

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

Meadowbrook/Forest Hills Meeting Room  
St. Louis Marriott West  
660 Maryville Centre Drive  
St. Louis, Missouri  
May 4, 2010

The Missouri Board for Architects, Professional Engineers, Professional Land Surveyors and Landscape Architects was called to order at 8:00 a.m. on Tuesday, May 4, 2010 in the Meadowbrook/Forest Hills Meeting Room, St. Louis Marriott West, 660 Maryville Centre Drive, St. Louis, Missouri. The Board met in both open and closed sessions during the meeting as reflected in the minutes. Ms. Kempker declared the meeting open for business.

**Members Present**

Randy Miltenberger, Chair of the Architectural Division  
Kenneth Frashier, Member of the Architectural Division  
Kathy Achelpohl, Member of the Architectural Division  
Royce Fugate, Chair of the Professional Engineering Division  
Kevin Skibiski, Member of the Professional Engineering Division  
Mike Freeman, Chair of the Professional Land Surveying Division  
Dan Govero, Member of the Professional Land Surveying Division  
Mike Flowers, 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**

Abiodun "Abe" Adewale, Member of the Professional Engineering Division

**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Since the reappointment of Jim Anderson was withdrawn by Governor Nixon, the Board currently does not have a Board Chair. Therefore in the absence of 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, Ms. Jackson nominated Mr. Robert Hartnett to conduct the remaining business of the meeting. Mr. Fugate seconded the nomination and it unanimously carried. Ms. Kempker then turned the meeting over to Mr. Hartnett.

### **Approval of Minutes**

A motion was made by Mr. Skibiski to approve the January 26, 2010 Open Board meeting, the February 2, 2010 Open Committee of the Board Telephone Conference Call, the February 10, 2010 Open Strategic Plan Committee of the Board Telephone Conference Call, and the April 15, 2010 Open Strategic Plan Committee of the Board Telephone Conference Call minutes as submitted. The motion was seconded by Ms. Jackson and unanimously carried.

### **Elect members to serve on a subcommittee to work with legal counsel to come up with a plan to be more consistent with discipline**

The Board Members discussed having a subcommittee to work with the Board's Legal Counsel to come up with a plan to be more consistent with discipline. Ms. Jackson and Messrs. Frashier, Flowers and Fugate along with the Board's General Counsel, Curt Thompson, volunteered to be on the subcommittee with Ms. Jackson serving as Chair of the subcommittee. Ms. Kempker was directed to send a list of all civil penalties, and a copy of the NCEES Discipline Guidelines along with the Real Estate Appraisers AG case referral checklist to the committee members. The subcommittee will then make a report of their findings to the Board at its August 2010 quarterly meeting.

Please note that at approximately 8:10 a.m., Mr. Jerald A. Saunders, Jr., LA-0007, President of Missouri Association of Landscape Architects (MALA), joined the meeting.

Please note that at approximately 8:14 a.m., Mr. Abiodun “Abe” Adewale joined the meeting.

**Report on Circuit Court decision regarding Suspended Imposition of Sentences (SIS)**

Mr. Thompson discussed a recent Cole County Circuit Court decision regarding Suspended Imposition of Sentences (SIS) with the Board Members. Mr. Thompson stated that the question before the Court was whether an individual who entered a guilty plea to a sexual abuse charge in 1992 and received a suspended imposition of sentence (SIS) is required to register as a sexual offender because of a federal law passed in 2006. Cole County Circuit Judge Richard Callahan found the individual exempt from sexual offender reporting and registration requirements. Judge Callahan ordered that the individual’s name be removed from the Sexual Offender Registry. Mr. Thompson stated that he would expect a challenge to a Board’s disciplinary action based upon an SIS, but since licensing laws are written somewhat differently than the predator law, hopefully the Board’s action can withstand a challenge. This item was presented for informational purposes; therefore no action was taken.

**Discuss Curt Thompson’s research (as it relates to Chapter 326 – Accountancy Board) regarding the settlement agreement between the Iowa Board and Aivars Leo Pelds and whether it could be adapted to Missouri with some modification of the Board’s Rules**

At the Board’s January 26, 2010 meeting, Mr. Freeman had presented a settlement agreement between the Iowa Board and Aivars Leo Pelds and asked whether this agreement could be adapted to Missouri with some modifications of the Board’s Rules. Mr. Thompson was directed at that time to research the matter and make a report to the Board at its May 2010 meeting. Mr. Thompson then advised of his research and reported to the Board that the Iowa Board has the ability to do “peer reviews” and the Missouri Board does not. He advised that this Board would have to go through extensive statutory revisions in order to have the ability to do “peer reviews.” Since the Board decided not to proceed with statutory revisions, no further action is necessary at this time.

**Discuss Kevin Skibiski’s news article entitled “Incidental Practice”**

The Board Members reviewed Mr. Skibiski’s news article entitled “Incidental Practice.” Ms. Kempker advised that she would change “less than 0 people” to reference “not more than 9 people.” The Board was in agreement with this change. Mr. Miltenberger then made a motion directing Ms. Kempker to make this change and include Mr. Skibiski’s news article entitled “Incidental Practice” in the

Board's next newsletter. The motion was seconded by Mr. Fugate and unanimously carried.

**Discuss the "Statement of Support" for the implementation of Computer Based Testing submitted by the Member Board Administrator Networking Group of NCEES**

The Members of the Board discussed the "Statement of Support" for the implementation of Computer Based Testing submitted by the Member Board Administrator Networking Group of NCEES. Upon discussion, the Board Members were generally in favor of supporting the Member Board Administrator Networking Group of NCEES' "Statement of Support and would most likely vote in favor of the statement of support at the NCEES Central Zone meeting in Salt Lake City, Utah on May 13, 14 and 15, 2010 as well as at the NCEES Annual Meeting in Denver, Colorado on August 18, 19, 20 and 21, 2010.

**Discuss proposed revisions to NCEES Zone Meeting and Continuity Guideline**

The Board Members discussed the proposed revisions to NCEES Zone Meeting and Continuity Guidelines. Ms. Kempker advised the Board Members that the guidelines will be discussed during the joint meeting of the Western and Central Zones as well as during each individual zone meetings. NCEES Executive Director Jerry Carter had stated that the goal is to have each Zone adopt the revisions so that NCEES will have greater consistency between zone operations and to reflect current day practices in the guidelines document. Messrs. Kevin Skibiski, Abe Adewale and Mike Freeman will be attending the upcoming zone meeting on May 13, 14 and 15, 2010 in Salt Lake City, Utah. Since the Board did not see anything unusual in the guidelines, they stated that they would most likely vote in favor of the NCEES Continuity Guidelines when the matter comes up during the zone meeting.

**Since Chapter 327.391, RSMo was revised and now only references land surveying and the new Section 327.392, RSMo no longer references a degree in Science, does the Board want to rescind Board Rule 20 CSR 2030-14.050?**

Ms. Kempker advised the Members of the Board that since Chapter 327.391, RSMo was revised and now only references land surveying and the new Section 327.392, RSMo no longer references a degree in Science, the Board might want to consider rescinding Board Rule 20 CSR 2030-14.050, Definition of Degree in Science as Used in Section 327.391, RSMo. Upon discussion, Mr. Govero made a motion to rescind Board Rule 20 CSR 2030-14.050. The motion was seconded by Mr. Fugate and unanimously carried.

**Is the Board interested in conducting its open meetings via webinars to make it easier for members of the public to participate?**

Ms. Kempker asked the Board if they were interested in conducting its open meetings via webinars to make it easier for members of the public to participate. Ms. Kempker advised that she had recently participated in a “webinar” with the Council of Landscape Architectural Registration Boards (CLARB) and found the experience very easy and helpful. After the meeting is recorded, it can then be placed on the Board’s web site to be listened to at a later date. After some discussion, the Board Members decided that since this was included in the Board’s Strategic Plan, it will not proceed with recording the Board’s open meetings via webinars at this time.

Please note that at approximately 8:45 a.m., Assistant Attorney General Edwin Frownfelter joined the meeting.

**Update from the March 4, 2010 Design Alliance meeting**

The Members of the Board reviewed and discussed the March 4, 2010 Professional Design Alliance Committee meeting minutes. Mr. Hartnett stated that the Committee discussed the Board’s Strategic Plan, Board appointments, specific discipline licensing for structural engineers, the BS+30 program, civil penalties, design build, proposed legislative changes to Chapter 327, SB 1000, QBS, incidental practice, construction bond legislation, and the Memorandum of Understanding (MOU). It was noted by the Board that the Memorandum of Understanding (MOU) between the professional associations and the Board had been signed by the associations but not by the Board. The MOU is an agreement between the associations and the Board to work together on changes to Chapter 327, RSMo. This item was presented for informational purposes; therefore no action was taken.

**Next Design Alliance meeting is scheduled for September 2010 – who will be able to attend and on what dates?**

The Members of the Board discussed the meeting date of the next Professional Design Alliance Committee meeting. After much discussion, the Board directed Ms. Kempker to notify Mr. Bruce Wylie, Executive Director for Missouri Society of Professional Engineers (MSPE) and coordinator for the Design Alliance meetings, advising that representatives of the Board would be available to meet again sometime the week of September 20<sup>th</sup> or later.

### **Discuss whether there should be specific discipline licensing for Structural Engineers**

The Members of the Board discussed whether there should be discipline specific licensing for Structural Engineers in the future and whether or not the Missouri Board should offer the new 16 hour NCEES structural exam for convenience sake even though Missouri does not currently license by discipline. Ms. Kempker raised some concerns and issued with Missouri administering the exam which can be taken in 2 different administrations over a period of years as well as the consequences that might result from a PE practicing structural engineering in Missouri who takes the new 16 hour structural exam in Missouri but fails it. This of course caused the Board Members to want to research the matter further. Mr. Skibiski stated that he would like to do some research in this matter and asked if the full Board would support him in setting up and chairing an ad hoc committee consisting of various members from around the state to discuss this matter further. The Board Members stated that they would support Mr. Skibiski in this matter. Mr. Skibiski stated that he would report his findings to the Board at its August 2010 Quarterly meeting.

### **Discuss a letter from Donovan Larson, P.E. regarding Preparation of Easement Descriptions**

The Members of the Board discussed a letter from Mr. Donovan Larson, P.E. regarding preparation of easement descriptions. After much discussion Mr. Freeman made a motion directing Ms. Kempker to send a letter to Mr. Larson stating that because of questions raised about whether easements tied to and running along a property boundary can be written by someone other than a land surveyor, and due to some disagreements within the professions regarding precisely what the statute is intended to provide, the Board will continue to consider whether such authority to prepare surveys for easements is a power reserved exclusively to the Land Surveyor. The Board does reiterate that blanket easements prepared by entities with condemning authority are not enforceable and urges its licensees to work with such entities to eliminate that practice. Also, Ms. Kempker is to advise Mr. Larson that due to the number of inquiries the Board has received pertaining to the newsletter article entitled, "Who can write a legal description?" the Board will be publishing another article in its Summer 2010 edition of *Dimensions* to provide further clarification on the matter. The motion was seconded by Mr. Fugate and unanimously carried. Mr. Freeman volunteered to write the article clarifying the legal description matter for the Summer 2010 edition of the Board's newsletter *Dimensions*.

### **Discuss the 2010 NCEES Annual Meeting scheduled for August 18, 19, 20 and 21, 2010 in Denver, Colorado, the 2010 NCARB Annual meeting scheduled for June 23, 24, 25 and 26, 2010 in San Francisco, California, and**

**the 2010 CLARB Annual meeting scheduled for August 26, 27 and 28, 2010 in Baltimore, Maryland as well as who all will be attending.**

Ms. Kempker asked who would like to attend the 2010 NCEES Annual Meeting scheduled for August 18, 19, 20 and 21, 2010 in Denver, Colorado. Messrs. Freeman, Adewale, and Skibiski stated that they would like to attend the meeting and that Mr. Skibiski should be designated as the funded delegate. Messrs. Miltenberger and Frashier advised Ms. Kempker that they would like to attend the 2010 NCARB Annual meeting scheduled for June 23, 24, 25 and 26, 2010 in San Francisco, California. Ms. Kempker advised that she had already submitted a request for out-of-state travel for Mr. Frashier and herself and had received approval from the Division of Professional Registration. However, she would immediately, upon her return to the Board office, submit an amended out-of-state travel request for Mr. Miltenberger to possibly attend the meeting as well. Ms. Jackson stated that she would like to attend the 2010 CLARB Annual meeting scheduled for August 26, 27 and 28, 2010 in Baltimore, Maryland especially since she is a Regional Director. Mr. Hartnett stated that he would like to also attend the 2010 CLARB Annual meeting as the funded delegate. Ms. Kempker stated that she is also planning to attend the CLARB meeting and that she will submit out-of-state travel requests for all the meetings upon receipt of the meeting agendas. She will then advise the members of the approval for when and if it is 2a qreceived. The Board directed Ms. Kempker to include the new Board Chair in any of the out-of-state travel requests, if and/or when one has been appointed to the Board.

**Discuss draft PDH rule amendment to address patents (20 CSR 2030-11.015)**

The Members of the Professional Engineering Division proposed to amend Board Rule 20 CSR 2030-11.015 to allow Professional Development Hours (PDHs) for a patent. Ms. Kempker asked the other Board Members if they were interested in giving continuing education credit for patents in their professions. The Members of the Architectural and Land Surveying Divisions stated they saw no need for the allowance of patents in their professions. However, the Members of the Landscape Architectural Division were in favor of allowing credit for patents. Upon discussion, Mr. Skibiski made a motion that the Board propose an amendment to Board Rules 20 CSR 2030-11.015 and 20 CSR2030-11.035 to allow 10 Professional Development Hours or Continuing Education Units for a work-related patent. The motion was seconded by Ms. Jackson and unanimously carried. It was noted by the Board that the 10 PDHs/CEUs would be awarded only one time for each patent. Since the Missouri Small Business Regulatory Fairness Board believes the most effective way to accomplish regulatory fairness for small businesses is by fostering communication during the promulgation, enforcement, and review of rules and regulations, the Board will be soliciting input from small business owners regarding this rule change by publishing the recommended amendments to Board Rule 20 CSR 2030-11.015 and 20 CSR2030-11.035 in its newsletter, *Dimensions*.

**Discuss letter from MSPE President Ben Ross asking for the Board's ruling regarding the following questions:**

- **Does an individual serving as Dean of a Missouri engineering school, by serving in this capacity, hold himself or herself out as willing or able to render services such as engineering teaching of advanced engineering subjects or courses related thereto and therefore practice as a professional engineer in the State of Missouri?**
- **Can university professors with degrees in botany and biology become licensed professional engineers?**

The Board Members discussed the letter from MSPE President Ben Ross, P.E. wherein he was asking for the Board's ruling on the above questions. After much discussion, Mr. Fugate made a motion directing Ms. Kempker to send a letter to Mr. Ralph Quatrano, Dean of the School of Engineering and Applied Science at Washington University in St. Louis, Missouri, advising that since he was named the new Dean of Engineering and Applied Science and is not a PE, the Board has concerns with who will be overlooking the engineering department of Washington University. Therefore, the Members of the Professional Engineering Division would like to meet with members of Washington University at a date and location of their choice to discuss and/or address these concerns. The motion was seconded by Ms. Jackson and unanimously carried. Mr. Skibiski and Mr. Adewale stated that they would be available to meet with members of Washington University. Mr. Fugate then made a motion directing Ms. Kempker to send a letter Mr. Ross advising him of the Board's intent to meet with officials of Washington University and also to advise that the Board is of the opinion that university professors with degrees in botany and biology, would have to follow the law by also having a post graduate degree in engineering from an ABET accredited university in order to qualify for licensure. The motion was seconded by Ms. Jackson and unanimously carried.

Please note that at approximately 9:50 a.m., Mr. Saunders departed the meeting.

**Probation Violation Hearing**

At approximately 10:00 a.m., the Board conducted a Disciplinary Complaint Hearing in the matter of the Missouri Board for Architects, Professional Engineers, Professional Land Surveyors and Landscape Architects vs. Dennis Stanley Nelson. Mr. Nelson did not appear. Assistant Attorney General Edwin Frownfelter appeared for the Board. Mr. Hartnett stated for the record that the hearing had convened. The record was established by a certified court reporter and a copy

made a part of the Board's file in Case No. 10-001. When the hearing was concluded (at approximately 10:45 a.m.), Mr. Frownfelter was told that the Board would issue an Order soon after it has completed its deliberations. Mr. Frownfelter then departed.

### **Motion to Close**

At approximately 10:45 a.m., Mr. Hartnett 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. The motion was seconded by Ms. Jackson. A roll call vote was taken and unanimously carried. Mr. Hartnett asked that all visitors leave the room. There being none, Mr. Hartnett declared the meeting closed to the general public.

### **Reconvene in Open Session**

At approximately 11:00 a.m., the Board reconvened its open meeting for the purpose of holding a disciplinary hearing in the matter of the Missouri Board for Architects, Professional Engineers, Professional Land Surveyors and Landscape Architects vs. Kenneth K. Shoemaker.

### **Disciplinary Hearing**

At approximately 11:00 a.m., the Board conducted a Disciplinary Complaint Hearing in the matter of the Missouri Board for Architects, Professional Engineers, Professional Land Surveyors and Landscape Architects vs. Kenneth K. Shoemaker. Mr. Shoemaker did not appear. Assistant Attorney General Edwin Frownfelter appeared for the Board. Mr. Hartnett stated for the record that the hearing had convened. The record was established by a certified court reporter and a copy made a part of the Board's file in Case No. 2010-000242. When the hearing was concluded (at approximately 11:25 a.m.), Mr. Frownfelter was told that the Board would issue an Order soon after it has completed its deliberations. Mr. Frownfelter then departed.

### **Motion to Close**

At approximately 11:25 a.m., Mr. Hartnett 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. Freeman 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. The motion was seconded by Ms. Jackson. A roll call vote was taken and unanimously carried. Mr. Hartnett asked that all visitors leave the room. There being none, Mr. Hartnett declared the meeting closed to the general public.

### **Reconvene in Open Session**

At approximately 11:55 a.m., the Board reconvened its open meeting for the purpose of meeting with Mr. Art Davis of the Art Davis Group, LLC.

### **Personal Appearance**

At approximately 12:00 noon the Members of the Board met with Mr. Art Davis of the Art Davis Group, LLC for the purpose of discussing strategic planning services. During the Board's working lunch, Mr. Davis presented his final Strategic Planning Timeline to the Board. After much discussion, Mr. Adewale made a motion to adopt the Strategic Plan as presented by Mr. Davis. The motion was seconded by Ms. Jackson and unanimously carried. Progress on issues identified in the Strategic Plan will be discussed at the Board's August 2010 meeting.

Please note that Mr. Frownfelter departed the meeting at approximately 1:00 p.m.

### **Report from Architectural Division**

Mr. Miltenberger stated that, at this time, the Members of the Architectural Division did not have anything to report, other than they thought the Open House Forum on May 3<sup>rd</sup> was a success with approximately 40 Architects attending.

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

Mr. Fugate stated that, at this time, the Members of the Professional Engineering Division did not have anything to report, other than they too thought the Open House Forum on May 3<sup>rd</sup> was a big success with approximately 140 Professional Engineers attending.

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

Mr. Freeman stated that, at this time, the Members of the Professional Land Surveying Division did not have anything to report, other than they also thought the Open House Forum on May 3<sup>rd</sup> was successful. Mr. Freeman said they had 12 Professional Land Surveyors in attendance.

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

Ms. Jackson stated that, at this time, the Members of the Landscape Architectural Division did not have anything to report, other than, like the other Divisions, they too thought the Open House Forum on May 3<sup>rd</sup> was successful. They had six Landscape Architects in attendance.

Because of the success of this Open House Forum, the Board unanimously decided to host another Forum in conjunction with the Board's August 2010 meeting in Independence, Missouri. The Members directed Ms. Kempker to structure the August Forum the same as the one held on May 3<sup>rd</sup>.

### **Discussion regarding response and turnaround time regarding conference call polls, mail ballot votes, and applications**

Ms. Kempker held a discussion with Board Members regarding how important the response and turnaround time is regarding conference call polls, mail ballot votes and licensure applications. She asked if the Board Members could make sure that all licensure files are returned to the Board Office within 2 weeks of receipt. Also, Ms. Kempker asked the Board Members to respond immediately or at least within 24 hours when being polled for a conference call or responding to a mail ballot vote.

## **Executive Director's Report**

Ms. Kempker presented the most recent information regarding the Board's Financial Report. She advised the Board that as of April 30, 2010, the fund balances were as follows:

Personal Service Balance was \$103,181.25. Originated with \$375,856. The Board has 27.46% of its PS funds remaining.

E&E (Expense & Equipment) Balance was \$91,703.09. Originated with \$331,587. The Board has 27.66% of its E & E funds remaining.

Fund Balance was \$3,636,828.05.

The Board's FY2011 Budget Request, which was submitted via HB 2007 was truly agreed and finally passed. The Board's FY2011 budget will remain the same as what its FY2010 appropriated budget was.

For FY 2011, the Board was appropriated a total of \$707,443 for Expense and Equipment and Personal Service (\$331,587 was appropriated for E&E and \$375,856 for PS); \$122,100E for transfers (i.e., AHC & AG); and, \$278,472E for payment of operating expenses to the Division of Professional Registration. Fringe Benefits expenses are not included in the Board's appropriation but they run approximately \$105,462/year.)

Ms. Kempker advised the Board Members that due to the budget crisis that the state is currently in, the state's Office of Administration (OA) is proposing the consolidation of all state vehicles. The Division of Professional Registration has already been directed to reduce its fleet of vehicles by six (6). The Division's pool vehicles as well as those owned by the autonomous boards currently totals 14, plus they have one (1) mail car which will be exempt from the consolidation. The Division has proposed to surrender the oldest vehicles thus keeping the newer ones. The van which our Board currently owns is only one (1) year old. Therefore, it most likely will be transferred to the pool and the Board would then be reimbursed for the cost of it. All vehicle usage after the consolidation will be funded through cost allocations. The cost allocation for all boards within the Division of Professional Registration will be based on each board's three (3) year licensee count. As of now, OA does not know where it plans to house these vehicles (all 400 or so, of them). OA will need to set up a dispatching service and all state employees will have to drive their personal vehicles to the dispatching site to pick up their state car. Ms. Kempker stated that she hopes they will let the Division of Professional Registration keep the remaining eight (8) vehicles on site at the Division but she did not think would happen.

Ms. Kempker announced that due to the Board's increased efficiencies in its operating procedures, the Board's fund balance has grown close to the point of

being swept by current statute. She reminded the Board Members that per current statute, in order to avoid a sweep of the Board's fund, our balance needs to be kept under \$3,959,943.00, or 3 times its appropriation (3 x \$1,319,981.00). Ms. Kempker stated that she has had a number of discussions with Division and Department budget staff in an effort to come up with a fee that would substantially reduce the Board's fund balance to a level to avoid being swept but yet still sustain the Board for many years without having to go back in for a fee increase. Based on those discussions which involved a detailed analysis of the Board's current fund balance as well as the Board's projections for the next five (5) years, it was determined that the Board could do an emergency rule to decrease the renewal fee one of two ways:

1. Do a drastic decrease by lowering the renewal fee that is due at the end of this year (FY2011) as well as the renewal fee that is due at the end of next year (FY2012) down to \$5.00. Then, in FY2013 and thereafter, reduce it to \$50.00, similar to our previous one time reduction of \$100 to \$30 and then thereafter \$60. With this route, the \$50 biennial renewal fee will carry the Board for a long time. In fact, in another 4 or 5 years, the Board may be able to reduce that \$50.00 fee down to \$40.00. OR,
2. Take a more conservative approach and reduce the fee across the board down to \$35.00. If the Board took this approach, its fund would decrease at a more gradual rate; however, the Board would most likely have to consider doing a fee increase in FY2017 or FY2018.

Ms. Kempker advised the Board that Senate Bill 1000 and House Bill 2305 were filed this legislative session, both of which propose to remove \$1,640,000 from the Board's fund. She stated that at the current time, it looks like neither of these bills are going to pass this year; however, there are still a couple of more weeks in session. If, by chance, one or both of these bills were to actually pass, the Board's fund then could not handle the drastic decrease.

After much discussion, Mr. Govero made a motion to file an emergency rule and rule amendment to lower the renewal fee that is due at the end of this year (FY2011) as well as the renewal fee that is due at the end of next year (FY2012) down to \$5.00, then \$50.00 for FY2013 and thereafter. The motion was seconded by Mr. Frashier. A roll call vote was taken as follows: Randy Miltenberger – Nay; Kenneth Frashier – Yea; Kathy Achelpohl – Yea; Royce Fugate – Nay; Kevin Skibiski – Nay; Abiodun “Abe” Adewale – Nay; Mike Freeman – Nay; Mike Flowers – Nay; Dan Govero – Yea; Jerany Jackson on behalf of the Landscape Architectural Division – Nay; Munnie Pacino - Nay. The motion did not carry. A motion was then made by Mr. Miltenberger to file an emergency rule followed by a rule amendment to reduce the Board's renewal fee for FY2011 and all subsequent years to \$35.00 contingent upon the fact that \$1,640,000 of the Board's fund is not

removed. The motion was seconded by Mr. Flowers and unanimously carried. If, by chance, the Board's fund is reduced by the \$1,640,000 Ms. Kempker was then directed to schedule a Board conference call. Ms. Kempker advised the Board Members that if that were to happen she would re-calculate the Board's revenue projections based on the reduced fund balance and schedule the Board's conference call to discuss other options at that time. Since the Missouri Small Business Regulatory Fairness Board believes the most effective way to accomplish regulatory fairness for small businesses are by fostering communication during the promulgation, enforcement, and review of rules and regulations, the Board will be soliciting input from small business owners regarding this rule change by publishing the recommended amendment to Board Rule 20 CSR 2030-6.015 on its website.

Ms. Kempker stated that at the Board's January 2010 meeting, she was directed to put together a Board Member Orientation Manual to help instruct new members by outlining the duties, responsibilities and time commitment of a Board Member as well as the composition of the Board. She distributed the "Board Member Orientation Manuals" to each Board Member and asked that if any of the Board Members had any suggestions or comments, to please let her know. The Members were very impressed with the manual and thanked Ms. Kempker for assembling such an informative and useful product. Ms. Kempker stated when the Manual gets updated, a revision date will be noted.

Ms. Kempker advised the Board Members that during each Division Meeting, each Member was provided with the status of the continuing education audits. She asked if anyone had any suggestions or comments, to please let her know. There being none, she moved on to the next topic.

At the current time, Ms. Kempker reported the Board has no pending proposed rules or amendments. However, the Division Chairs may have motions for some rule changes based on discussions they had in their Division Meetings yesterday. The Members of the Professional Land Surveying Division advised the Board Members that it is their thought that land surveyors should be included in Board Rule 20 CSR 2030-2.050(1) Title Block. Therefore, Mr. Freeman made a motion to amend Board Rule 20 CSR 2030-2.050(1) Title Block to state: "An architectural, engineering, **land surveying** or landscape architectural entity shall incorporate a title block on all drawings and other documents required to be signed and sealed by Chapter 327, RSMo and these regulations." The motion was seconded by Ms. Jackson and unanimously carried. Since the Missouri Small Business Regulatory Fairness Board believes the most effective way to accomplish regulatory fairness for small businesses are by fostering communication during the promulgation, enforcement, and review of rules and regulations, the Board will be soliciting input from small business owners regarding this rule change by publishing the recommended amendment to Board Rule 20 CSR 2030-2.050(1) in its newsletter, *Dimensions* and on the Board's website.

Next, Ms. Kempker discussed Legislation with the Board Members. She stated that House Bill 2007, the "Budget" bill, was truly agreed and finally passed. Ms. Kempker reported that Senate Bill 1000 and House Bill 2305 will most likely not get passed this legislative session. These are the bills which propose to transfer certain stated amounts from 23 funds to the state general revenue fund, specifically, \$1,640,000 from the Board's fund. The last action on SB 1000 was a hearing conducted in the Senate on March 3<sup>rd</sup> and the last action on HB 2305 was on March 15<sup>th</sup> when the House read it a second time.

The proposed changes to Chapter 327, RSMo as outlined in House Bill 1639 were moved into Senate Bill 754, which is known as this year's PR Omnibus Bill. The House Committee Substitute for Senate Committee Substitute for SB 754 has been voted "do pass" by both the Senate and the House. Ms. Kempker stated that this bill appeared to be moving very well and most likely will get passed.

Ms. Kempker discussed Senate Bill 621 with the Board Members. She stated that if passed, this bill will modify Section 327.272 which is currently entitled "Practice as professional land surveyor defined." It requires the Office of the State Land Surveyor in the Department of Natural Resources to promulgate rules and regulations establishing minimum standards for digital cadastral parcel mapping. Any map designed and used to reflect legal property descriptions or boundaries for use in a digital cadastral mapping system must comply with such rules, unless the party requesting the map specifies otherwise in writing, the map was designed and in use prior to the promulgation of the rules, or the parties requesting and designing the map already agreed to their contractual terms on the effective date of the rules promulgation. The practice of land surveying shall include working with positions of the United States Public Land Survey System. It shall also include creating, preparing or modifying electronic or computerized data relative to the performance of certain other surveying activities; however, such acts shall not be exclusive to professional land surveyors unless they affect real property rights. The revisions to Section 327.272 have been moved to House Committee Substitute for Senate Substitute for Senate Committee Substitute for SB 580. Ms. Kempker advised that at this point, it does not look like SB 621 is going to pass this year. The last action on it was a second reading by the House on March 1<sup>st</sup>. However, HCS for SS for SCS for SB 580 appears to be moving right along and very well may get passed. The last action reported on it is that it was referred to Rules Committee pursuant to Rule 25(32)(f) on April 22, 2010.

Ms. Kempker advised the Board Members that Senate Bill 745, which creates a statewide energy code for new building construction and renovation, is not moving. The last action on it was a hearing that was conducted in the Senate on March 2<sup>nd</sup>.

Ms. Kempker reported to the Board Members that Senate Bill 714, which modifies provisions relating to state retirement, is moving right along and may very well get passed. If passed, it will not have any impact on current Board or state employees but will have a major impact on all future Board/state employees.

Ms. Kempker stated that House Bill 1710, which authorizes school districts to enter into design-build contracts for construction projects, is not moving. The last reported action on it occurred on January 20<sup>th</sup> at which time it was read the second time by the House.

Ms. Kempker stated that House Bill 2377, which removes February 12, Lincoln's Birthday and May 8, Truman's Birthday from the list of established public holidays of the state of Missouri is not moving. However, the language of this bill has been attached to several other pieces of legislation that are moving and may get passed. As far as we know all of the language has an emergency clause attached, which means if the piece of legislation passes and is signed by the Governor the holiday language should go into effect immediately. If that happens before May 7<sup>th</sup>, that day will no longer be a state holiday and will be considered a regular work day for all Board/state employees.

Ms. Kempker advised the Board Members that she had been told to watch for new Board Member appointments to occur in June. Currently, the Board has two vacant positions on the Board (Board Chair and a Landscape Architect Member) and four members serving in expired terms. Those members are Randy Miltenberger, Royce Fugate, Jerany Jackson and Munnie Pacino.

Ms. Kempker announced that the Summer 2010 Newsletter is currently being drafted and that all articles have been timely submitted. She thanked all the Board Members for being so prompt in their submittals. Due to the timely submission of all articles, the newsletter should go out on schedule as planned.

Ms. Kempker advised that two requests for Attorney General Opinions have been submitted to Jane Rackers, Director of Professional Registration. One opinion request was regarding public nuisance and the other was relating to QBS. Ms. Rackers forwarded the opinion requests to John Huff, Department Director, on January 15<sup>th</sup> and Mr. Huff made the formal requests to the Attorney General's Office on February 10<sup>th</sup>. Ms. Kempker stated that as soon as the opinions are issued and received in the Board office, she will have them scanned and sent to the Board Members.

Ms. Kempker advised that since the Board's last meeting, she has sent an additional 21 letters to tax delinquent licensees advising if they don't come into compliance with the Missouri Department of Revenue that their license will be suspended on June 19, 2010. This matter will be discussed further since this topic is also on the Board's closed agenda.

Ms. Kempker announced that a post card, as a third reminder was sent out in March to all of those licensees who had not yet renewed their license reminding them that their license will officially lapse come April 1 if they don't renew before then. She advised that a total of 853 licensees were sent the reminder postcards.

As a result of that mailing, 197 followed through with submitting their renewal application and the remaining 656 officially suspended (or lapsed) on April 1, 2010 for failure to renew. Ms. Kempker stated that 639 expiration notices were also sent out to licensees.

Ms. Kempker announced that every Board Member had timely filed their Personal Financial Disclosure Statements. She advised the Board Members serving on expired terms, to please remember that even if they are no longer a Board Member, they must still file a Personal Financial Disclosure Statement if they served as a Board Member for any part of that year.

Ms. Kempker announced that she had just received notification from the Division Director that the mileage reimbursement for Board Members had just changed to 37 cents per mile from 42 cents per mile. The change will take effect on May 4, 2010. Ms. Kempker explained to the Board Members that they can request mileage reimbursement for their trip to St. Louis at the 42 cent rate but their return trip would only be reimbursed at the new 37 cent reimbursement rate.

#### **Date and Location of May 2011 Board Meeting**

The May 2011 meeting will be held in the St. Louis, Missouri area on May 2, 3 and 4, 2011.

#### **Discuss and decide if the Board wants to be an exhibitor at the 2010 Missouri Municipal League Annual Conference which is scheduled for September 12, 13, 14 & 15, 2010 at the St. Charles Convention Center**

Ms. Kempker asked the Board Members if they wanted to have an exhibit at the 2010 Missouri Municipal League's Annual Conference which is scheduled for September 12, 13, 14 and 15, 2010 at the St. Charles Convention Center. Mr. Govero made a motion that the Board be an exhibitor at the 2010 Missouri Municipal League's Annual Conference which is scheduled for September 12, 13, 14 and 15, 2010 at the St. Charles Convention Center. Since Mr. Hagerty is not available to set up the booth on Sunday, September 12<sup>th</sup>, Ms. Kempker stated that she and other staff members will set up and man the booth for the Board. She invited any of the Board Members to feel free to assist if they will be attending the conference.

#### **Motion to Close**

At 2:35 p.m., Mr. Hartnett 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. Adewale seconded the motion. The motion carried. Mr. Hartnett asked that all visitors leave the room. There being none, the meeting was declared closed to the general public.

### **Reconvened in Open Session**

At approximately 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 Mr. Govero to adjourn. The motion carried unanimously. The meeting adjourned at approximately 4:30 p.m. on Tuesday, May 4, 2010.

ATTEST:

\_\_\_\_\_

Executive Director

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