

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

**Heidelberg Meeting Room  
Chateau on the Lake Convention Center  
415 North State Highway 265  
Branson, Missouri  
November 3, 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, November 3, 2009 in the Heidelberg Meeting Room at the Chateau on the Lake Convention Center, 415 North State Highway 265, Branson, Missouri. The Board met in both open and closed sessions during the meeting as reflected in the minutes. The meeting was declared open for business.

**Members Present**

Randy Miltenberger, Chair of the Architectural Division  
Kathleen Warman, Member of the Architectural Division  
Royce Fugate, Chair 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  
Robert Hartnett, Chair of the Landscape Architectural Division  
Jerany Jackson, Member of the Landscape Architectural Division

**Member Not Present**

Promod Kumar, Member of the Professional Engineering Division  
John Teale, Member of the Professional Land Surveying Division  
Marian "Munnie" Pacino, Public Member

**Others Present**

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

### **Selection of Individual to Conduct Meeting**

Since the Board currently does not have a Board Chair, Ms. Kempker called the meeting to order and asked for nominations of an individual to conduct the remaining business of the meeting. The Members of the Board discussed the selection of an individual to conduct the business of the meeting. Upon discussion, Mr. Hartnett nominated Mr. Mike Gray to conduct the remaining business of the meeting. Ms. Warman seconded the nomination and it unanimously carried. Ms. Kempker then turned the meeting over to Mr. Gray.

### **Approval of Minutes**

A motion was made by Mr. Miltenberger to approve the minutes for the August 4, 2009 Open Board meeting as submitted. The motion was seconded by Mr. Fugate and unanimously carried.

### **Discuss the September 1, 2009 Professional Design Alliance Committee Meeting and the response from AIA-Missouri regarding the proposed changes to Chapter 327, RSMo**

The Board Members discussed the September 1, 2009 Professional Design Alliance Committee meeting and the response from AIA-Missouri regarding the proposed changes to Chapter 327, RSMo. After much discussion, Mr. Miltenberger made a motion directing Ms. Kempker to send an email to the American Institute of Architects-Missouri (AIA-MO), thanking them for their support of the proposed revisions of Chapter 327, RSMo which were presented and discussed at the Design Alliance Committee meeting. Ms. Kempker is to advise AIA-MO that the Board will always be open to working with the professional associations in the future with regard to making adjustments that will improve the workings of the Board; however, the Board feels that the signing of a Memorandum of Understanding is something that should be done by the four professional associations and not the Board. Ms. Kempker is to copy Missouri Society of Professional Engineers (MSPE) Missouri Society of Professional Surveyors (MSPS) and Missouri Association of Landscape Architects MALA on the email. The motion was seconded by Mr. Fugate and unanimously carried.

### **Review and discuss Nominations for NCEES National Awards**

The Members of the Board discussed nominations for NCEES National Awards. Upon discussion, the Board Members decided not to make any nomination for NCEES National Awards at this time.

**Discuss the Board's exhibit at the Missouri Association of Counties scheduled for November 22, 23 and 24, 2009, in Osage Beach, Missouri**

The Board Members discussed the upcoming Missouri Association of Counties' 38<sup>th</sup> Annual Conference and Trade Show which is scheduled for November 22, 23 and 24, 2009. Ms. Kempker advised that Mr. Hagerty is to deliver and set up the booth at the exhibit site on Sunday, November 22, 2009. Mike Freeman and Jerany Jackson volunteered to work the booth on November 22 and 23, 2009. Ms. Kempker also advised the Board Members that Ms. Warman had made up flyers to be handed out at the Conference and Trade show along with a copy of the Title Block example and a check list for County Planning Departments to utilize when issuing building permits.

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

Ms. Kempker gave a report on the status of the MOU between the Geology Board and the APELSLA Board. Ms. Kempker stated that the Geology Board is not making any statement until the final document has been received from JTFAP. This item was presented for informational purposes; therefore no action was taken.

**Update from Strategic Planning Committee**

Mr. Hartnett gave an update from the Strategic Planning Committee. He advised that the Board had received authorization to bid business management consultants. Mr. Hartnett is in the process of drafting a scope of services and is hoping to have more information to report to the Board at its January 2010 quarterly meeting.

**Discuss QBS Procedure**

The Members discussed Quality Based Selection (QBS). After much discussion, the Board decided that it wanted an Attorney General Opinion regarding QBS. Upon discussion, Mr. Miltenberger made a motion directing Ms. Kempker and Mr. Thompson to work with the Division of Professional Registration and the Attorney General's Office in getting an opinion regarding QBS, specifically with regard to

the delivery of envelopes with cost information at the time design professionals submit proposals for such work with public governmental bodies. Mr. Miltenberger directed Ms. Kempker and Mr. Thompson to include a copy of the QBS brochure from AIA when they submit the Attorney General Opinion Request. The motion was seconded by Mr. Fugate. A roll call vote was taken and unanimously carried.

### **Does House Bill 103 conflict with Board Rule 20 CSR 2030-2.040 or Board Rule 20 CSR 2030-21.010**

The Board discussed whether House Bill 103 conflicts with Board Rule 20 CSR 2030-2.040 or Board Rule 20 CSR 2030-21.010. The statute does not conflict with either chapter 327 or Board Rule 20 CSR 2030-2.040. The provision of the Board Rule currently refers to Section 106 of the 2006 International Building Code. Moreover, the General Assembly has decided that an owner of a single family residence or multi-unit dwellings of four units or less can decline to install a fire sprinkler system. It is the Board's opinion that any zoning authority that would not allow an owner of such a dwelling to decline the installing of a sprinkler system would be in violation of House Bill 103. The Members of the Board directed Ms. Kempker to include an article in the Board's newsletter regarding House Bill 103 conflicts with Board Rule 20 CSR 2030-2.040 or Board Rule 20 CSR 2030-21.010.

### **Report from Architectural Division**

Mr. Miltenberger stated that, at this time, the Architectural Division did not have anything to report.

### **Report from Professional Engineering Division**

Mr. Fugate reported that Mr. Richard C. Purcell, E-24726, State Conservation Engineer, met with the Professional Engineering Division on Monday, November 2, 2009, at his request, for the purpose of discussing the function of the Natural Resources Conservation Service (NRCS) and if its procedures are in compliance with Missouri's statutes and rules related to engineering. The Division Members pointed out the changes to the Board's rule on Title Block to Mr. Purcell as well as a Professional Engineer needs to sign, seal and date underneath the seal. Mr. Skibiski asked Mr. Purcell if he would be willing to serve on an ad hoc committee with MSPE to discuss/research the issues he presented more thoroughly. Mr. Purcell stated that he would be willing to serve on an ad hoc committee with MSPE. Upon discussion, Mr. Fugate made a motion directing Mr. Thompson to send a letter to Mr. Purcell thanking him for voluntarily meeting with the Professional Engineering Division Members. Mr. Thompson is to advise Mr. Purcell that even though most of the services the NRCS provides do not fall within

the definition of the practice of professional engineering. However, to the extent that those services do rise to the level of professional engineering, they must be completed under the direct personal supervision of a professional engineer. Moreover, within that category of services, some of those require the preparation of plans. The Board believes that such plans must be sealed by a licensee. Another matter discussed with Mr. Purcell was the titles of employees of the NRCS. It is the Board's position that anyone who uses a title in the state of Missouri that includes the word "engineer" that implies that such person can perform engineering services must be licensed by this Board as a professional engineer. That position is supported by the provisions of Section 327.181 as well as Missouri case law. Other entities, both governmental and private, have changed their titles to bring such titles into compliance with the provisions of Chapter 327, or, at a minimum, not used such titles in communications with the public. The Board is to ask that Mr. Purcell consider bringing NRCS into compliance in this regard. Mr. Thompson is to ask Mr. Purcell for a response so that the Board may discuss the matter further at its January 2010 meeting. The motion was seconded by Mr. Miltenberger and unanimously carried.

Also, the Professional Engineering Division Members discussed that since Missouri will not be offering the new 16 hour NCEES Structural Exam, it voted that effective with the April 2011 exam administration, if a comity application is submitted and the individual has taken and passed the 16 hour NCEES Structural Engineering exam in another jurisdiction, then the individual would be eligible to be licensed in Missouri as a Professional Engineer.

### **Report from Professional Land Surveying Division**

Mr. Freeman stated that, at this time, the Professional Land Surveying Division did not have anything to report.

### **Report from Landscape Architectural Division**

Mr. Hartnett stated that, at this time, the Landscape Architectural Division did not have anything to report.

### **Executive Director's Report**

Ms. Kempker presented the most recent information regarding the Board's Financial Report. She advised the Board that as of October 30, 2009, the financial balances were as follows:

Personal Service Balance was \$264,134.44. Originated with \$375,856. The Board has 70.28% of its Personal Service funds remaining.

E&E (Expense & Equipment) Balance was \$228,873.89. Originated with \$331,587. We have 69.03% of our E & E funds remaining.

Fund Balance was \$3,337,904.17.

Ms. Kempker announced that the Board's renewals for all four professions were sent out the first of October. The Board is currently in the process of conducting its random continuing education audit of licensees and each Division of the Board should have received a status report during their Division meetings on Monday, November 2<sup>nd</sup>. The Board audited the following percentages plus everyone who has had a complaint filed against them during this past renewal period: 10% of Land Surveyors; 2% of Professional Engineers; and, 5% of Architects.

Ms. Kempker advised that Senate Bill 298 which was filed last year contained proposed changes to Section 327.031, 327.041, 327.411, and 327.351. She reported that it did not go very far in the Legislature this past session mainly due to differences of opinion between the professional associations regarding the rotation of the Board Chair and the addition of a fourth member to the Professional Engineering Division. Since then the Design Alliance Committee met and as a result, it was agreed that the professional associations would again this year file the proposed language presented by the Board in hopes of getting it past in 2010. The proposed changes are as follows:

**RE: Section 327.031 – Board established, membership, officers, qualifications of members --how appointed--terms--vacancy, how filled--may sue and be sued--abolishment of council--transfer of powers, duties and funds.**

- Allow a Landscape Architect to serve as the chairperson and ranking vice chairperson of the Board
- Allow each Landscape Architect Member of the Board to cast a vote when voting on an action pending before the Board.
- Change the quorum from seven voting members and two members of each Division to eight voting members including at least one member of each Division. (As the law is currently written, if 12 out of the 14 members are present for a Board Meeting but the two members that are absent are from the same Division, the Board does not have a quorum and therefore is prohibited from meeting.)
- Allow active service as a faculty member while holding the rank of assistant professor or higher in an accredited school of landscape architecture to be regarded as the active practice of

landscape architecture. This change will make the landscape architectural language of the law consistent with the language referencing the other three professions regulated by the Board.

- Require the sequential rotation of the Board Chair among the four professions, starting with an architect and then followed by a professional engineer, professional land surveyor and landscape architect and the addition of a fourth member to the Professional Engineering Division.

- It will limit the term of the Board Chair to one four-year term

- Require the person who is appointed as the Chair of the Board to have previously served as a member of the Board thus ensuring that this person has the experience and knowledge needed to successfully supervise and expedite the work of the Board and its Divisions. OR, the Committee discussed coming up with alternative wording to allow the Board to elect its own Chair. If so, neither this nor the chair rotation becomes an issue. Ms. Kempker stated that since this was discussed at the September Design Alliance Committee meeting, Kathi Harness (lobbyist for AIA) conversed, via email, with Mary Nelson, Director of Boards and Commission for the Office of Governor Jay Nixon, about the possibility of changing the appointment of the Board's chair from being a gubernatorial appointment to a Board elected appointment like all other boards within the Division of Professional Registration. Ms. Nelson's response was "As to the suggestion of changing the designation of the chairperson, I will convey your inquiry to the Governor for feedback. The right to select a chair gives the Governor a valuable opportunity to ensure the leadership of a board will work cooperatively with his administration and agenda. Let me get back to you on this. I'd be very interested to know whether this proposal was submitted previously, and what the reaction was from those administrations." Ms. Harness replied that she was not aware of any time when the architects, engineers, etc. attempted to change the statute to allow its chair to be selected by the Board Members and she asked Ms. Kempker to confirm that, which she did.

- All other changes are merely housekeeping revisions.

**RE: Section 327.041 – Board, powers and duties--rules, generally, this chapter, procedure.**

- Change will allow the Board to issue a subpoena without the concurrence of the AG's office. Since the AG's office is not in

attendance at the Board's entire meeting, the current requirement for AG concurrence on all subpoenas is burdensome.

- Other boards within the Division of Professional Registration do not need concurrence of the AG's office when issuing a subpoena.

**RE: Section 327.411 – Personal seal, how used, effect of.**

- In light of the recent Supreme Court Ruling on the Bruce Bird case, the Board and professional associations felt it necessary to make the intent of the law more clear by clarifying what is deemed to be immediate personal supervision.

**RE: Section 327.351 – Professional license renewal--expired or suspended license, renewal procedure--professional development requirements for renewal, exception.**

- This change will allow the Professional Land Surveyors who choose to place their license in an inactive status to continue to use the title "Professional Land Surveyor" or the initials "PLS" after such person's name.
- Architects, engineers and landscape architects who place their license in an inactive status already have the statutory authority to continue to use their professional title; therefore, this change will make the land surveying language of the law consistent with the language referencing the other three professions regulated by the Board.

Ms. Kempker then reported on the status of Board Rules. She said the Proposed Amendment to Board Rule 20 CSR 2030-21.010 (Design of Fire Suppression Systems) which is being amended 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 so long as the layout and sizing of these systems are done by a Level III Technician certified in the Fire Suppression System Layout by the National Institute for Certification of Engineering Technologies (NICET) was filed with SB, JCAR and SOS on July 22, 2009. It appeared in the Missouri Register on September 1, 2009. The end of comment period was October 1, 2009. The Board received two letters in support of the proposed change. One from the Fire Marshal's Association of Missouri (FMAM) and the other from the Metropolitan Fire Marshal's Association (MFMA). Both associations urged final approval of the proposed rule change. The Final Order of Rulemaking was filed with SB & JCAR on October 8, 2009 and will be filed with the SOS's office on November 9, 2009. The Final Order of Rulemaking is scheduled to appear in the Missouri Register on December 15, 2009 and in the Code of State Regulations on December 31, 2009. The scheduled effective date is

January 30, 2010.

Ms. Kempker further reported that the Proposed Amendment to Board Rule 20 CSR 2030-2.040 (Standard of Care) which is being amended to reflect the current (2009) edition of the International Building Code, Section 106 was filed with SB, JCAR and SOS on July 22, 2009. It appeared in the Missouri Register on September 1, 2009. The end of comment period was October 1, 2009. No comments were received. The Final Order of Rulemaking was filed with SB & JCAR on October 8, 2009 and will be filed with the SOS's office on November 9, 2009. The Final Order of Rulemaking is scheduled to appear in the Missouri Register on December 15, 2009 and in the Code of State Regulations on December 31, 2009. The scheduled effective date is January 30, 2010.

Ms. Kempker then reminded the Board Members that Small Business Statements will need to be filed with every rule or amendment that the Board promulgates. Upon discussion, Mr. Miltenberger made a motion directing Ms. Kempker to publish all future proposed Rules and amendments to Board Rules in the Board's newsletter, "Dimensions" as well as on the Board's web site allowing sufficient time for the public to comment on each rule or amendment. The motion was seconded by Mr. Hartnett and unanimously carried.

Ms. Kempker announced that there has been some checking into the licensure status of a number of individuals being considered for appointment as Board Members; however, to date, no new appointments have been made. Currently, the Board has three vacant positions on the Board, eight members serving in expired terms, and three members serving current terms, Mike Freeman who has a term expiring in 2010 and Kevin Skibiski & Bob Hartnett who have terms expiring in 2011. Therefore, the Board is looking at having 11 new members out of a total of 14.

Ms. Kempker announced that the Fall/Winter 2009 Newsletter is in the process of being finalized and will hopefully be mailed in mid December. Ms. Kempker asked the Board Members if they still wish to send a full newsletter twice per year, or if they would consider sending one full newsletter including articles from all chairs in the Spring and then send a shorter version without the articles from all four chairs in the Fall. Upon discussion, it was decided to continue to publish 2 full versions of the newsletter. Mr. Hartnett then made a motion directing Ms. Kempker to go back to the electronic version of the Board's newsletter by January 1, 2012. Starting with the 2010 renewals, Ms. Kempker is to enclose an announcement advising that effective January 2010, the Board's newsletter will be sent electronically. Therefore, each licensee must include their email address on their renewal form when they renew their license. This same flyer is to also be mailed with the 2011 renewals.. The motion was seconded by Mr. Kumar. The motion carried with Mr. Fugate voting against the motion.

Next, Ms. Kempker announced that she sent out 26 House Bill 600 Suspension Notice letters to tax delinquent licensees advising if they don't come into compliance with Revenue that their license will be suspended effective November 21, 2009.

Ms. Kempker reported that she recently ran a report that showed all of the Board's licensees who were licensed 50 years or longer and ended up with a total of 89 licensees, four of which were licensed over 60 years. Ms. Kempker stated that she would like to send a certificate to those licensees in recognition of their years of service if this is something the Board agrees with. Ms. Kempker also prepared an article listing their names for publishing in the next newsletter. Upon discussion, Mr. Hartnett made a motion directing Ms. Kempker to send a letter of invite to the licensees who have been licensed 60 years or longer to attend a Board Meeting in recognition of those many years of service. At that time, the Board will present them with a certificate. If the individual(s) cannot attend, then Ms. Kempker is to mail the certificate to them. The motion was seconded by Mr. Fugate and unanimously carried.

Ms. Kempker stated that she just recently received copies of the Missouri Sunshine Law 2009 booklet regarding the state's open meetings and records law from the Missouri Attorney General's Office. Ms. Kempker then distributed copies to each of the Board Members.

### **Date and Location of November 2010 Board Meeting**

The Board Members discussed the date and location of the November 2010 Board Meeting. Therefore, the Board decided that the November meeting for 2010 will be held on November 8, 9 and 10, 2010.

Please note that at approximately 10:50 a.m., Mr. Kumar departed the meeting.

### **Motion to Close**

At approximately 10:50 a.m., Mr. Gray 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. Mr. Fugate seconded the motion. A roll call vote was taken as follows: Randy Miltenberger – Yea; Kathy Warman – Yea; Royce Fugate – Yea; Promod Kumar – Absent; Kevin Skibiski – Yea; Mike Gray – Yea; Mike Freeman – Yea; and, Robert Hartnett, on behalf of the Landscape Architectural Division – Yea; Motion carried. Mr. Gray asked that all visitors leave the room. There being none, Mr. Gray declared the meeting closed to the general public.

**Return to Open Session**

At 4:50 p.m., the Board reconvened its open meeting for the purpose of adjournment.

**Adjournment**

A motion was made by Mr. Miltenberger to adjourn the meeting. Mr. Fugate seconded the motion and unanimously carried. The meeting adjourned at 4:50 p.m. on Tuesday, November 3, 2009.

ATTEST:

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Executive Director

Approved by the Board on: \_\_\_\_\_