

OPEN MINUTES
**Missouri Board for Architects, Professional Engineers,
Professional Land Surveyors and Landscape Architects**

Capitol Room
Capitol Plaza Hotel and Convention Center
415 West McCarty
Jefferson City, Missouri
January 27, 2009

The Missouri Board for Architects, Professional Engineers, Professional Land Surveyors and Landscape Architects was called to order at 8:00 a.m. on Tuesday, January 27, 2009 in the Lincoln Room of the Capitol Plaza Hotel and Convention Center located at 415 West McCarty, Jefferson City, Missouri. The Board met in both open and closed sessions during the meeting as reflected in the minutes. Mr. Anderson declared the meeting open for business.

Members Present

Jim Anderson, Board Chair
Randy Miltenberger, Chair of the Architectural Division
Kathleen Warman, Member of the Architectural Division
Royce Fugate, Chair of the Professional Engineering Division
Promod Kumar, Member of the Professional Engineering Division
Kevin Skibiski, Member of the Professional Engineering Division
Mike Gray, Chair of the Professional Land Surveying Division
Mike Freeman, Member of the Professional Land Surveying Division
Bob Hartnett, Chair of the Landscape Architectural Division
Jerany Jackson, Member of the Landscape Architectural Division
Marian "Munnie" Pacino, Public Member

Member Absent

John Teale, Member of the Professional Land Surveying Division

Others Present

Judy Kempker, Executive Director
Shawn Hagerty, Board Investigator
Sandra Robinson, Executive Assistant
Jane Coffman, Board Staff
Curtis F. Thompson, General Counsel

To better track the order in which items were taken up on the agenda, each item in the minutes will be listed in the order it was discussed in the meeting.

Motion to go into Closed Session

At 8:03 a.m., Mr. Anderson called for a motion to close the meeting to the general public for the purpose of discussing confidential or privileged communications between this agency and its attorney as well as to discuss pending litigation and complaint matters. Mr. Miltenberger made a motion that the meeting be closed to the general public pursuant to Chapter 610.021 subsection (14) and 324.001.8 and 324.001.9, RSMo for the purpose of discussing investigative reports, complaints, audits and/or other information pertaining to licensees or applicants; Chapter 610.021 subsection (1) RSMo for the purpose of discussing general legal action, causes of action or litigation and any confidential or privileged communication between this agency and its attorney, and for the purpose of reviewing and approving closed meeting minutes of one or more previous meetings under Chapter 610.021 RSMo which authorizes this agency to go into closed session during those meetings. Ms. Jackson seconded the motion. The motion carried. Mr. Anderson asked that all visitors leave the room. There being none, the meeting was declared closed to the general public.

Return to Open Session

At 8:06 a.m., the Board reconvened in open session for the purpose of continuing the discussion of open agenda items.

Approval of Minutes

A motion was made by Mr. Miltenberger to approve the November 3, 2008 Open Board Meeting, the December 8, 2008 Board Open Telephone Conference Call, and the January 8, 2009 Board Open Telephone Conference Call minutes as submitted. The motion was seconded by Mr. Fugate and unanimously carried.

Update on Proposed Amendment to Board Rule 20 CSR 2030-2.010(15) with regard to mandatory reporting of misconduct

The Board discussed the Proposed Amendment to Board Rule 20 CSR 2030-2.010(15) with regard to mandatory reporting of misconduct. Mr. Anderson published an article in the Board's Fall 2008 Newsletter soliciting input from licensees regarding this issue. In response, the Board received only one comment from Danny R.

Bowen. Mr. Bowen suggested licensees only be required to notify the Board as a “last” resort after the licensee has pursued other responsible options rather than “notify the Board if they have knowledge of a violation.” Upon discussion, Ms. Warman made a motion directing Mr. Thompson to draft possible language for the Proposed Amendment to Board Rule 20 CSR 2030-2.010(15) and provide a report to the Board at its May 2009 meeting. Ms. Kempker was directed to place this matter on the Board’s May 2009 Agenda for discussion. The motion was seconded by Ms. Pacino. A roll call vote was taken and unanimously carried.

Report on status of MOU between the Geology Board and the APELSLA Board

Ms. Kempker reported the status of the MOU between the Geology Board and the APELSLA Board. She advised that a Member of the Geology Board Staff had spoken to Mr. John Bognar, Chair of the Geology Board. He said the MOU status is unchanged with the exception of the item under consideration is the Joint Task Force on Areas of Practice. Mr. Bognar said the document is very close to being released to the three (3) sponsoring organizations and that he thinks the document will be released to the public within the next two to three weeks and that it will be a good time for the Geology and Engineering Boards to review that document and the joint MOU. Upon discussion, Mr. Miltenberger made a motion directing Ms. Kempker to advise the Geology Board that the members of the APELSLA Board would like to have a chance to review the Joint Task Force on Areas of Practice document and meet with the Geology Board **prior** to the document being released to the general public. The motion was seconded by Mr. Kumar and unanimously carried.

Motion to go back into closed session

At 8:20 a.m., Mr. Anderson called for a motion to go back into closed session for the purpose of discussing confidential or privileged communications between this agency and its attorney as well as to discuss pending litigation and complaint matters. Mr. Hartnett made a motion that the Board goes back into closed session, closing the meeting to the general public pursuant to Chapters 610.021 subsection (14), 610.021 subsection (1) and 324.001.8 and 324.001.9, RSMo. Ms. Jackson seconded the motion. A roll call vote was taken as follows: Randy Miltenberger – Nay; Kathy Warman – Yea; Royce Fugate – Yea; Promod Kumar – Yea; Kevin Skibiski – Yea, Mike Gray – Yea; Mike Freeman – Yea; Robert Hartnett, on behalf of the Landscape Architectural Division – Yea; Munnie Pacino – Yea. Motion carried. Mr. Anderson asked that all visitors leave the room. There being none, the meeting was declared closed to the general public.

Return to Open Session

At 8:40 a.m., the Board reconvened in open session for the purpose of continuing the discussion of open agenda items.

Report from “Strategic Plan” committee

Mr. Hartnett reported to the Board that the “Strategic Plan” committee had not met. Ms. Kempker reported that she had asked the Division if they or the Department had a “Strategic Planner” on staff and was told that at this time, they do not. She was further informed that there were no strategic planning services on state contract. Therefore, it is the Division of Professional Registration’s suggestion that the Board wait for Governor Nixon to get his personnel in place to see if strategic planning services is a part of his plan. If after the Nixon team is in place and there are no Department and/or Division personnel dedicated to serving as a strategic planning facilitator, Professional Registration said we could then solicit bids through the Office of Administration. The Board then directed Ms. Kempker to place this matter on the Board’s May 2009 Agenda for further discussion and update.

Executive Director’s Report

Ms. Kempker presented the most recent information regarding the Board’s Financial Report. She advised the Board that as of January 23, 2009, the financial balances were as follows:

Personal Service Balance was \$200,016.22. Originated with \$375,856.

E&E (Expense & Equipment) Balance was \$251,495.32. Originated with \$394,587.

Fund Balance was \$3,557,752.68.

Ms. Kempker gave a report regarding Proposed Amendments to Board Rules. The Final Order of Rulemaking for the Proposed Amendment to Board Rule 20 CSR 2030-5.080 which is being amended to allow those individuals who complete an engineering education program that is non-accredited and not deemed substantially equivalent and who then earns a graduate engineering degree from a U.S. school with an EAC/ABET-accredited undergraduate or graduate program in an equivalent discipline to be accepted for licensure and clarifies that any noted deficiencies in engineering courses must be made up with courses offered by an EAC/ABET-accredited degree program or equivalent appeared in the Missouri Register on January 16, 2009. It is scheduled to appear in the Code of State Regulations on January 29, 2009 and will become effective on February 28, 2009.

The Final Orders of Rulemaking for Proposed Amendments to Board Rules 20 CSR 2030-11.015 (continuing education for Professional Engineers) and 20 CSR 2030-11.025 (continuing education for Architects) which are being amended to limit the credit for teaching a course to the first occurrence per renewal period appeared in the Missouri Register on December 15, 2008 and in the Code of State Regulations on December 31, 2008. The effective date of the rules will be January 30, 2009.

The Proposed Amendment to Board Rule 20 CSR 2030-5.030 (standards for admission to examination – architects) which is being amended to allow a person participating in IDP through NCARB who has graduated with a NAAB accredited degree or equivalent degree from Canada to call him/herself an “Architectural Intern,” appeared in the Missouri Register on January 2, 2009. The public comment period will end on February 1, 2009. As of this date, no comments have been received.

The Proposed Amendment to Board Rule 20 CSR 2030-2.010 (Code of Professional Conduct) which is being amended as a result of the Bruce Bird ruling to clarify the services that licensees can undertake when performing architectural, professional engineering, professional land surveying and landscape architectural services is at the Department pending review/approval.

The Proposed Amendments to Board Rules 20 CSR 2030-11.025 (Continuing Education for Architects) and 20 CSR 2030-11.035 (Continuing Education for Landscape Architects) which are being amended to make the continuing education requirements equal among resident licensees and out-of-state licensees is at the Department pending review/approval. This is the change that was brought about because of the Texas architect who was granted restricted practice without accumulating any CEUs to renew his Missouri license and because of the way our rule read, he was allowed to renew so long as he met the continuing education requirements in the state where he lived or worked. In other words, with this proposed change, if another state has less stringent requirements than Missouri, that licensee then has to meet Missouri’s requirements in order to renew.

Mr. Fugate reported to the Board that the Professional Engineering Division Members met with Mr. Jeff Hewitt, E-28349, Mr. Chris Gaut and Mr. Buddy Dewar, both who work for the National Fire Sprinkler Association, Inc. on Monday, January 26, 2009, to discuss possible Proposed Amendments to Board Rule 20 CSR 2030-21.010 Design of Fire Suppression Systems and how it particularly relates to residential construction. After much discussion, the Division Members advised Messrs. Hewitt, Gaut and Dewar that it was the initial intent of the Board to apply the provisions of Board Rule 20 CSR 2030-21.010 to only commercial projects. Therefore, Mr. Fugate made a motion to amend Board Rule 20 CSR 2030-21.010 to clarify that the design of fire suppression systems for one and two family residential homes is not required to be designed, prepared, and sealed by a professional

engineer. The motion was seconded by Mr. Miltenberger and unanimously carried. The Board considered the impact that this Proposed Amendment to Rule 20 CSR 2030-21.010(1) would have on small businesses. Several Board Members, namely, Jim Anderson, Randy Miltenberger, Kathy Warman, Kevin Skibiski and Mike Gray are small business owners. These members felt the Proposed Amendment to Rule 20 CSR 2030-21.010(1) may be a cost savings to small businesses by not requiring them to pay the expense for a design professional to design, prepare and seal fire suppression systems for their business located in their home. The savings to each small business owner who has a home office could be as much as \$10,000.

The Board Members are of the opinion that Board Rule 20 CSR 2030-2.040, Standard of Care, may need to be amended to reflect the 2009 edition of IBC. They asked Ms. Kempker to place this matter on the Board's May 2009 agenda for further discussion.

Mr. Thompson and Ms. Kempker recently met with Kathi Harness (lobbyist for AIA), Sam Licklider (lobbyist for MALA), Mark Rhodes (lobbyist for MSPE), and Richard (Mo) McCulloch (lobbyist for MSPS) to discuss the proposed changes to Chapter 327, which include changes to 327.031 (Board composition), 327.041 (elimination of AG concurrence on subpoenas), 327.411 (Bird Decision), 327.442 (automatic revocation---like Pharmacy Board), and 327.351 (Inactive PLS's can still use title). Ms. Harness said Representative Jay Wasson will file one bill with all sections except the disciplinary hearing language. Representative Curt Dougherty objects to giving the Board this authority to bypass the Administrative Hearing Commission regarding any felony unrelated to their practice act. Mr. Thompson clarified this misunderstanding in an email and that information was sent to Ms. Harness so that she could share it with Representative Dougherty. Ms. Harness said Senator Delbert Scott will file two bills, one with all sections except the disciplinary hearings and one specific to that section.

Due to the number of complaints filed against corporations and/or LLCs for practicing without a license and in an ongoing effort to be proactive, Ms. Kempker inquired if the Board would be interested in sending a one page flyer to all of its licensees advising of the requirement for a Corporate Certificate of Authority and announcing that the Board is now invoking civil penalties on all corporations or LLCs that are practicing without a license. The Board Members were supportive of this suggestion and as a result, a motion was made by Ms. Warman directing Ms. Kempker to proceed with preparing and mailing the flyer. The motion was seconded by Mr. Gray and unanimously carried.

Since the Board Members received an update regarding the status of the continuing education audits in the Division Meetings, she asked if anyone had any questions. Since there were no questions, no further action was necessary.

Ms. Kempker announced that the target date for sending the Spring 2009 Newsletter will be the first part of May, therefore, she will need all articles by March 15th. Ms. Kempker announced that only two requests were received to go back to sending the post cards versus the hard copy but we received at least a dozen comments from licensees thanking the Board for deciding to go back to issuing a hard copy of the newsletter. Based on this information, Ms. Kempker asked the Board if they wished to continue with the hard copy. Upon discussion, Board Members asked Ms. Kempker to place a statement in the Spring 2009 Newsletter advising licensees that, "In an attempt to be environmentally conscience, if they would like to receive the Board's Newsletter via email, they are to please provide their email address to the Board Office."

Ms. Kempker announced that Ms. Jane Rackers, formerly from the Attorney General's Office, is the new Director of the Division of Professional Registration and Mr. Earl Kraus is the Division's new head legal counsel. Ms. Rackers replaced David Broeker and Mr. Kraus replaced David Barrett. Patricia Churchill is the new Chief Counsel over the Governmental Affairs Division in the Attorney General's office. She replaced Ms. Rackers. Ms. Kempker advised the Board that she had invited both Ms. Rackers and Ms. Churchill to join the Board for lunch on Tuesday, January 27, 2009 followed by a brief "greet and meet" session. Unfortunately, Ms. Rackers had already made vacation plans and will be in Florida on that day. However, Ms. Kempker at did receive a response from Ms. Churchill advising that she will be able to meet the Board at lunch.

Ms. Kempker announced to the Board that Mr. Kip Stetzler is the new Acting Director of the Department of Insurance, Financial Institutions and Professional Registration.

Ms. Kempker advised that at the beginning of the year, she was asked to do a budget exercise which would reduce the Board's E & E appropriation by \$63,000. Two areas were mandated to be cut by all boards. Those two areas were: reimbursement for college tuition for which this Board has not made any disbursement of funds and a 50% reduction in out-of-state travel. Ms. Kempker has not heard anything additional about whether this exercise will become reality or if it is indeed just an exercise.

Ms. Kempker advised that she had received approval for Bob Hartnett and Jerany Jackson to travel to the upcoming CLARB Spring Meeting in Charleston, South Carolina on February 26, 27 and 28, 2009. Ms. Jackson is the Region 2 Director so her expenses are paid in full by CLARB and the Board will have a balance of \$1,800 in the CLARB Travel Fund which will be used to cover Mr. Hartnett's expenses.

Ms. Kempker also advised that she had requested approval for Randy Miltenberger to travel to the upcoming NCARB Joint Regional Meeting in Salt Lake

City, Utah from March 26 until 28, 2009. The Board has a balance of \$2,700 in the NCARB Travel Fund which will be used to cover Randy's expenses. Any remaining funds will be used for the Annual Meeting in June.

Ms. Kempker announced that she just received the information for the NCEES Central Zone Meeting which is scheduled to be held in Des Moines, Iowa on April 2, 3 and 4, 2009. Ms. Kempker asked which Board Members were wishing to attend this meeting. Messrs. Anderson, Kumar, Skibiski, Gray, and Freeman stated they were interested in attending the NCEES Central Zone Meeting. Ms. Kempker stated that she would check with Mr. John Teale to see if he is also interested in attending the meeting.

Ms. Kempker announced that she is still waiting for approval from the Division to proceed with the purchase of a new Board van. The Division of Professional Registration wanted to wait until after the new administration took office before approving such purchases.

Ms. Kempker advised that a second renewal notice with a watermark stating "Second Notice" was sent, as a courtesy reminder, the first part of December to all those licensees who had not yet renewed. The Board's staff will also send a post card, as a third reminder, in March of 2009 to all of those licensees who had not yet renewed reminding them that their license will officially lapse come April 1 if they don't renew before then. As of the first part of January, we had approximately 90% of our licensees renew on time. Of that 90%, 41% renewed online. This percentage is higher than last year's online renewal percentage of 33%.

Ms. Kempker reminded the Board Members that if they have not yet filed their Personal Financial Disclosure Statement, that the deadline to file it is May 1, 2009. If an individual failed to file it by May 1st, they will be assessed a \$10.00 per day penalty. Ms. Kempker suggested they mail the Personal Financial Disclosure Statement via certified mail.

Ms. Kempker advised that Governor Nixon withdrew the appointments of Robert S. Shotts as a new Landscape Architect Member of the Board and J. Christopher Ball as a new Architect Member of the Board. He also withdrew the re-appointment of Jim Anderson as the Board Chair. Since Mr. Anderson was previously confirmed upon his initial appointment as Board Chair, it was the understanding of the Board's legal counsel that Mr. Anderson will continue to serve until his replacement is appointed and has been qualified. However, since neither Bob Shotts nor Chris Ball had ever been confirmed, the withdrawal of their appointment by Governor Nixon resulted in immediate removal from the Board. Ms. Kempker did not know if Governor Nixon will reappoint them or if he will decide to appoint someone else. There has been no word on replacements for Jerany Jackson, Munnie Pacino, Kathy Warman, Mike Gray or Royce Fugate, all of whom are serving on expired terms. Mr. Fugate is the only one who is eligible

and interested in serving a second term. Ms. Kempker advised that she did know that some of the associations have been working on submitting their list of recommendations.

Ms. Kempker distributed copies of the 2008 Year End Report for informational purposes. She asked if any of the Board Members had any questions, to please let her know.

Ms. Jackson advised the Board Members that she thought letters of gratitude should be issued to employers of Board Members. She explained that preparation and attendance at the meetings took several hours away from Board Members employment and therefore felt it would be a nice gesture to express the thanks to those employers of Board Members. The Board then decided that such a letter should come from the Board Chair. Any Member wanting this letter sent to their employer was instructed to provide Ms. Kempker with the appropriate name(s) and address.

At approximately 10:30 a.m., Ms. Pacino departed the meeting.

Date and Location of January 2010 Board Meeting

The January 2010 meeting will be held in Jefferson City, Missouri on January 25, 26 and 27, 2010.

Motion to go back into closed session

At 10:45 a.m., Mr. Anderson called for a motion to go back into closed session for the purpose of discussing confidential or privileged communications between this agency and its attorney as well as to discuss pending litigation and complaint matters. Mr. Hartnett made a motion that the Board goes back into closed session, closing the meeting to the general public pursuant to Chapters 610.021 subsection (14), 610.021 subsection (1) and 324.001.8 and 324.001.9, RSMo. Ms. Warman seconded the motion. A roll call vote was taken as follows: Randy Miltenberger – Nay; Kathy Warman – Yea; Royce Fugate – Yea; Promod Kumar – Yea; Kevin Skibiski – Yea, Mike Gray – Yea; Mike Freeman – Yea; Robert Hartnett, on behalf of the Landscape Architectural Division – Yea; Munnie Pacino – Absent. Motion carried. Mr. Anderson asked that all visitors leave the room. There being none, the meeting was declared closed to the general public.

Return to Open Session

At 12:00 Noon, the Board reconvened its open meeting for the purpose of meeting with members of the Board's staff.

Board Meets with Its Staff

At approximately 12:00 Noon the Missouri Board for Architects, Professional Engineers, Professional Land Surveyors and Landscape Architects met with its staff for the purpose of discussing licensure and policy issues. Those joining the meeting were: Nancy Plaster, Jan Gilliam, Karen Payne, Laurie Koelling, Brianne Rademan and Debbie Thompson.

At approximately 12:10 p.m., Assistant Attorneys General Patricia Churchill and Edwin Frownfelter joined the meeting.

Please note that at approximately 1:00 p.m., Ms. Plaster, Ms. Gilliam, Ms. Payne, Ms. Koelling, Ms. Rademan and Ms. Thompson departed the meeting.

Go Back into Closed Session

At 1:10 p.m., a motion was made by Mr. Miltenberger to go back into closed session pursuant to the provisions of Sections 610.021(1), (3) and (14) and 620.010.14(7), RSMo for the purpose of reviewing complaint and disciplinary matters. The motion was seconded by Mr. Hartnett and unanimously carried. Mr. Anderson asked all visitors to please leave the room. There being none, the meeting was declared closed to the general public.

Please note that at approximately 1:20 p.m., Ms. Churchill departed the meeting.

Please note that at approximately 2:25 p.m., Mr. Frownfelter departed the meeting.

Return to Open Session

At 4:30 p.m., the Board reconvened its open meeting for the purpose of adjournment.

Adjournment

A motion was made by Mr. Miltenberger and seconded by Ms. Jackson, to adjourn. The motion carried unanimously. The meeting adjourned at 4:30 p.m. on Tuesday, January 27, 2009.

ATTEST:

Executive Director

Approved by the Board on: _____