

TEXAS BOARD OF ARCHITECTURAL EXAMINERS
Minutes of February 16, 2017 Board Meeting
William P. Hobby Jr. Building, 333 Guadalupe Street
Tower III, Room 102
Austin, TX 78701
9:00 a.m. until completion of business

AGENDA ITEMS

DESCRIPTIONS

1A. Call to Order

Ms. Dockery called the meeting to order at 9:00 o'clock a.m.

1B. Roll Call

Ms. Odell called the roll.

Present Board Members

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

**1C. Excused and
Unexcused absences**

Paula Ann Miller	Secretary-Treasurer, Public Member
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A MOTION WAS MADE AND SECONDED (Anastos/Odell) TO APPROVE THE EXCUSED ABSENCE OF PAULA ANN MILLER. 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; 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; David Lancaster, Texas Society of Architects; and Jeri Morey, Corpus Christi Architect.

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

Ms. Dockery stated that one of the distinct pleasures of being the Chair of the Board is having the opportunity to sign the certificates of the newly registered design professionals. Each time she signs a certificate, she reflects on the perseverance of the individual in satisfying the rigorous requirements to becoming a registered architect, landscape architect or registered interior designer. Ms. Dockery stated that this spirit of

perseverance will serve these professionals well as they embark upon their careers.

1G. Public Comments

The Chair read the rules of providing public comment into the record for the benefit of the audience. She introduced Jeri Morey, a registered architect who requested to make a public comment.

Ms. Morey provided the Board with a scenario regarding her experience with the Texas Department of Insurance (hereafter "TDI") and the windstorm rules and regulations. She was concerned that TDI required an engineer to redraw her work regarding windstorms and seal it. She stated that she contacted the Texas Board of Professional Engineers, and stated that TBPE did not want two seals on a page that included architectural design work and the engineer's windstorm work. She believes that if this continues to happen in the future, it could create conflicts and that the Board may want to review this process.

**2. Approval of
December 1, 2016
Board Meeting Minutes**

A MOTION WAS MADE AND SECONDED (Davis/Bearden) TO APPROVE THE DECEMBER 1, 2016 BOARD MEETING MINUTES. THE MOTION PASSED UNANIMOUSLY. (Mr. Anastos abstained from voting on the minutes because he was absent for the December 1, 2016 meeting.)

**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 information regarding executive accomplishments as described on page 14 of the Board materials. In addition to the materials discussed on page 14, Ms. Hildebrand discussed committee assignments at the legislature, and the current post-payment audit by the comptroller's office. Ms. Hildebrand stated that TBAE recently created a PSPA brochure in conjunction with the Land Surveying Board and the Professional Engineers Board. She also presented updated figures regarding the grandfathered registered interior designers and the September 1, 2017 deadline to complete the examination.

Ms. Hildebrand presented the Board with statistics from the Registration and Enforcement Departments as described on pages 15 and 16 of the Board materials. She stated that the agency had an increase in referral cases from Texas Department of Licensing and Regulation (hereafter "TDLR") and agency staff is conducting a review of the complaints in order to estimate future caseloads. Mr. Anastos requested that the Executive Director provide the Board with information on repeat offenses regarding TDLR violations. Ms. Hildebrand suggested that Mr. Stamps give a presentation to the Board on TDLR cases at the next Board meeting.

B. Operating Budget/Scholarship: Presentation on 1st quarter expenditures/revenues

Ms. Hildebrand presented information regarding the 2017 1st quarter operating budget as described on page 17 of the Board materials. She also provided an update on the Scholarship Fund, as described on page 18.

3. Report on Conferences and Meetings

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

A. NCARB Committee Summit – Dec 9-10

Ms. Hildebrand participated in the NCARB Committee Summit meeting and as a member of the Procedures and Documents Committee. She stated that only one resolution was presented at the meeting and that resolution will be brought before the Board in June.

B. 41st Annual Federation of Associations of Regulatory Boards (FARB) Forum – Jan 26-29

Ms. Hildebrand attended the Federation of Associations of Regulatory Boards (FARB) Conference in San Antonio. This was a collaboration of all regulatory boards across the country and was a good networking experience. Topics of discussion included the North Carolina Dental case and antitrust issues, appropriate licensure application questions, and best practices for strategic planning.

C. CLARB MBE Committee Meeting – February 4-5

Lastly, she attended the CLARB MBE Committee meeting in February. The Committee planned the annual meeting for the Fall and discussed how to engage Executives from other states to become involved in the committee.

3. Report on Upcoming Conferences and Meetings

A. NCARB Regional Summit/MBE Workshop – Mar 9-11

Ms. Hildebrand stated that she and Ms. Dockery will attend the NCARB Regional Summit Workshop in March.

B. 2017 Texas ASLA Annual Conference – Apr 25-27

Ms. Hildebrand stated that Texas ALSA will be in Austin this year and she plans on attending as well as Mr. Davis.

4. General Counsel Report

Mr. Brenton provided the general counsel's report to the Board, as follows:

Proposed Rule for Adoption (Action)

Revise Rule 5.5 relating to definitions of "Actual Signature," "Architectural Barriers Act" (add), "Authorship" (repeal), "Consultant," "E-mail Directory" (repeal), "Interior Designers' Registration Law," and "Registrant." Repeal Rule 5.34 relating to Fees

Mr. Brenton presented information on the proposed rule revision and repeal, as described on page 19 of the Board materials.

A MOTION WAS MADE AND SECONDED (Davis/Anastos) TO APPROVE THE PROPOSED AMENDMENTS TO 22 TEX. ADMIN. CODE §5.5 AND §5.34 FOR FINAL ADOPTION. THE MOTION PASSED UNANIMOUSLY.

**Draft Rule for Proposal
(Action)**

Draft Rule 7.11, relating to enhanced contract and performance monitoring

Mr. Brenton presented information on the draft rule for proposal, as described on page 26 of the Board materials.

A MOTION WAS MADE AND SECONDED (Anastos/Wetmore) TO APPROVE DRAFT RULE 22 TEX. ADMIN. CODE §7.11 FOR PUBLICATION IN THE TEXAS REGISTER, WITH AUTHORITY FOR THE GENERAL COUNSEL TO MAKE EDITORIAL CHANGES AS NECESSARY TO CLARIFY THE RULE AND BOARD INTENT AND TO COMPLY WITH THE FORMATTING REQUIREMENTS OF THE TEXAS REGISTER. THE MOTION PASSED UNANIMOUSLY.

5. Enforcement Cases

The Board considered the following enforcement cases:

A. SOAH CASE

TBAE vs. Robert “Bob” Sanchez (SOAH Docket No. 459-17-0272 and TBAE Case No. 151-14N)

Mr. Brenton presented a summary of the matter and the associated documents beginning on page 28 of the Board materials.

Ms. Dockery asked Mr. Brenton what would happen if the Respondent refuses to pay the administrative penalty. Mr. Brenton explained that the matter would be referred to the Office of the Attorney General for collection of the debt owed to the state. The Attorney General’s office would file a lawsuit in district court and get a judgment entered against the Respondent.

Mr. Bearden asked whether staff had attempted to determine whether Ms. Sanchez had engaged in similar behavior on other projects. Mr. Stamps stated that staff had researched whether other projects had been submitted by Mr. Sanchez for TDLR review, and did not find any.

Mr. Wetmore asked if the architect sued the Respondent over stealing his seal and Mr. Stamps answered in the affirmative.

A MOTION WAS MADE AND SECONDED (Anastos/Bearden) TO ACCEPT STAFF’S RECOMMENDATION LOCATED ON PAGE 28 TO ADOPT THE ORDER OF THE BOARD IN SOAH DOCKET NO. 459-17-0272, TBAE VS. ROBERT “BOB” SANCHEZ, JR. THE MOTION PASSED UNANIMOUSLY.

B. Registrant Cases**Estes, Lawrence C. (#004-17L)**

Mr. Brenton presented a summary of this matter as described on page 38 of the Board materials.

A MOTION WAS MADE AND SECONDED (Bearden/Walker) TO ACCEPT STAFF'S RECOMMENDATION OF A \$1,000 ADMINISTRATIVE PENALTY IN THE CASE AGAINST LAWRENCE C. ESTES (#004-17L). THE MOTION PASSED UNANIMOUSLY.

Nguyen, Tien Thu (#116-16A)

Mr. Brenton presented a summary of this matter as described on page 39 of the Board materials.

A MOTION WAS MADE AND SECONDED (Wetmore/Davis) TO ACCEPT STAFF'S RECOMMENDATION OF A \$5,000 ADMINISTRATIVE PENALTY AND COMPLETION OF THE TEXAS ACCESSIBILITY ACADEMY WITHIN ONE YEAR OF THE BOARD'S ORDER IN THE CASE AGAINST TIEN THU NGUYEN (#116-16A).

Mr. Anastos asked whether the case involved a failure to submit plans or late submittal. Mr. Brenton responded that this was a matter involving a late submittal.

Mr. Bearden asked whether Mr. Nguyen had previously been required to complete the accessibility academy. Mr. Brenton replied that he had.

THE MOTION PASSED UNANIMOUSLY.

Spurkin, Louis K. (#121-16A)

Mr. Brenton presented a summary of this matter as described on page 40 of the Board materials. Mr. Brenton noted that this was a matter involving a late TDLR submittal rather than a continuing education violation.

A MOTION WAS MADE AND SECONDED (Davis/Anastos) TO ACCEPT STAFF'S RECOMMENDATION OF A \$2,000 ADMINISTRATIVE PENALTY IN THE CASE AGAINST LOUIS K. SPURGIN (#121-16A). THE MOTION PASSED UNANIMOUSLY.

C. CE Cases

Mr. Brenton stated that the Board would hear the following cases regarding continuing education violations and vote on them together.

Carrasco, Carmen (#059-16A)

Evans, James W. (#032-17A)

Faure, Matthew C. (#026-17A)

Haver, Joseph R. (#088-17A)

Laitkep, Jo Ann (#037-17I)
Terrill, Allen, Jr. (#036-17A)

A MOTION WAS MADE AND SECONDED (Anastos/Walker) TO APPROVE STAFF'S RECOMMENDATION AND PENALTIES FOR CASES #059-16A, #032-17A, #026-17A, #088-17A, #037-17I, and #036-17A. THE MOTION PASSED UNANIMOUSLY.

**6. Legislative
Committee Update
(Information)**

Ms. Dockery requested that the Chair of the Legislative Committee give the report on the Committee's meeting on February 15, 2017. Mr. Davis stated that the agency is monitoring several bills, including bills which were filed by Representative Springer (HB1120, HB1121 and HB1123) and address issues of accessibility, TDLR, and architectural training programs. The Committee also discussed HB1657 regarding the extension for grandfathered RIDs to take the exam. Mr. Davis emphasized that staff was doing a great job tracking the bills and the agency is poised and ready to respond to any requests by the Legislature.

Ms. Dockery asked whether RIDs who had given up their registration would be able to come back if the law changes. Ms. Hildebrand noted that, if an RID had allowed his or her registration to expire, he or she would be eligible to return to registered status if less than two years had passed.

**7. Budget Committee
Update (Information)**

Ms. Hildebrand explained that Mr. Anastos served as the Committee Chair because Ms. Miller was absent from the meeting. She stated that the Committee reviewed the budget for FY16 and the first quarter of FY17. They also discussed how to build the budget for FY18. Ms. Hildebrand also reviewed the current environment in state government with bills being filed relating to zero-based budgeting and appropriations caps. Though these bills would not apply to TBAE as an SDSI agency, they should to a certain degree influence the agency's budget decisions. Ms. Hildebrand also noted that the Governor had instituted a hiring freeze for appropriated agencies. The committee also discussed the fund balance and long term projects such as moving office locations.

Mr. Anastos stated that the committee would look to take an aggressive approach to planning for the next five years, especially in light of the possibility of losing grandfathered RID registrants and the impending retirement of the baby boomer generation.

Ms. Dockery reiterated the need for the Board to be proactive and responsive to emerging trends.

The Committee decided to present the FY18 budget to the Budget Committee and then to the full Board in June.

8. Board Election
(Action)

Ms. Dockery held the Board election as follows:

**A. Board Vice-Chair
and
Secretary/Treasurer**

Mr. Anastos nominated Chad Davis as Vice Chair. Ms. Dockery announced that the nominations for Vice Chair were closed.

Ms. Odell nominated Jennifer Walker as Secretary/Treasurer. Ms. Dockery announced that the nominations for Secretary/Treasurer were closed.

Ms. Dockery called for the vote and all board members were in favor of Chad Davis serving as Vice Chair.

Ms. Dockery called for the vote and all board members were in favor of Jennifer Walker serving as Secretary/Treasurer.

**B. Board Committee
Assignments**

Ms. Dockery stated that she wanted the Board Committee assignments to remain in effect until June.

**9. Upcoming Board
Meetings *(Information)***

Thursday, June 8, 2017

Thursday, August 17, 2017

Wednesday, November 8, 2017

Ms. Odell noted that Ms. Dockery was selected as a 2017 inductee into the AIA College of Fellows. Ms. Odell stated that Ms. Dockery had worked tirelessly for the architectural profession, and that this was a well-deserved honor.

Ms. Dockery thanked Ms. Odell and the Board, and stated that she was overwhelmed and humbled to be included among the College of Fellows. Ms. Dockery said that one of the rewarding aspects of the application process was remembering the architects with whom she had worked on various committees.

The Board took a break at 10:18 a.m. and reconvened at 10:40 a.m.

**11. Board Training on
Rulemaking and State
Action Immunity**

Mr. Brenton made a presentation to the Board on the following matters:

The Rulemaking Process; Anti-trust laws; Sovereign Immunity; First Amendment of the Constitution (Free Speech); Due Process; Ex-Parte Communications; Failure to Follow Administrative Procedures; Exceeding Statutory Authority; and Ad Hoc Rulemaking. Mr. Brenton provided a general presentation on the law involved in these topics, and counseled the Board members that, if they had any questions on how these legal precedents applied to the Board, such issues could be addressed in executive session under the attorney client privilege.

Mr. Anastos asked whether a respondent could construe that he or she had a constitutional right to speak to a Board member on a pending investigation. Mr. Brenton stated that such a communication could be an ex parte communication contrary to state law, and, therefore, would not be protected under the First Amendment.

The Board took a break at 11:34 a.m. and reconvened at 11:37. The Board went into closed session at 11:38 a.m. to consult with the Board's attorney as provided under Tex. Govt. Code Sec. 551.071 and adjourned the closed session at 12:42 p.m. The Board returned to open session at 12:43 p.m.

12. Adjournment

A MOTION WAS MADE AND SECONDED (Anastos/Davis) TO ADJOURN THE MEETING AT 12:43 P.M. THE MOTION PASSED UNANIMOUSLY.

APPROVED BY THE BOARD:



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