

TEXAS BOARD OF ARCHITECTURAL EXAMINERS

Minutes of January 31, 2013 Board Meeting

William P. Hobby Jr. Building, 333 Guadalupe Street

Tower III, Conference Room 102

Austin, TX 78701

9:00 a.m. until completion of business

1. Preliminary Matters

A. Call to Order

Chair Alfred Vidaurri called the meeting of the Texas Board of Architectural Examiners to order at 9:05 a.m.

B. Roll Call

Secretary/Treasurer Sonya Odell called the roll.

Present

Alfred Vidaurri, Jr.	Chair
Chase Bearden	Vice-Chair
Sonya Odell	Secretary/Treasurer
Charles H. (Chuck) Anastos	Member
Bert Mijares, Jr.	Member
Brandon Pinson	Member
Diane Steinbrueck	Member
Debra Dockery	Member

TBAE Staff Present

Cathy L. Hendricks	Executive Director
Scott Gibson	General Counsel
Glenda Best	Executive Administration Manager
Glenn Garry	Communications Manager
Mary Helmcamp	Registration Manager
Ken Liles	Finance Manager
Jack Stamps	Managing Investigator
Matthew Le	Programmer
Dale Dornfeld	Programmer
Katherine Crain	Legal Assistant

C. Excused and unexcused absences

Paula Ann Miller (Excused)

D. Determination of a quorum

A quorum was present.

E. Recognition of Guests

The Chair recognized the following guests: Donna Vining, Executive Director for Texas Association for Interior Design, and Jeri Morey, Architect from Corpus Christi, James Perry, Executive Vice-President/CEO of Texas Society of Architects, David Lancaster, Senior Advocate for Texas Society of Architects, Julie Evans, Registered Interior Designer, Ed Emmett, Texas.gov, and Randy Storm, Texas.gov.

F. Chair's Opening Remarks

The Chair thanked everyone including Board members and the audience for attending the Board meeting. He stated that he had the opportunity to participate in some senior training in organizations that perform similar to ones outlined in Jim Collins' books *Good to Great* and *Great by Choice*. High performing leaders and companies that perform at 10x the norm of industry average is a major concept of the books. Southwest Airlines is a good example of industry average that is 63 times the norm. Other companies cited were Intel at 20x, Microsoft at 56x, and Progressive Insurance at 14x. A common trait of all of those companies is that they agree that they are not limited by circumstances, conditions or unfairness. They acknowledge there are things that they can control and some things they cannot control. In the end, even if we can only control a tiny sliver of a given situation, we have the freedom to control our actions and make the right decisions – to be great by choice. The Chair suggested that is what the Board may resolve to do as it begins its work of the meeting.

G. Public Comment

None.

2. Approval of Minutes (Action)

A. October 17, 2012 Board Meeting

A MOTION WAS MADE AND SECONDED (Mijares/Pinson) TO APPROVE THE OCTOBER 17, 2012, BOARD MEETING MINUTES. THE MOTION PASSED UNANIMOUSLY.

The Chair stated that he was going to take the next section a little out of order because of the guests from Texas.gov were in the audience to give a presentation to the Board members.

3. Executive Director Report (Information)

C. Texas.gov Credit Card Transaction Processing

The Executive Director introduced the representatives of Texas.gov and gave a brief background on business registration. She stated that TBAE registrants would pay the fee online and the administrative cost would be added online. Texas.gov is here to share what they do and offer how it works.

Ed Emmett (Outreach Manager of Tex.gov) and Randy Storm (Administrator of Tex.gov) addressed the Board. Mr. Storm stated that he works with agencies to implement online registration services. Texas Online was in business from 2001 until 2009 when the name changed to Texas.gov. DIR contracted with Texas.gov to provide online transaction processing services for state agencies. He stated that their agency has done payment services online for approximately 20 years and they had developed a self-funded model. Texas.gov provides an out-of-the-box system and provides resources for customer assistance. He stated that Texas.gov is authorized to take payments online and recover the credit card fee plus a charge of 2.25% plus 25 cents per transaction. Mr. Emmett noted that for large transactions for which 2.25% may be very large, there is flexibility to request an exception from the Texas.gov governance board. Mr. Emmett and Mr. Storm also stated Texas.gov can customize different fee structures subject to some

restrictions for a state agency. He stated that they won the DIR bid in 2009 and they have 100 employees in Texas and therefore, none of their work is outsourced. Mr. Emmett explained that their fee structure is set unless they request a change and get it approved through the legislature. He also stated Texas.gov does not charge back processing fees to the agency. They have a flat fee on electronic checks that is roughly \$3.00. He stated that they are audited by third party auditors, and are governed by a governance board and other parties outside of Texas.gov to ensure transparency and integrity. In addition, he said if an agency's rules change, you can add services on to the Master Agreement. Mr. Emmett and Mr. Storm stated Texas.gov serves large and small agencies and has lots of customer support available about three blocks away.

The Executive Director suggested that the staff come back to the Board with an analysis of how the agency is doing things now versus using Texas.gov to process renewal fees. She stated staff should prepare a cost analysis and also explained that the change in processes may require a rule amendment. She said she wanted to introduce Mr. Emmett and Mr. Storm to the Board so the Board can learn what Texas.gov has to offer the agency.

Ms. Steinbrueck asked about the 2.25% charge to be made to applicants and the options on diminishing or eliminating that charge. Mr. Storm stated the agency has options regarding the charge: It may either pass the charge on to its registrants or it may choose to cover the charge itself. Ms. Dockery noted the Board could not pass on the credit card fee. But the Board is now learning the Board may have a third party contractor do what the Board may not do directly. Mr. Storm noted Texas.gov has specific legislative approval to append a fee for its services, including credit card fees, on the renewal fees the agency charges. Ms. Dockery also noted a person may avoid the fee by paying by check. The Executive Director confirmed that is the case but those who choose to do so would diminish over time.

Ms. Steinbrueck suggested the fee appear as a charge separate from the registration fee. Mr. Emmett stated an agency must be careful in how it represents its fees because if each is considered a transaction then an additional 2.25% fee will attach to the separate fee. It is a subscription fee. Ms. Steinbrueck opined that the fact that it is a separate charge passed through to a third party contractor should be apparent to the people who pay it. The Executive Director stated that the agency would have a report to the Board members at its June meeting.

A. Budget Review:

The Executive Director explained that everything on the budget was "on target" for the quarter. She stated that the agency's revenue was above 25% and that expenses were at 25%. She said the agency was being very frugal because of the unsettled nature of pending legislation and its fiscal impact on the agency. She also noted salary expenses were expected to be lower because two people were retiring from the agency by the end of February and another employee had left the agency.

Ms. Dockery questioned the Statewide Cost Allocation Plan (SWCAP) payment and wanted to know why the agency was already at 50% and we were not even through the first quarter of the year. Finance Manager, Ken

Liles, approached the Board and explained that the agency had paid for the first half of SWCAP at the first of the year, and will only pay another \$34,000.00 by the end of the year, so the agency will be under budget by the end of the year. The Chair inquired about computer upgrades in the budget. The Executive Director noted upgrades were made on a schedule and the agency also had charges to cover the cost of efforts to utilize the cloud. Mr. Anastos questioned whether the agency's Executive Director was going to request that the agency's payment through the SDSI program be lowered due to the loss of revenue the agency will incur as a result of changes made by the Legislature. Ken Liles gave an explanation on how the SWCAP was created and changed over time and believed that there was zero probability of getting agency payments to the General Revenue fund reduced. Mr. Pinson questioned the operating expenditures and asked what was driving the 67% in just the first quarter. Mr. Liles explained that the Board carries a liability policy which costs approximately \$13,000.00 which was paid in September so the agency pays that entire cost up front. Also, the agency had a human resources audit which was front-loaded in the year and somewhat skewed agency expenditures toward the first quarter. The Executive Director also outlined expenditures and balances in the agency's scholarship fund. There were 12 scholarships awarded since September 2012.

B. Sunset Advisory Commission Decision Review

The Executive Director explained to the Board that the agency was already working on Sunset's recommendations. She said that agency staff is working on the criminal history background check procedures issue, proposed rule revisions, changes to the agency fee schedule and has started work on metrics and trend data collection recommended by the Sunset Commission. She stated that the agency is going to look at all procedures and processes and further utilize IT to streamline.

Mr. Pinson noted that the agency would be losing significant revenue because the Self-Directed Semi-Independent Sunset bill requires all administrative penalties be deposited in General Revenue and would not be available for agency operations.

The Chair requested staff produce a comprehensive fiscal impact to the agency caused by the Sunset bill. He noted that information will be necessary for the Board to set a budget for the upcoming fiscal year.

Mr. Anastos opined that the bill's examination requirement for registered interior designers who have not passed the examination will cause a drop in registrants in the first year the bill takes effect. He said he's talked to a half dozen architects and they all said they would drop their interior design registrations if the law required them to pass the NCICQ in order to renew registration. Ms. Vining stated that TAID sent a survey out on that question and received a 50/50 response from surveyed registered interior designers. Chuck Anastos stated that he believes that depending on what is finally passed, he anticipates that the agency will suffer a significant loss of registered interior designers because there are a number of professionals currently registered that will not take the NCIDQ exam. Mr. Anastos stated he hopes the legislature realizes the reduction in the number of registered

interior designers will make fees go up for the other two professions. Mr. Lancaster suggested that the agency wait for the bill to be passed before it figures out what is going to happen to the profession in the future.

The Board took a break at 10:10 a.m. and reconvened at 10:25 a.m.

Report on conferences and meetings (Information)

A. TSA 73rd Annual Convention – Oct. 18-20, 2012

The Chair stated that he attended this convention along with Mr. Mijares, Ms. Dockery and staff from TBAE. Ms. Dockery complimented the Chair in his seminar presentation on HB2284. She also stated that TBAE staff did a good job at presenting the Sunset Report. Mr. Mijares congratulated TSA on its selection of a keynote speaker. Mr. Mijares stated the presentation was excellent and conveyed an amazing story. Mr. Anastos also complimented TSA and the Chair and everyone involved in holding the meeting. The Chair stated to TSA representatives in the audience that he appreciated the opportunity to have a TBAE booth at the convention.

B. NCARB 2011 MBC/MBE Conference – Oct. 31-Nov. 4, 2012

The Chair commented on this conference and stated that there were 54 different chairs and jurisdictions that attended. The conference lasted multiple days and there was a variety of training involved in the conference. NCARB is continuing with their strategic plan and has moved into Stage II of the plan, which is implementation. NCARB is also moving on a new campaign for greater data sharing, especially on enforcement and disciplinary actions. The Chair stated that architects are more mobile than they used to be and as architects move from state to state; there is a greater need to know their backgrounds. In addition, the Chair reported that the Council has assembled interns together to create a think tank to get input from interns and refine the IDP program. The Chair reported there was a call for volunteers for committee appointments through early March. He noted that there were 220 positions for volunteers for committee work. He said that he sits on the education committee and chairs the broadly-experienced architect committee and that it has been very rewarding. Ms. Dockery stated that she sits on the ARE design vignette and that it was an “eye opener” to see how the ARE is developed. The Chair also stated that Yvonne Castillo was there representing the AIA and gave a presentation on practice issues, design build and other matters AIA is working on.

C. NCIDQ Annual Council of Delegates Meeting – Nov. 9-10, 2012

Ms. Odell, Ms. Miller, the Executive Director and the Communications Manager attended this meeting. The Executive Director stated that they had a good keynote speaker named Cheryl Durst. Ms. Durst is the Executive VP of IIDA and gave a great speech on futuristic waves. In addition, NCIDQ is currently searching for a new Executive Director because current Executive Director Jeff Kinney is resigning and moving back to Colorado. Ms. Vining stated that she is on the search committee for the Executive Director and that no architect has applied yet. The Communications Manager noted the variety and number of interest groups involved in IIDA. Ms. Odell noted that IIDA’s voting structure is for each jurisdiction to have one vote regardless of the number of represented interior designers in that jurisdiction. Texas represents

more registered interior designers than several jurisdictions but has the same vote as each of them. The Canadian provinces have a heavy contingent at IIDA.

4. Board Review of House Bill 2284 Committee Decision on Applications for Exempt Engineer Status (Action)

A. Clifford Martin, P.E.

The Chair of the Committee, Chuck Anastos, gave the Board a brief summary of the Committee Report. Mr. Martin had appealed to SOAH the Board's earlier decision to deny his application. SOAH determined Mr. Martin's post-deadline substitution of two projects was timely and remanded the application to the Board to determine whether his application evinced safe and adequate design of buildings that exceed the statutory thresholds. The Committee had considered the documentation Mr. Martin had filed and determined that the submitted plans and reports do not demonstrate the safe and adequate preparation of architectural plans and specifications. One project, a redesign of a church, lacked adequate detail and included egress errors. Another project involved the replacement of a roof on a building that did not exceed the thresholds. The documentation of another project included architectural plans and specifications prepared by an architect. Mr. Martin's involvement was limited to consultation on a means to attach columns to the foundation. Mr. Martin also submitted documentation for another project which involved having a test performed on a core sample from concrete and rebar from tilt-wall panels on a warehouse/office that had burned down. The Committee Chair reported the Committee had concluded Mr. Martin's application does not demonstrate safe and adequate preparation of architectural plans and specifications for projects over the statutory thresholds. The Committee Report is to deny Mr. Martin's application for placement on the exempt engineer list.

B. Daniel O'Donnelly, P.E.

The Committee Chair reported that the Committee had reviewed the application of Daniel O'Donnelly. The Committee had determined that the documentation Mr. O'Donnelly had submitted were for federal buildings for a federal agency while Mr. O'Donnelly was a federal employee and therefore the projects are exempt and not in excess of the statutory thresholds. The Committee also determined that Mr. O'Donnelly's design work was too limited to demonstrate the full scope of the safe and adequate practice of architecture. The designs depicted the relocation of walls and partitions and the enclosure of an exterior storage area – very slight alterations to pre-existing buildings. The Committee noted the projects apparently are not subject to local building codes and Texas Accessibility Standards which makes it impossible to assess the applicant's familiarity with building design codes and standards. The Committee noted one bathroom in one of the projects was non-compliant with accessibility standards – had they applied. For these reasons, the Committee determined Mr. O'Donnelly's application should be denied.

A MOTION WAS MADE AND SECONDED (Pinson/Bearden) FOR THE BOARD TO ADOPT THE COMMITTEE'S REPORT DENYING APPROVAL OF CLIFFORD MARTIN'S APPLICATION TO HAVE HIS NAME ADDED TO THE EXCEPTED ENGINEER LIST. THE MOTION PASSED UNANIMOUSLY.

A MOTION WAS MADE AND SECONDED (Pinson/Bearden) FOR THE BOARD TO ADOPT THE COMMITTEE'S REPORT DENYING APPROVAL OF DANIEL

O'DONNELLY'S APPLICATION TO HAVE HIS NAME ADDED TO THE EXCEPTED ENGINEER LIST. THE MOTION PASSED UNANIMOUSLY.

5. General Counsel Report (Action)

A. Consideration of public comment and Adoption of Proposed Rules

- I. Repeal Rules 1.63/3.63/5.73 relating to the replacement of certificates of registration for architects, landscape architects and registered interior designers
- II. Amend Rule 1.67 relating to architectural emeritus status, making defined terms upper-case
- III. Amend Rules 1.142/3.142/5.152 to revise the definition of the term "gross incompetence" to include reference to the circumstances of the specific conduct at issue
- IV. Amend Rules 1.144/3.144/5.154 to repeal requirements that Board registrants publish registration numbers in certain advertising
- V. Repeal Rules 1.152/3.152/5.161 prohibiting Board registrants from maliciously injuring the professional reputation of another
- VI. Amend Rules 1.177/3.177/5.187 relating to the administrative penalty schedules to correct a technical error
- VII. Amend Rule 7.10 relating to the fee schedule to correct a technical error and repeal an obsolete administrative fee

The General Counsel explained to the Board that all of the above referenced rules were all proposed rules and they have been published; therefore, they were ready for adoption now. Furthermore, staff is recommending that the Board withdraw VII due to potential changes from the legislative session.

A MOTION WAS MADE AND SECONDED (Anastos/Pinson) TO ADOPT ALL OF SECTION A I-VI, BUT NOT VII, RELATING TO THE AMENDMENTS TO RULE 7.10. THE MOTION PASSED UNANIMOUSLY.

A MOTION WAS MADE AND SECONDED (Anastos/Steinbrueck) TO WITHDRAW VII PROPOSED AMENDMENTS TO RULE 7.10 RELATING TO THE FEE SCHEDULE. THE MOTION PASSED UNANIMOUSLY.

B. Prospective Rule for Proposal and receipt of public comment

- I. Amend Rule 1.191 relating to experience required for architectural registration by examination, deleting the cap on the maximum number of hours awarded for an academic internship
- II. Amend Rule 7.10 relating to General Fees to impose professional fees upon initial architectural registration, reduce late renewal penalties, impose charge for online business registration and technical amendments

A MOTION WAS MADE AND SECONDED (Anastos/Mijares) TO PROPOSE AMENDMENTS TO RULE 1.191 AND TO PUBLISH THE PROPOSAL IN THE TEXAS REGISTER FOR PUBLIC COMMENT. THE MOTION PASSED UNANIMOUSLY.

The Board discussed Amendment to Rule 7.10 at length. The amendments included technical amendments which had been previously proposed and for which the Board receive no public comment. The amendments also included charges for business registration, processing charges for online registration and registration renewal and revisions in anticipation of statutory changes in the agency's Sunset bill currently pending in the Legislature. There were

many concerns that this amendment was premature due to unanticipated changes from the Legislature. The General Counsel noted that the Board could choose to decline adoption of the proposed rule or amending the proposed rule if the Legislature did not adopt the Sunset bill in its current form. The General Counsel also stated the Administrative Procedure Act allows Boards to propose rule amendments in anticipation of legislative changes and the Board will not have adequate time to propose and adopt amendments to the fee schedule before the Sunset bill's effective date. There was no motion on the prospective proposed amendment.

The Board took a break at 11:35 a.m. and reconvened at 11:50 a.m.

6. Enforcement Cases

Review and possibly adopt the ED's recommendation in the following enforcement cases: The Executive Director's recommendations are to resolve the following cases in accordance with proposed settlement agreements reached with the Respondents. The Chair recognized the General Counsel to present the enforcement cases.

A. Continuing Education Cases

The General Counsel outlined the cases on the agenda. For continuing education cases, a standard penalty of \$700 for misstatements to the Board, \$500 for failing to complete required continuing education, and \$250 for failing to respond to an inquiry of the Board is recommended by the Executive Director to resolve the cases.

A MOTION WAS MADE AND SECONDED (Mijares/Anastos) THAT THE BOARD APPROVE THE EXECUTIVE DIRECTOR'S PROPOSED SETTLEMENTS IN THE FOLLOWING CASES INVOLVING CONTINUING EDUCATION VIOLATIONS:

Bernard, Edward (#004-13A)
Brooks, Robert S. (#078-13A)
Englert, Dimitri C. (#080-13A)
Evans, Julia (#044-13I)
Huerta, Wally (#002-13A)
LaBard, Laura (#047-13I)
LeVrier, Fulgencio (#069-13I)
Loose, Kenneth H. (#068-13A)
McCathren, James (#042-13A)
Metersky, Richard (#062-13A)
Miller, Dwight D. (#083-13A)
Parker, Timothy K. (#079-13A)
Sarabia, Joe C. (#240-12L)
Schwartz, Martha (#038-13L)
Senelly, Richard (#250-12A)
Sopourn, Robert J. (#064-13A)
Traub, Robert G. (#048-13A)
Veale, Peter Read (#059-13A)

THE MOTION PASSED UNANIMOUSLY.

The following continuing education cases were heard separately because a Board member in each case did not vote to avoid a perceived or actual conflict of interest:

A MOTION WAS MADE AND SECONDED (Mijares/Pinson) THAT THE BOARD APPROVE THE EXECUTIVE DIRECTOR'S PROPOSED SETTLEMENT IN THE CASE INVOLVING ALLISON HALL GARZA IN CASE NUMBER 050-13I. THE MOTION PASSED UNANIMOUSLY 6-0. (ODELL NOT VOTING.)

A MOTION WAS MADE AND SECONDED (Mijares/Pinson) THAT THE BOARD APPROVE THE EXECUTIVE DIRECTOR'S PROPOSED SETTLEMENT IN THE CASE INVOLVING JOSEPH E. GONZALES IN CASE NUMBER 241-12A. THE MOTION PASSED UNANIMOUSLY 6-0. (DOCKERY NOT VOTING.)

A MOTION WAS MADE AND SECONDED (Pinson/Bearden) THAT THE BOARD APPROVE THE EXECUTIVE DIRECTOR'S PROPOSED SETTLEMENT IN THE CASE INVOLVING LORI MCCUAIG IN CASE NUMBER 251-12I. THE MOTION PASSED UNANIMOUSLY 6-0. (MIJARES NOT VOTING.)

B. Unlawful Use of Architectural Title (Whistler, Todd (#015-12N))

The General Counsel presented the background of the case to the Board members. This case arose because Mr. Whistler had entered into a previous Order of the Board and had violated that Order by advertising as an architect on his website. He stated that the proposed settlement was for Mr. Whistler to pay a \$10,000.00 administrative penalty and an additional \$15,000.00 administrative penalty if he violates the Agreed Order within five years from the date of the Order. The proposed settlement also requires respondent to affirmatively state his firm does not employ or contract with architects in all contracts and on Respondent's website. Respondent is required to file a copy of each contract with the agency to ensure compliance. The General Counsel stated that the case is currently pending before the State Office of Administrative Hearings. There was ample discussion amongst the Board members regarding his prior violation and the current proposed settlement.

A MOTION WAS MADE AND SECONDED (Mijares/Steinbrueck) TO ACCEPT THE AGREED ORDER AS RECOMMENDED BY STAFF. THE MOTION PASSED UNANIMOUSLY.

The Chair stated that the Board would address items 7, 8 and 9 after lunch. He said they would begin with Resolutions at 1:00 p.m.

The Board took a lunch break at 11:23 p.m. and reconvened at 1:03 p.m.

**9. Approval of Resolution Honoring: (Action)
Diane Steinbrueck**

The Chair read the Resolution honoring Linda Diane Steinbrueck, registered landscape architect into the record. Appointed by Governor Rick Perry, Ms. Steinbrueck served as a Board member from April 2001 through January 2013. Ms. Steinbrueck accepted the Resolution stated that she enjoyed her tenure as a Board member and thanked the board members and staff for their dedication and service.

Chuck Anastos

The Chair read the Resolution honoring Charles (Chuck) Anastos, a registered architect, served as Vice-Chair to the Texas Board of Architectural Examiners. Appointed by Governor Rick Perry, Mr. Anastos served as a Board member from May 2008 through January 2013. Mr. Anastos accepted the Resolution and stated that he enjoyed his tenure as a Board member and thanked the board members and staff for their dedication and service.

Brandon Pinson

The Chair read the Resolution honoring Brandon Pinson, an attorney at law, served as a public member to the Texas Board of Architectural Examiners. Appointed by Governor Rick Perry, Mr. Pinson served as a Board member from April 2008 through January 2013. Mr. Pinson accepted the Resolution and stated that he enjoyed his tenure as a Board member and thanked the board members and staff for their dedication and service.

Beatriz Loera Lewellen

The Chair read the Resolution honoring Beatriz Loera Lewellen. Ms. Lewellen has worked for the State of Texas from June of 1971 through January of 2013. Ms. Lewellen has served as receptionist for the Texas Board of Architectural Examiners for the past 18 years. Ms. Lewellen accepted the Resolution and stated that she enjoyed working for the Board and considers the staff her extended family.

Gail Hile

The Chair read the Resolution honoring Gail Hile. Ms. Hile has worked for the Texas Board of Architectural Examiners for the past 18 years in many different capacities. She is retiring from the Board as the Registration Renewal Coordinator. Ms. Hile accepted the Resolution and stated that she enjoyed working for the Board especially on the website and the newsletter.

The Chair thanked each and every one of the honorees for their service. Furthermore, he stated we could not function without the staff or the Board and stated that they would all be missed.

7. **Consider and possibly act on Final Order issued by SOAH in TBAE v. John Scales, SOAH Docket Number 459-12-7143.AE.**

The Board went into a closed session for a briefing by the General Counsel on the Final Order in TBAE v. John Scales, at 1:20 p.m. and adjourned the closed session at 2:20 p.m.

The Board took a recess at 2:21 p.m. after the closed session and reconvened in an open meeting at 2:23 p.m.

A MOTION WAS MADE AND SECONDED (Pinson/Bearden) TO INSTRUCT AGENCY STAFF TO FILE A MOTION FOR REHEARING AT THE STATE OFFICE OF ADMINISTRATIVE HEARINGS FOR THE PROCESS OF HB2284 TO BE FOLLOWED IN ITS ENTIRETY. THE MOTION PASSED UNANIMOUSLY.

8. **Consideration of Adoption or Amendment of Proposal for Decision – Texas Board of Architectural Examiners vs. Ruben Martinez (SOAH Case No. 459-11-6016) (Action)**

The Chair stated that the General Counsel will introduce the background of the case to the Board members and Mr. Martinez' counsel will have the opportunity to respond. Each side may make a 10-15 minute presentation.

The General Counsel stated that the case was pretty straightforward. Mr. Martinez was a Registered Accessibility Specialist (RAS) and a registered architect and while he was acting as a RAS he accepted misdirected filing fees of \$175.00 per project over a three-year period which he neglected to convey to the Texas Department of Licensing and Regulation (TDLR). In addition, he did not file the proper paperwork at TDLR which would have put that agency on notice that he had accepted the fees on its behalf. He agreed to repay TDLR after the agency performed an audit and discovered the discrepancies.

TBAE's General Counsel stated that the case was filed at SOAH, alleging dishonest practices by Respondent, and a hearing was held. The Administrative Law Judge (ALJ) determined that Mr. Martinez did not violate any laws or rules and issued a Proposal for Decision (PFD) instructing the Board to not take action against Mr. Martinez's architectural and/or interior design registration in this matter. TBAE General Counsel has asserted that Mr. Martinez was deceitful and committed fraud with his actions and requested the Board to change Findings of Fact 49 and 50 and Conclusions of Law 9 and 10 in the ALJ's Proposal for Decision (PFD) because the ALJ misapplied agency rule. The General Counsel argued the ALJ incorrectly read a specific intent requirement into the rule.

Mr. Martinez' counsel, Jacqueline Salinas, addressed the Board and thanked them for entertaining her comments and subsequent argument. She stated that Mr. Martinez had been an architect for over 30 years with no disciplinary history with the Board. She said that there was a three-year period (2005-2008) when Mr. Martinez was licensed as a RAS, but he fell ill and was diagnosed with cancer in 2006; therefore, he did not timely submit the filing fees on projects at that time. By May 10, 2010, Mr. Martinez agreed to relinquish his RAS license and pay back all the monies for the projects. She stated that he could have done things differently, but he was not being deceitful. She requested that the Board uphold the ALJ's decision and not change the PFD. The Board had multiple questions for the two attorneys and a lengthy discussion of the particulars of the case.

The Board went into a closed session at 3:02 p.m. for a briefing by Nancy Fuller, Assistant Attorney General serving as legal counsel to the Board on the PFD issued in TBAE v. Ruben Martinez, adjourned the closed session at 3:45 p.m. and reconvened in an open meeting.

The Chair stated that the Board deliberated this case and took into consideration the seriousness of the nature of the case. He stated that he would like the record to reflect their grave concern about this matter and have consciously and methodically reviewed the information before them.

A MOTION WAS MADE AND SECONDED (Steinbrueck/Anastos) TO ADOPT THE PROPOSAL FOR DECISION BY THE ALJ AND DIRECT STAFF TO PREPARE A FINAL ORDER CONSISTENT WITH THE BOARD'S DECISION THAT RESPONDENT SHOULD NOT BE DISCIPLINED. THE MOTION PASSED UNANIMOUSLY.

10. Chair's Closing Remarks

The Chair stated that the Board has come to a conclusion. He thanked the members for their service.

11. Adjournment

A MOTION WAS MADE AND SECONDED (Pinson/Steinbrueck) TO ADJOURN THE MEETING AT 3:58 P.M. THE MOTION PASSED UNANIMOUSLY.

Approved by the Board:



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