

# TEXAS BOARD OF ARCHITECTURAL EXAMINERS

## Minutes of February 2, 2012 Board Meeting

William P. Hobby Jr. Building, 333 Guadalupe Street

Tower II, Conference Room 350L

Austin, TX 78701

9:00 a.m. until completion of business

### 1. Preliminary Matters

#### A. Call to Order

Chair Alfred Vidaurri called the meeting of the Texas Board of Architectural Examiners to order at 9:01 a.m.

#### B. Roll Call

Secretary/Treasurer, Chase Bearden, called the roll.

#### Present

Alfred Vidaurri, Jr.	Chair
Charles H. (Chuck) Anastos	Vice-Chair
Chase Bearden	Secretary/Treasurer
Bert Mijares, Jr.	Member
Brandon Pinson	Member
Diane Steinbrueck	Member
Debra Dockery	Member
Sonya Odell	Member

#### TBAE Staff Present

Cathy L. Hendricks	Executive Director
Scott Gibson	General Counsel
Glenda Best	Executive Administration Manager
Katherine Crain	Legal Assistant
Michael Shirk	Managing Litigator
Jack Stamps	Managing Investigator

#### C. Excused and unexcused absences

Paula Miller (excused absence)

#### D. Determination of a quorum

A quorum was present.

#### E. Recognition of Guests

Guests were as follows: Ted Ross, Counsel to the Board from the Attorney General's Office, Donna Vining, Texas Association for Interior Design, David Lancaster, Texas Society of Architects (arrived 9:22 a.m.), Brent Luck, Landscape Architect/Texas ASLA, Brian Glass, Architect for Boy Scouts of America, Mark S. Robinson of J. Robinson & Associate Architects, Inc., Carrie Holley-Hurt, Policy Analyst, Sunset Commission, Shawn William Massock, Landscape Architect, Chad Davis, Landscape Architect/Texas ASLA (arrived 9:12 a.m.), Nancy Fuller, Counsel from the Attorney General's Office, and Jeri Morey, Architect from Corpus Christi (arrived 9:15 a.m.).

**F. Chair's Opening Remarks**

The Chair thanked everyone including Board members and the audience for attending the Board meeting. He stated that this was the first meeting of our new calendar year and second quarter of the fiscal year. He said that he is honored and humbled to come to work for the State of Texas and is proud that this group comes together focused. He said that being a Board member is a heavy duty for six years and thanked each and every one of them for the business they performed for the State of Texas. He stated that people here were passionate and all take business at hand very seriously.

**G. Public Comment**

The Chair recognized Mark Robinson of J. Robinson Architects. Mr. Robinson made a presentation to the Board regarding the change in the grandfathering rule which allowed certain applicants with requisite work history to seek architectural registration, without an architectural degree, under the law as it existed prior to September 1, 1999. Mr. Robinson had applied with NCARB and was recording his work history through the IDP program. He stated he has been working in architecture for 18 years. However, due to changes in the IDP program, NCARB will not accept a large amount of his older work history. He contacted TBAE to apply for licensing and learned that the grandfather provision had been repealed and that the August 31, 2011 deadline to apply had passed. His only recourse now is to seek licensure in another jurisdiction or meet current registration requirements, which would entail earning a degree in architecture. He asked if the Board could allow him to apply under the grandfather clause.

The Chair asked if the staff could provide the Board with a summary or a timeline of the circumstances of Mr. Robinson's situation so that it may be determined whether this issue should appear on the agenda of a future Board meeting. The Executive Director agreed to provide the Chair with the requested information. She also stated the agency had made every effort to notify interns and prospective applicants about the impending deadline for applying under the grandfather program.

Shawn Massock spoke next during public comment and thanked the Board for their time. He stated that he was at the meeting because of an enforcement issue the agency brought against him. The agency audited his continuing education records and is citing him for failing to maintain proper records. A proposed agreed settlement is on the agenda for the Board meeting. He stated that he did not dispute the Findings of Fact recorded in the settlement agreement. However, he asked about the Board's stance on "proper documentation" for continuing education taken in the past. The Executive Director requested to review the file again and consider the evidence in greater detail. Board member Bert Mijares suggested that the Board table the case. The Chair agreed and, without objection, there was unanimous consent from the Board to table the case against Mr. Massock until the next meeting of the Board.

**2. Approval of the October 20, 2011 Board Meeting Minutes**

A MOTION WAS MADE AND SECONDED (Anastos/Mijares) TO APPROVE THE OCTOBER 20, 2011, BOARD MEETING MINUTES. THE MOTION PASSED UNANIMOUSLY.

**3. Application for Placement on Exempt Engineer List**

Herb Byk (TBAE File #010.12E)

Mr. Byk's attorney had notified the agency to inform the Board that he no longer wished to challenge the committee's decision. The Chair determined there was no need to consider this agenda item. Without objection, there was unanimous consent of the Board to indefinitely postponed consideration of the matter.

**4. Legal counsel briefing on recent developments regarding litigation**

A. *TSPE v. TBAE and Cathy L. Hendricks in her official capacity as Executive Director*

B. *Richardson, Rogers, and Winton vs. TBAE*

At 9:24 a.m., the Board went into a closed session, pursuant to Section 551.071(a), Government Code, to confer with legal counsel on pending litigation and proposed settlement of pending litigation. The Chair adjourned the closed session at 10:40 a.m.

The Chair convened the Board in public meeting at 10.40 a.m. With unanimous consent of the Board, the Board took a recess at 10:41 a.m. and reconvened at 11:07 a.m.

**5. Executive Director Report**

A. Budget Review

The Executive Director reported the agency collected 24.82% of the revenue projected for the year during the first quarter. The agency's expenditures for the first quarter are roughly 19% of the total budgeted for the fiscal year. The Executive Director stated that Texas Online will no longer allow state agencies to impose a separate fee or a convenience fee for doing business online. Therefore, the Board should not adopt such a fee. The Board discussed options for the agency to cover the cost of the fees charged by credit card companies for payments made to the agency. The Executive Director reported that state agencies may not collect the fee through third party contractors and it is more expensive to process payments made by check.

B. State Auditor's Office Audit Report and Management's Response

The Executive Director reported upon the auditor's report and recommendations to the agency, as well as the agency's implementation of the recommendations. Most of the more critical findings addressed issues arising from inadequate or non-existent policies and procedures. The agency has implemented policies and procedures and purchased an accounting software system to ensure background documentation exists for the agency's financial reports and to ensure controls are in place to prevent errors. In addition, she stated that the agency was currently in the process of writing and implementing policies and procedures for all operations of the agency. New procedures for the development of a budget have been implemented and were used for the development and adoption of the 2012 budget. The agency's policies now specify the "closed date" on an enforcement matter in response to the audit recommendations. The Board members questioned the Executive Director on policies and procedures regarding the collection and

compliance with Board Orders and penalties issued in enforcement cases. Mr. Mijares requested periodic updates on cases which require payments or other action by the respondent over a prolonged period of time. The Chair asked if there were any recommendations in the audit that required Board action. The Executive Director reported that some recommendations require approval from the Board. The Chair requested the Executive Director to provide the Board with an implementation schedule on policies and procedures of the agency and other actions taken to implement audit recommendations. The Executive Director stated that she would have a schedule for them at the May Board meeting.

### **Report on conferences and meetings**

A. TSA 72<sup>nd</sup> Annual Convention – October 27-29, 2011

The Executive Director reported that she and the General Counsel gave a presentation to attendees at the convention and that it went well. The presentation was on the process for agency rule-making and the manner in which architects may play a role in adopting rules at TBAE and at other agencies. Mr. Anastos stated that he had received several favorable comments regarding their presentation. Mr. Mijares and Ms. Dockery also attended the convention. They reported keynote speakers were good. Ms. Dockery reported that Mr. Lancaster of TSA gave a good presentation on House Bill 2284 regarding the practices of architects and engineers. The Chair thanked Mr. Lancaster for providing TBAE a booth at the convention and allowing the agency to make a presentation. It was noted that the next TSA convention will be held in Austin on October 16-17, 2012.

B. NCARB 2011 MBE Workshop – November 4-5, 2011

The Executive Director gave a brief summary of the workshop stating that it was an educational meeting on activities at NCARB and the IDP program.

C. NCIDQ Annual Council of Delegates Meeting – November 11-12, 2011

Ms. Odell reported on the meeting and stated that she was the first Texas delegate to be nominated at NCIDQ to the Council. She gave a summary on their new process for continuing education providers to get their courses approved. She stated they are seeing a decline in applicants due to the economy coupled with new fees for recording continuing education units. She stated there was a stronger presence of attendees from Canada. The Executive Director commented upon the opening keynote speaker who was interesting, global and eccentric. They both said that there was a lot of creativity and great ideas generated by the conference.

D. Sunset Advisory Commission 1<sup>st</sup> Meeting of the Year (Jan 10, 2012)

The Executive Director introduced Carrie Holly Hurt as the analyst at the Sunset Commission who is assigned to the agency. She reported that Sunset Commission staff is scheduled to begin its review of the agency in June 2012. The Executive Director noted that the Chair of the Commission emphasized that the Sunset bill is to relate to agency effectiveness and efficiency, not policy-making changes. The Sunset Commission last reviewed the agency in 2002-2003. The report on the results of the review should be finished by December 2012 and the bill based upon Sunset Commission recommendations will be filed in the House and the Senate.

**6. Report on Engineer Applications**

The General Counsel explained to the Board the process on the applications. The agency reviews applications to ensure they meet qualifying requirements. If the applications consist of three qualifying projects, designed by a licensed engineer at the proper time and were timely filed, the Committee reviews the application to determine if the submitted documents establish experience in designing buildings that are safe and adequate. The agency has received 78 applications and 52 of those received have been denied placement on the list. The process has operated very well. To date, no one has challenged a determination of the Committee or the agency. The Chair thanked the committee members for their hard work in reviewing the applications.

**The Board took a recess at 11:55 a.m. and reconvened at 12:47 p.m.**

**7. General Counsel Report**

The General Counsel gave a brief summary of the following proposed rules which had been published in the *Texas Register*. They are before the Board for the consideration of public comment and adoption. The proposed amendments to §§1.69, 3.69, and 5.79 increased continuing education hours from 8 to 12 and lists descriptions of the subjects which would qualify for continuing education credit. NCARB submitted written comment supporting the increase in mandatory continuing education hours but requesting that the rule mandate that continuing education requirements apply on a calendar year basis. The comment noted that NCARB had recently amended its model law to require 12 hours of continuing education each calendar year. It was noted that Texas architects may have difficulty in adhering to the requirements in other jurisdictions if the continuing education requirement in Texas deviated from the requirements in other jurisdictions. Mr. Chad Davis, on behalf of the Texas Chapter of ASLA, addressed the Board in opposition to the increase to 12 hours of mandatory continuing education per year. Mr. Davis noted that it is only recently that all 50 states had landscape architecture licensing laws. He noted that ASLA is a voluntary organization without the infrastructure or resources for pre-qualifying, tracking and recording continuing education. As a result, landscape architects do not have the continuing education opportunities that other professions have. If TBAE is adopting the rule change to conform to recent resolutions by NCARB, it ought to consider the circumstances of landscape architects who do not have a voice at NCARB. Donna Vining, on behalf of TAID, spoke in favor of increasing the continuing education hours to 12 but noted TBAE had disallowed credit for a course which had been certified by the IDCEC.

**A. Adoption of Proposed Rules**

(1) A MOTION WAS MADE AND SECONDED (Anastos/Mijares) TO ADOPT PROPOSED AMENDED §§1.69, 3.69 AND 5.79 TO INCREASE THE NUMBER OF MANDATORY CONTINUING EDUCATION HOURS FROM 8 HOURS TO 12 HOURS AND CLARIFY THE SUBSTANCE OF ACCEPTABLE CONTINUING EDUCATION.

A MOTION WAS MADE AND SECONDED (Bearden/Mijares) TO DIVIDE THE QUESTION TO ADDRESS EACH PROPOSED RULE SEPARATELY. THE MOTION PASSED UNANIMOUSLY.

A MOTION WAS MADE AND SECONDED (Anastos/Mijares) TO AMEND PROPOSED §1.69 TO REQUIRE THE COMPLETION AND REPORTING OF CONTINUING EDUCATION HOURS EACH CALENDAR YEAR INSTEAD OF EACH YEAR PRECEDING THE DATE OF REGISTRATION RENEWAL AND TO ADOPT THE PROPOSED RULE AS AMENDED. THE MOTION PASSED UNANIMOUSLY.

A MOTION WAS MADE AND SECONDED (Anastos/Mijares) TO AMEND PROPOSED §5.79 TO REQUIRE THE COMPLETION AND REPORTING OF CONTINUING EDUCATION HOURS EACH CALENDAR YEAR INSTEAD OF EACH YEAR PRECEDING THE DATE OF REGISTRATION RENEWAL AND TO ADOPT THE PROPOSED RULE AS AMENDED. THE MOTION PASSED UNANIMOUSLY.

A MOTION WAS MADE AND SECONDED (Anastos/Dockery) TO AMEND PROPOSED §3.69 TO DELETE THE REQUIREMENT FOR 12 HOURS OF CONTINUING EDUCATION AND MAINTAIN THE CURRENT 8-HOUR REQUIREMENT, TO REQUIRE THE COMPLETION OF CONTINUING EDUCATION EACH CALENDAR YEAR INSTEAD OF THE YEAR IMMEDIATELY PRECEDING EACH REGISTRANT'S REGISTRATION RENEWAL DATE, AND TO ADOPT THE PROPOSED RULE AS AMENDED. THE MOTION PASSED UNANIMOUSLY.

**The Board took a recess at 2:12 and reconvened at 2:26 p.m.**

(2) The General Counsel gave a summary of proposed amendments to §§1.124, 3.124 and 5.135, relating to business registration. He stated the amendments were proposed in October as a recommendation of the Rules Committee. These proposed rules make businesses, instead of principals at businesses, responsible for registering with the Board. The proposed rules also impose a fee for annual business registration. The agency received public comment from a former Board member who is a landscape architect who opposed the proposed rules, particularly the proposed business registration fee. The General Counsel directed the Board's attention to the letter filed as public comment.

A MOTION WAS MADE (Anastos/Pinson) TO ADOPT THE PROPOSED AMENDMENTS TO §§1.124, 3.124, and 5.134.

The Board discussed the purpose for business registration. The General Counsel noted that the purpose for business registration is to assist in determining the business entities which are engaging the practices regulated by the Board unlawfully or unlawfully offering the services regulated by the Board. The rule also serves to ensure that the agency has accurate information on the licensed individual(s) at each registered firm to ensure that the general public receives accurate information when retaining a firm.

The Board's discussion centered upon an exemption under the rule for registered sole proprietors doing business under the name of the sole proprietor. The Board discussed the rationale for creating the exemption when the rule was first adopted. The General Counsel stated that the Board did not wish to register a business that is working under the name of an individual who is already registered by the Board. The General Counsel noted that the Board was concerned about double registration – once as an individual and once as a business entity offering and rendering the services of a registered individual.

A MOTION WAS MADE AND SECONDED (Pinson/Dockery) TO AMEND PROPOSED §§1.124, 3.124 and 5.134 TO AMEND THE EXEMPTION FOR SOLE PROPRIETORS TO CREATE AN EXEMPTION FOR REGISTRANTS WHO ARE DOING BUSINESS UNDER HIS/HER NAME REGISTERED WITH TBAE. THE MOTION PASSED BY A VOTE OF 5-2 (Mijares and Anastos opposed).

Further discussion was had regarding the exemption and the extent of the amended exemption. The Board noted that a sole proprietor may employ several individuals and determined that the intent of the exemption would be better served if it were limited to sole practitioners who are registered and working under the name registered with the Board.

A MOTION WAS MADE AND SECONDED (Pinson/Anastos) TO AMEND THE AMENDMENT TO RESTRICT THE EXEMPTION TO A SOLE PROPRIETOR DOING BUSINESS UNDER HIS/HER NAME AS REGISTERED WITH TBAE. THE AMENDMENT PASSED BY A VOTE OF 5-1. (Dockery opposed, Steinbrueck abstained.)

THE CHAIR DIRECTED THE BOARD MEMBERS BACK TO THE MAIN MOTION WITH THE TWO AMENDMENTS. THE PROPOSED RULE WAS ADOPTED AS AMENDED BY A VOTE OF 6-1 (Steinbrueck opposed.)

(3) The General Counsel described the proposed amendments to §7.10 adopting a fee for initial business registration, renewal of business registration and late registration fees. The General Counsel noted that a fee for engineers to apply for placement on the list of engineer exempt from the Architectural Practice Act is obsolete. The deadline for applying for placement on the list was January 1, 2012.

A MOTION WAS MADE AND SECONDED (Pinson/Anastos) TO ADOPT PROPOSED AMENDMENTS TO §7.10 REGARDING GENERAL FEES AS AMENDED BY REPEALING THE APPLICATION FEE FOR PLACEMENT ON THE EXEMPT ENGINEER LIST. THE MOTION PASSED BY A VOTE OF 6-1. (Steinbrueck opposed).

Mr. Mijares requested a clarification regarding the meaning of the term “sole practitioner” who are to be exempt from the fee and “sole proprietor” who is to pay the fee. The Board directed staff to prepare a definition of “sole practitioner” and place the matter on the agenda of the next Board meeting. The Executive

Director stated that the implementation for a fee for business registration will either be September 1, 2012 or January 1, 2013.

**The Board took a break at 3:55 p.m. and reconvened at 4:08 p.m.**

(4) Proposed amendments to §§1.232, 3.232, and 5.242 to conform the penalty matrix to amendments to business registration processes. The proposed amendments modify the penalties to reflect the duty imposed upon business entities, instead of principals acting on behalf of business entities, to maintain registration. The amendments also correct cross-references to other rules which the Board has amended and renumbered.

A MOTION WAS MADE AND SECONDED (Pinson/Bearden) TO ADOPT PROPOSED AMENDMENTS TO §§1.232, 3.232 AND 5.242. THE MOTION PASSED BY A VOTE OF 6-0 (Steinbrueck abstained).

(5) Proposed amendments to §5.201, relating to the education and experience required for interior design registration, repealing obsolete provisions relating to previously repealed "grandfather" clauses.

A MOTION WAS MADE AND SECONDED (Odell/Mijares) TO ADOPT PROPOSED AMENDMENTS TO §5.201 TO REPEAL OBSOLETE PROVISIONS RELATING TO PREVIOUSLY REPEALED "GRANDFATHER" CLAUSES. THE MOTION PASSED UNANIMOUSLY.

**B. Draft Rules for Proposal or Committee Referral**

(1) Amendment to §1.191 revising requirements to complete the Intern Development Training Program.

(2) Amendment to §1.192 to allow Applicants to begin earning credit under the Intern Development Program upon commencing education or experience.

The General Counsel described the draft amendments. The intent of the draft amendments is to conform the rules to recent changes NCARB has made to the intern development program which candidates must complete in order to become registered as architects.

A MOTION WAS MADE AND SECONDED (Anastos/Pinson) TO PROPOSE AMENDMENTS TO §§1.191 and 1.192 REVISE REQUIREMENTS TO COMPLETE THE INTERN DEVELOPMENT TRAINING PROGRAM AND TO ALLOW APPLICANTS TO BEGIN EARNING CREDIT UNDER THE INTERN DEVELOPMENT PROGRAM UPON COMMENCING EDUCATION OR EXPERIENCE. THE MOTION PASSED UNANIMOUSLY.

**8. Enforcement Cases**

**Review and possibly adopt the Executive Director's recommendations to resolve the following enforcement cases.** The Executive Director's recommendations are to resolve the following cases in accordance with agreements reached with the Respondents. The Chair recognized the Managing Litigator to present the enforcement cases.



**B. Continuing Education Cases**

Merrick, Tami (#071-12A)

A MOTION WAS MADE AND SECONDED (Mijares/Anastos) TO APPROVE THE EXECUTIVE DIRECTOR'S RECOMMENDATION IN CASE NUMBER 071-12A IMPOSING A \$250.00 ADMINISTRATIVE PENALTY FOR VIOLATION OF BOARD RULE 1.171. THE MOTION PASSED UNANIMOUSLY.

**A. Non-registrant**

Hillrichs, Thayne (#134-11N)

A MOTION WAS MADE AND SECONDED (Mijares/Pinson) TO APPROVE THE EXECUTIVE DIRECTOR'S RECOMMENDATION IN CASE NUMBER 134-11N IMPOSING A \$2,000.00 ADMINISTRATIVE PENALTY UPON THE RESPONDENT FOR VIOLATING TEX. OCC. CODE §§105.701, 1051.752 AND 1051.801 BY MISREPRESENTING HIS BUSINESS AS AN ARCHITECTURAL DESIGN FIRM. THE MOTION PASSED UNANIMOUSLY.

**B. Continuing Education Cases**

Burt, John Vincent (#028-12A)

A MOTION WAS MADE AND SECONDED (Anastos/Pinson) TO APPROVE THE EXECUTIVE DIRECTOR'S RECOMMENDATION IN CASE NUMBER 028-12A IMPOSING A \$500.00 ADMINISTRATIVE PENALTY UPON THE RESPONDENT FOR VIOLATING BOARD RULE 1.69(e)(1), BY FAILING TO MAINTAIN A DETAILED RECORD OF HIS CONTINUING EDUCATION ACTIVITIES FOR THE AUDIT PERIOD IN QUESTION. THE MOTION PASSED UNANIMOUSLY.

Morris, Deborah Mary (#021-12A)

A MOTION WAS MADE AND SECONDED (Anastos/Pinson) TO APPROVE THE EXECUTIVE DIRECTOR'S RECOMMENDATION IN CASE NUMBER 021-12A IMPOSING A \$500.00 ADMINISTRATIVE PENALTY UPON THE RESPONDENT FOR VIOLATION OF BOARD RULE 1.69(e)(1), BY FAILING TO MAINTAIN A DETAILED RECORD OF HER CONTINUING EDUCATION ACTIVITIES FOR THE AUDIT PERIOD IN QUESTION. THE MOTION PASSED UNANIMOUSLY.

Sawyer, Stacy (#050-12I)

A MOTION WAS MADE AND SECONDED (Anastos/Pinson) TO APPROVE THE EXECUTIVE DIRECTOR'S RECOMMENDATION IN CASE NUMBER 050-12I IMPOSING A \$500.00 ADMINISTRATIVE PENALTY UPON THE RESPONDENT FOR VIOLATING BOARD RULE 5.79(e)(1), BY FAILING TO MAINTAIN A DETAILED RECORD OF HER CONTINUING EDUCATION ACTIVITIES FOR THE AUDIT PERIOD. THE MOTION PASSED UNANIMOUSLY.

Massock, Shawn William (#130-11L)

In accordance with Board action earlier in the meeting to table consideration of this case, the Executive Director's recommendation to resolve this case in accordance with an agreed order was not taken up and remained on the table until the next meeting of the Board.

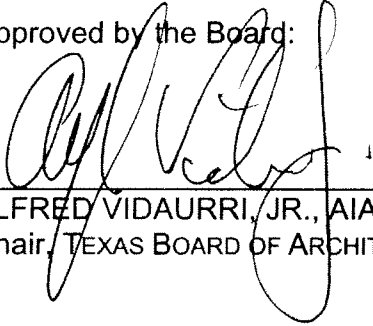
**9. Chair's Closing Remarks**

The Chair stated that the following dates had been approved for the remainder of Board meetings for 2012: May 17-18, 2012, August 23-24, 2012 and October 17, 2012. There was discussion about rescheduling the October Board meeting because the TSA convention begins on October 18<sup>th</sup>. The Board decided to maintain the October 17<sup>th</sup> meeting date.

**10. Adjournment**

A MOTION WAS MADE AND SECONDED (Pinson/Anastos) TO ADJOURN THE MEETING AT 4:37 P.M. THE MOTION PASSED UNANIMOUSLY.

Approved by the Board:



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ALFRED VIDAURRI, JR., AIA, NCARB, AICP  
Chair, TEXAS BOARD OF ARCHITECTURAL EXAMINERS