model law.

A MOTION WAS MADE AND SECONDED (Anastos/Odell) TO APPOINT CHAD DAVIS AS THE DELEGATE TO VOTE AT THE ANNUAL CLARB MEETING ON BEHALF OF THE TBAE BOARD. THE MOTION PASSED UNANIMOUSLY.

**8. Approval of the Proposed 2018 Board Meeting Dates**

Due to scheduling conflicts, Ms. Dockery proposed the following Board meeting dates for 2018: February 1, 2018, May 22, 2018, August 21, 2018 and November 15, 2018.

**February 1, 2018**  
**May 31, 2018**  
**August 9, 2018**  
**November 15, 2018**

A MOTION WAS MADE AND SECONDED (Anastos/Davis) TO APPROVE THE MEETING DATES AS PROPOSED BY MS. DOCKERY. THE MOTION PASSED UNANIMOUSLY.

**9. Executive Director Performance Evaluation**

Ms. Dockery stated that she would like to move the Board into executive session to discuss personnel matters. The Board entered into executive session at 2:41 p.m.

**I. Report on findings based upon performance evaluation**

The Board reconvened at 3:42 p.m.

**II. Consider and possibly act upon any proposed personnel action that may be proposed by the Board**

Ms. Dockery stated that the Board had been very pleased with the Executive Director's performance. The strengths have been communication formats with the Board, financial planning and her participation on national boards. Ms. Dockery identified three performance goals for next year. First, an internal focus in understanding where the harm exists in matters under the regulation of the Board. Second, an external focus on the Executive Director's role in defending the regulatory role of the Board – why do we license and what is the harm? Third, a future focus to conduct stakeholder meetings or other efforts to look at how the profession and environment will be impacted by technology, and regulatory changes.

A MOTION WAS MADE AND SECONDED (Davis/Anastos) TO APPROVE A THREE PERCENT (3%) RAISE FOR THE EXECUTIVE DIRECTOR BASED UPON HER PERFORMANCE EVALUATION. THE MOTION PASSED UNANIMOUSLY.

**10. Upcoming Board Meeting - Wednesday, November 8, 2017**

Ms. Dockery stated that the next Board meeting will be on November 8, 2017 and it will be a one day meeting.

**11. Chair's Closing Remarks**

The Chair thanked the Board and staff for their time.

**12. Adjournment**

A MOTION WAS MADE AND SECONDED (Davis/Anastos) TO ADJOURN THE MEETING AT 3:50 P.M. THE MOTION PASSED UNANIMOUSLY.

APPROVED BY THE BOARD:

  
DEBRA J. DOCKERY, FAIA  
Chair, TEXAS BOARD OF ARCHITECTURAL EXAMINERS