TEXAS BOARD OF ARCHITECTURAL EXAMINERS
Minutes of the Rules Committee Meeting
August 24, 2012
The William P. Hobby, Jr. Building
333 Guadalupe Street, Tower II, Ste. 350L
Austin, TX 78701

1. **Call to Order**
The Chair called the meeting of the Rules Committee to order at 9:03 a.m.

2. **Roll Call**
The Chair called the roll and declared a quorum of the Committee was present.

   Present Board Members:
   Brandon Pinson, Chair
   Charles A. (Chuck) Anastos
   Diane Steinbrueck (arrived at 9:07)
   Sonya Odell

   Guests:
   Jeri Morey, Architect
   Donna Vining, Texas Association for Interior Design
   Michelle Downey, Texas Sunset Advisory Commission

3. **Public Comment**
Ms. Morey introduced herself by reference to material she had previously emailed to the Committee. She informed the Committee that she had earlier in her career been retained to consult upon the design of a building that had burned down, resulting in the death of two people. Ms. Morey stated this experience emphasized to her the risk posed by the lack of instruction on fire code and fire-related issues in architectural education. She reserved her remaining time for discussion of proposals on the rules under review.

4. **Approval of Minutes**
   a. Rules Committee Minutes of August 19, 2011. The Chair proposed that the Committee postpone consideration of the minutes until the next following meeting. Without objection, the MOTION PASSED UNANIMOUSLY.

5. & 6. **Stakeholder Input on Review of Chapters 1, 3, 5 and 7 of Board Rules**
Ms. Morey proposed revisions to the laws as follows:
   a. Amend Rule 1.142 to amend the description of “gross incompetence” to modify the reasonably prudent architect standard to include reference to the circumstances at issue.
   b. Amend Rule 1.143 to modify the prohibition upon recklessness in the practice of architecture to require architects to establish “or equal” proof when building plans include life-safety features or designs to compensate for other parts of the building
that do not comply with fire code. The proposal would require the architect to establish that the design meets standards of analysis and reliability. Ms. Morey recommended modeling by a fire protection engineer. Ms. Morey offered to provide a draft of the amendment to the Committee.

c. Amend Rule 1.144(b) to alter or delete the requirement that each architect list her or his registration number in telephone listings and other advertisements. Ms. Morey noted that almost no one follows this rule and it probably is not necessary. The Chair noted staff also recommended eliminating this requirement. After Committee deliberation, the Chair directed staff to prepare an amendment to Rules 1.144(b), 3.144(b) and 5.154(b) for deliberation at the Committee’s next meeting.

d. Rule 1.145 – Ms. Morey stated this rule, relating to conflicts of interest, is necessary and should be retained but the agency should make greater efforts to explain how it applies to architects. Ms. Morey indicated that there appears to be a lack of consensus on the application of the rule when an architect commits an error in the design of a project.

e. Amend Rule 1.152 which prohibits malicious injury to professional reputation. Ms. Morey stated the rule should define the term “malicious” which under the Restatement on Torts is defined as statements made with improper motives. Staff informed the Committee it is recommending the repeal of the rule.

f. Rule 1.174 – Ms. Morey stated that before the last Sunset review, the agency did not provide adequate notice to complainants on the investigation of cases. Ms. Morey stated the changes made by the last Sunset review resolved many of those problems. The rule was amended in accordance with the Sunset review. She stated complainants should have more input on investigations and should have the same standing as respondents. She did not propose any amendment to the rule in its current form.

g. Amend Rule 1.175(a) which prohibits the agency from filing a case arising from alleged architectural recklessness, gross incompetence, or dishonesty at the State Office of Administrative Hearings until it has been evaluated by an expert who is an architect. Ms. Morey proposed an amendment to permit the evaluation by an expert in the field of science at issue in the case. Ms Morey stated a fire safety engineer is the expert who should evaluate alternative means and methods in designing a building to resolve life-safety issues. She stated her proposal was intended to ensure the consultation of fire safety engineers in those cases. The Committee discussed whether the amendment is warranted. The Committee noted the conduct at issue in such cases must have been within the scope of the practice of architecture so it would follow that the matter would not be outside the expertise of an architect serving as an expert.

The Rules Committee recessed at 10:03 a.m.
The Rules Committee reconvened at 10:15 a.m.

The Chair clarified that the meeting is for the purpose of receiving stakeholder input. The Committee’s meeting is for information-gathering purposes to ascertain if the rules should be readopted, amended or repealed as part of the rules review process. The Committee will meet again to evaluate the information it is receiving and make recommendations to the Board. The Committee determined that it should meet again
before the October meeting of the Board to consider the proposals received at this meeting.

7. Staff Recommendations’ Rule Review, Amendment, Repeal or Re-adoptions
The General Counsel reported he had received input from the managers of the agency in preparing staff recommendations to the Committee. The staff recommendations are not intended as substantive policy recommendations but are intended to remove redundant rules, rules that no longer have a statutory basis and correct technical errors. The staff recommendations are limited to the following:

a. Amend Rule 1.67, relating to emeritus architect status to make the term “emeritus architect” upper case to designate it as a defined term.

b. Amend Rules 1.177, 3.177, and 5.187 to correct a technical error in the wording of a rule requiring responses to an inquiry of the Board.

c. Repeal Rules 1.152, 3.152, and 5.161 which prohibit registrants from maliciously injuring the reputation of another. The staff has found the rule has been largely unenforceable.

d. Repeal Rules 1.63, 3.63, and 5.73 which provides for the issuance of a replacement certificate of registration for a certificate which is lost or destroyed. Other agency rules provide for the issuance of duplicate certificates. The rules for replacement certificates are redundant.

e. Amend Rule 7.10, relating to fees charged by the agency. The amendments repeal an obsolete fee for the administration of the landscape architecture registration examination and correct a technical error. The Committee discussed provisions relating to agency charges for returned checks. The Committee directed staff to determine if the agency receives actual cost recovery from the return check charge and whether the agency incurs any cost if any other payment (credit card or electronic check) is denied.

8. Adjourn
A MOTION WAS MADE (Anastos/Steinbrueck) TO ADJOURN THE MEETING OF THE RULES COMMITTEE. THE MOTION PASSED UNANIMOUSLY. Committee adjourned at 10:55 a.m.

Brandon P. Pinson, Chair of the Rules Committee