

TEXAS BOARD OF ARCHITECTURAL EXAMINERS

Minutes of October 20, 2011 Board Meeting

William P. Hobby Jr. Building, 333 Guadalupe Street

Tower III, Conference Room 102

Austin, TX 78701

9:00 a.m.

1. Preliminary Matters

A. Call to Order

Chair Alfred Vidaurri called the meeting of the Texas Board of Architectural Examiners to order at 9:05 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 (late arrived @ 9:30 (excused))
Debra Dockery	Member
Paula Miller	Member
Sonya Odell	Member

TBAE Staff Present

Cathy L. Hendricks	Executive Director
Scott Gibson	General Counsel
Glenda Best	Executive Administrative Manager
Mike Alvarado	Registration Records Coordinator
James Coffman	IT Manager
Katherine Crain	Legal Assistant
Steve Franz	Investigator
Glenn Garry	Communications Manager
Mary Helmcamp	Registration Manager
Kenneth Liles	Accounting Manager
Julio Martinez	Network Specialist
Michael Shirk	Managing Litigator
Jack Stamps	Managing Investigator

C. Excused and unexcused absences

None.

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, and Jeri Morey, Architect from Corpus Christi.

F. Chair's Opening Remarks

The Chair thanked everyone including Board members and the audience for attending the Board meeting. He stated that things the Board does today set the stage for tomorrow so he urged the Board members to carefully consider their decisions and actions today. The Chair moved on to Public Comment.

G. Public Comment

The Chair recognized Jeri Morey of Corpus Christi, Texas. Ms. Morey stated that she thought it was important for the Board to reconsider proposing a rule to require architects to report to the Board liability and settlement arising from lawsuits filed against them. She stated that she believed such a rule would encourage architects to settle lawsuits, learn the law and standards to avoid liability, and would encourage architects to work with clients and contractors to avoid misunderstandings that can lead to litigation. She also stated that the Board, in adopting the rule would provide a public service to prospective clients who would learn about an architect's lawsuits before deciding whether to hire the architect.

2. Approval of the August 18, 2011 Board Meeting Minutes

A MOTION WAS MADE AND SECONDED (Anastos/Dockery) TO APPROVE THE AUGUST 18, 2011 BOARD MEETING MINUTES. Mr. Mijares stated that there is a comment in the minutes about the Board contemplating the renewal of a contract or otherwise prolonging the retention of the services of an independent auditing firm which did not accurately reflect the discussion of the Board. Mr. Mijares opined that it is important that the Board express its uneasiness about and dissatisfaction with responses made to questions during the report made by the firm. THE MOTION WAS AMENDED (Anastos/Dockery) TO STRIKE A SENTENCE REGARDING THE RENEWAL OF A CONTRACT WITH AN INDEPENDENT AUDITOR. THE MOTION PASSED UNANIMOUSLY.

3. 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*

The Board went into a closed session for a briefing on the litigation from Assistant Attorney General Ted Ross at 9:20 a.m. and adjourned the closed session at 10:30 a.m.

The Chair convened the Board in public meeting. With unanimous consent of the Board, the Board took a 15 minute recess and reconvened at 10:45 a.m.

4. Executive Director Report

A. Budget

The Executive Director and the Accounting Manager gave a detailed explanation of 2011 budget, actual expenditures and revenue from fiscal year 2011, and the

projected 2012 budget. The Accounting Manager explained to the Board that there was a \$121,896.09 surplus in fiscal year 2011. A number of applicants became registered just before the close of the fiscal year because of the expiration of grandfathering provisions at the end of the year. The Accounting Manager reported that the cost of the audit by the State Auditor was commenced in fiscal year 2011 and will be reported as an expense from that year. The cost of the audit will be roughly \$50,000 which will reduce the 2011 surplus to approximately \$71,896.90. The Executive Director reported that the 6-month operating reserve balance is \$191,681.00 and is currently reported in fiscal year 2012, as fiscal year 2011 has ended and the balance is no longer reported for that year. In response to questions from the Board, the Executive Director and Accounting Manager explained variations between actual expenditures in 2011 and budgeted in 2012 regarding rent, staff training, and payments made for SWYCAP. The Accounting Manager briefed the Board on the planned acquisition of an automated accounting system in fiscal year 2012. The Board also noted the fee paid to credit card companies arising from online registrant transactions is absorbed by the agency as part of its budget.

B. Enforcement

The Executive Director presented case load data on the agency's enforcement function: The Board reviewed a graph on open case load history for Fiscal Years 2008-2011. It was noted that there is a trend toward lower numbers of open cases over that period. The Executive Director noted the trend has been caused by the fact that the agency no longer regulates the title "interior designer" and the change in the TDLR law increasing the deadline for the submission of plans for accessibility review from 5 days to 20 days. The Executive Director also reported that the agency is emphasizing more serious enforcement cases, which generally are more complicated and time-consuming which impacts the number of cases resolved during the fiscal year.

C. Registration

The Executive Director presented graphs depicting registration trends for the three professions regulated by the Board. The number of active registrants for architects and landscape architects is increasing. The number of registered interior designers is decreasing. The Board noted that the number of emeritus landscape architects has nearly doubled over the past two years. The Board requested staff to determine if it is possible to ascertain the median age of registrants for planning purposes. The Executive Director stated the agency will determine whether that data can be captured and report it back to the Board. Mr. Mijares also suggested staff present data on the number of applicants who have taken and passed licensure examinations. The Executive Director noted it might be difficult to track that data because the exams are given in parts over a period of time of up to five years. The Board also examined data on the residency of registrants. Roughly 66 percent of agency registrants reside in-state. The percentage has remained stable over the period from 2008 through 2011.

D. Communications

The Executive Director and the Communications Manager presented the chart on the communications efforts of the agency. It was noted that there were approximately 628 impressions made in the first quarter of the 2011. There were 120 impressions made in the second quarter; 161 made in the third quarter, and 247 in the fourth quarter. An "impression" is a presentation to a member of the public by someone on behalf of TBAE.

Report on conferences and meetings

A. 2011 CLARB Annual Meeting – September 14-18, 2011

Ms. Steinbrueck and the Executive Director attended the meeting. Ms. Steinbrueck reported to the Board on the meeting and stated that the Council discussed moving to a fully computerized licensing examination in 2013, issued its report on the definition of the term “welfare” as used in the term “health, safety and welfare” regarding the legitimate public purpose for the regulation of a profession, and reviewed NCARB’s new policy favoring 12 hours of mandatory continuing education per year. The Executive Director reported there was also discussion regarding the use of the appellation “ASLA” behind one’s name. Since some ASLA members are not licensed as landscape architects, the use of the designation, including the reference to the title “landscape architect” might mislead the public regarding the ASLA member’s licensure status. Also, she stated that a new regional director was hired from South Carolina named John Tarkany.

B. 2011 LRGV-AIA Building Communities Conference – September 24, 2011

The General Counsel and the Communications Manager made a presentation at the conference regarding HB2284. The presentation was made jointly with members of the staff of the Texas Board of Professional Engineers. The presentation was well received and well attended. The audience was divided into two groups – two-thirds architects and one-third engineers. The Chair encouraged the staff to be proactive and work with the staff of the Professional Engineering Board on this issue.

C. 2011 Government Law & Liability Conference – October 6-7, 2011

Ms. Miller attended the conference. She stated that they covered 121 topics in 2 days. Attorneys from the Office of the Attorney General spoke on open government law, electronic discovery, and judicial review. She noted that Mr. Ross spoke on judicial review of contested cases and did a very good job. They also covered the Texas Open Meetings Act, ethics, and the whistleblower statute as well as workplace safety and security. Representatives from the Governor’s Office spoke regarding duties of Board members. She concluded her report by stating that it was an excellent conference.

D. Design Futures Counsel Leadership Conference – October 9-11, 2011

The Executive Director attended the Conference.

The Board took a 30 minute recess for lunch at 11:50 a.m. and reconvened at 12:25 p.m.

5. General Counsel Report

A. Adoption of Proposed Rules

Repeal of §3.12, relating to the Joint Advisory Committee on the Practices of Architecture, Engineering and Landscape Architecture.

The General Counsel stated the proposed rule had been published in the *Texas Register*. The agency received no public comment. The rule is repealed to conform to HB 2284 which repealed the Committee’s enabling law. He stated that the Board of Professional Engineers had already repealed its counterpart to this rule.

A MOTION WAS MADE AND SECONDED (Steinbrueck/Anastos) TO REPEAL RULE 3.12. THE MOTION PASSED UNANIMOUSLY.

B. Report on HB 2284

The General Counsel gave the Board members a brief report on the agency's implementation of House Bill 2284 which draws a brighter line of demarcation between architecture and engineering and allows certain engineers to apply for an exemption from the Architecture Practice Act. He stated that the agency had received seven applications from engineers. Four of the seven will be reviewed by the Review Committee on Friday, October 21, 2011, the first committee meeting on the matter.

6. Report on the Rules Committee

A. Committee Report on amendments to Rules 1.69/3.69/5.79 increasing the number of mandatory continuing education program hours registrants must obtain annually; clarifying substance and acceptable continuing education.

The Rules Committee approved the draft before the Board. The Committee changed the original draft to increase to 60 days the period of time a registrant has to make up disallowed continuing education credit.

Ms. Steinbrueck stated that she understood that the impetus for increasing the mandatory continuing education requirement was that NCARB had 12 hours as the standard in its model law. Furthermore, she stated, given current economic circumstances, it is not a good time to increase continuing education hours. She also opposed the mandatory ethics hour. She stated there is a lack of empirical data to show that increasing the continuing education and requiring an hour of ethics would improve the public health, safety and welfare. The board members discussed the mandatory ethics hour at length.

A MOTION WAS MADE AND SECONDED (Mijares/Steinbrueck) TO PROPOSE RULES 1.69, 3.69 AND 5.69 TO REQUIRE 12 HOURS OF CONTINUING EDUCATION PER YEAR, TO DELETE THE REQUIREMENT FOR AN HOUR OF ETHICS TRAINING PER YEAR AND TO RESTORE EXISTING LANGUAGE TO ALLOW REGISTRANTS TO REPEAT A COURSE AFTER THREE YEARS. THE MOTION PASSED UNANIMOUSLY.

B. Committee Report on amendments to Rules 1.124/3.124/5.134 revising process for the registration and renewal of registration of business entities with the Board

The General Counsel outlined the amendments as approved by the Rules Committee. The first change in the rule requires a firm to register instead of mandating registration by a person acting on behalf of the firm. The amendment requires registered firms to file an email address with the agency for communication purposes. The Committee amended the original draft to require firms to post a copy of its registration certificate at each place of business. Finally, the third change provided for a \$30 fee to be charged for business registration and annual renewal of business registration.

The proposed rules were discussed at length by the board members. Mr. Anastos opposed the requirement that firms display a business registration certificate at each place of business.

A MOTION WAS MADE AND SECONDED (Pinson/Anastos) TO PROPOSE THE COMMITTEE REPORT AMENDMENTS TO RULES 1.124/3.124/5.134 AS AMENDED TO STRIKE THE REQUIREMENT THAT FIRMS DISPLAY A COPY OF THE CERTIFICATE OF REGISTRATION AT EACH PLACE OF BUSINESS. THE MOTION PASSED (6-2) (Ms. Steinbrueck and Mr. Mijares opposed.)

Mr. Lancaster of the Texas Society of Architects informed the Board that professional firms currently pay an annual fee to the Comptroller which makes an additional charge by the agency redundant.

The Board took a break at 2:10 p.m. and reconvened at 2:20 p.m.

C. Committee Report on amendments to Rule 7.10 adopting a \$30 fee for initial business registration and for the renewal of business registration, a \$45 fee for late renewal, and a \$60 fee for renewal later than 90 days after registration expiration.

A MOTION WAS MADE AND SECONDED (Anastos/Dockery) TO PROPOSE THE COMMITTEE REPORT AMENDING RULE 7.10 TO IMPOSE AN ANNUAL BUSINESS REGISTRATION FEE AND LATE FEES FOR RENEWAL AFTER EXPIRATION, AS AMENDED TO CLARIFY THAT A MULTIDISCIPLINARY FIRM IS NOT REQUIRED TO PAY MORE THAN ONE FEE FOR REGISTRATION AND RENEWAL. THE MOTION PASSED (6-2) (Ms. Steinbrueck and Mr. Mijares opposed).

D. Committee Report on amendments to Rules 1.232/3.232/5.242 to conform penalty matrix to amendments to business registration processes.

The General Counsel explained that it was a technical, conforming amendment to update cross-references in the penalty matrix. The Committee Report also added a line specifying sanctions for failing to register a business that offers or renders regulated services.

A MOTION WAS MADE AND SECONDED (Anastos/Pinson) TO PROPOSE THE COMMITTEE REPORT AMENDMENTS TO RULES 1.232/3.232/5.242 TO CONFORM THE PENALTY MATRIX TO AMENDMENTS TO BUSINESS REGISTRATION PROCESSES. THE MOTION PASSED (7-1) (Ms. Steinbrueck opposed).

E. Committee Report on amendments to Rule 5.201 repealing obsolete provisions relating to alternative experience requirements for registered interior design applicants within a grandfather class which no longer exists.

A MOTION WAS MADE AND SECONDED (Odell/Miller) TO PROPOSE THE COMMITTEE REPORT REPEALING PORTIONS OF 5.201 WHICH REFERENCE ABOLISHED GRANDFATHER CLASSES. THE MOTION PASSED UNANIMOUSLY.

7. Enforcement Cases

The Chair recognized the Managing Litigator to present the enforcement cases.

A. TBAE v. Dwight Norton and Fountainhead Co., L.L.C.

(TBAE Case No. 044-11N; SOAH Docket No. 459-11-4646)

The contested case was heard before the State Office of Administrative Hearings. An Administrative Law Judge issued the Proposal for Decision before the Board. The proposed decision finds in favor of the Texas Board of Architectural Examiners and proposing the imposition of an administrative penalty of \$140,000.00 upon Respondent.

The Managing Litigator stated that this case involved a non-registrant who designed a charter school to be located in Schertz, Texas. He stated that the Respondent prepared plans for the school over a period of one and a half years and that he put an architect's seal on the plans. The project was never built. He recommended that the Board approve the Proposal for Decision as written imposing a \$140,000.00 administrative penalty. Furthermore, it was noted that Respondent did not attend the Board meeting, but he had been notified of the Board meeting on multiple occasions.

A MOTION WAS MADE AND SECONDED (Anastos/Bearden) TO APPROVE THE PROPOSAL FOR DECISION ISSUED BY THE ADMINISTRATIVE LAW JUDGE IN SOAH DOCKET NUMBER 459-11-4646, TEXAS BOARD OF ARCHITECTURAL EXAMINERS VS. DWIGHT NORTON AND FOUNTAINHEAD CO., L.L.C., IMPOSING AN ADMINISTRATIVE PENALTY OF \$140,000. THE MOTION PASSED UNANIMOUSLY.

The Managing Litigator explained to the Board that the remainder of the cases involved proposed agreed settlements recommended by the Executive Director.

B. Registrants

Arthur Andersson (#122-11A)

A MOTION WAS MADE AND SECONDED (Mijares/Pinson) TO ACCEPT THE EXECUTIVE DIRECTOR'S RECOMMENDATION IN CASE NUMBER 122-11A IMPOSING A \$5,500.00 PENALTY AGAINST ARTHUR ANDERSSON FOR PRACTICING ARCHITECTURE WHILE HIS ARCHITECTURAL REGISTRATION WAS DELINQUENT. THE MOTION PASSED UNANIMOUSLY.

C. Non-Registrant

Hart, James T. (#211-09N)

A MOTION WAS MADE AND SECONDED (Anastos/Bearden) TO ACCEPT THE EXECUTIVE DIRECTOR'S RECOMMENDATION IN CASE NUMBER 211-09N IMPOSING A \$1,500.00 PENALTY AGAINST JAMES T. HART FOR UNLAWFUL USE OF THE TITLE "ARCHITECT". THE MOTION PASSED UNANIMOUSLY.

D. Continuing Education Case

Rohr, Anthony (#129-11A)

A MOTION WAS MADE AND SECONDED (Mijares/Anastos) TO ACCEPT THE EXECUTIVE DIRECTOR'S RECOMMENDATION IN CASE NUMBER 129-11A IMPOSING A \$1,450.00 PENALTY AGAINST ANTHONY ROHR

FOR FAILING TO TIMELY COMPLETE HIS CONTINUING EDUCATION HOURS. THE MOTION PASSED UNANIMOUSLY.

**E. Non-Registrant Case
Schmidt, Richard (#116-11N)**

A MOTION WAS MADE AND SECONDED (Pinson/Odell) TO ACCEPT THE EXECUTIVE DIRECTOR'S RECOMMENDATION IN CASE NUMBER 116-11N IMPOSING A \$1,000.00 PENALTY AGAINST RICHARD SCHMIDT FOR SUBMITTING PROPOSALS FOR ARCHITECTURAL SERVICES WITHOUT REGISTRATION AS AN ARCHITECT IN TEXAS. THE BOARD TOOK INTO CONSIDERATION THE FACTS OF THE CASE AND RESPONDENT'S COOPERATION AS MITIGATING CIRCUMSTANCES. THE MOTION PASSED UNANIMOUSLY.

8. Approval of the 2012 Board Meeting Dates

February 2, 2012
May 17-18, 2012
August 23-24, 2012
October 18-19, 2012

It was noted that Ms. Miller is excused from attending the February 2, 2012, Board meeting.

A MOTION WAS MADE AND SECONDED (Pinson/Anastos) TO APPROVE THE LISTED BOARD MEETING DATES FOR 2012. THE MOTION PASSED UNANIMOUSLY.

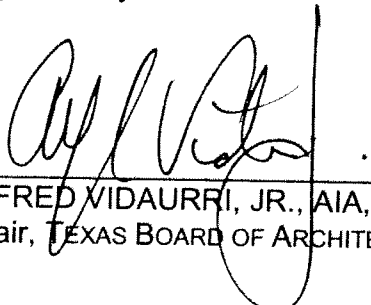
9. Chair's Closing Remarks

The Chair stated that all architects on the Board are to attend the March NCARB meeting and the annual NCARB meeting scheduled for June in Minnesota.

10. Adjournment

A MOTION WAS MADE AND SECONDED (Pinson/Anastos) TO ADJOURN THE MEETING AT 3:23 P.M. THE MOTION PASSED UNANIMOUSLY.

Approved by the Board:



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