

MINUTES
REGULAR MEETING
CALIFORNIA ARCHITECTS BOARD

September 15, 2010

Ontario, CA

A. CALL TO ORDER – ROLL CALL – ESTABLISHMENT OF A QUORUM

President Iris Cochlan called the meeting to order on September 15, 2010 at 9:15 a.m. Secretary Marilyn Lyon called the roll.

Board Members Present

Iris Cochlan, President
Pasqual Gutierrez, Vice President
Marilyn Lyon, Secretary
Jon Alan Baker
Jeffrey Heller
Michael Merino (arrived at 9:18 a.m.)
Sheran Voigt

Board Members Absent

Larry Guidi
Hraztan Zeitlian

Guests Present

Kurt Cooknick, Director of Regulation and Practice, American Institute of Architects, California Council (AIACC)
Suki DeAndre, member of the public from R.E. Broker
Maureen DeCombe, Association of Professional Landscape Designers (APLD)
Kimberly Kirchmeyer, Deputy Director, Board and Bureau Relations, Department of Consumer Affairs (DCA)
Daryl Walker, Chief, Division of Investigation (DOI), DCA

Staff Present

Doug McCauley, Executive Officer
Vickie Mayer, Assistant Executive Officer
Justin Sotelo, Program Manager, Examination/Licensing Unit
Anthony Lum, Administration Analyst
Don Chang, Legal Counsel, DCA

Six members of the Board present constitute a quorum. There being six present, a quorum was established.

B. PRESIDENT'S REMARKS

Ms. Cochlan welcomed everyone to the meeting including Kim Kirchmeyer, DCA Deputy Director, Board and Bureau Relations, and thanked Pasqual Gutierrez for hosting the meeting. She stated that National Council of Architectural Registration Boards (NCARB) would be having their Member Board Executive/Member Board Chair meeting in November 2010 where they will conduct Strategic Planning. She indicated that the December Board meeting in San Diego is when the Board will hold officer elections and conduct Strategic Planning.

C. DEPARTMENT OF CONSUMER AFFAIRS DIRECTOR'S REPORT

Ms. Cochlan introduced Ms. Kirchmeyer. Ms. Kirchmeyer reported that on August 31, 2010, the Governor issued a directive to cease the hiring of state employees and that DCA is complying with the directive. She stated that there are limited exceptions to the hiring directive, but that they would need to be approved by the State and Consumer Services Agency and the Governor's Office. She stated that the hiring freeze also applied to appointments and reappointments and that she had been in contact with the appointments office about the issue. Jeffrey Heller asked the status of Board members. Doug McCauley indicated that currently there is one vacancy and three members (Pasqual Gutierrez, Sheran Voigt, and Hraztan Zeitlian) are serving in their one-year grace period until June 30, 2011.

Ms. Kirchmeyer reported that for DCA's Consumer Protection Enforcement Initiative (CPEI), DCA has been receiving enforcement data on the performance measurements from each of the boards on a monthly basis. She indicated that the statistics from the data will be posted on the boards' Web sites in October 2010 for public accessibility.

Ms. Kirchmeyer stated that the BreZE project to replace the current archaic licensing and enforcement computer system is moving forward. She advised that DCA is evaluating possible vendors to implement the new system. She indicated that the project will need to be headed by the boards' program staff and not DCA's Office of Information Services' staff, as they do not know the business functions of each board. She said that a representative from each board will participate in order to convey each particular board's needs for the system.

Ms. Kirchmeyer stated that some of the provisions detailed in the failed Senate Bill 1111, which proposed to implement changes to many of the enforcement processes, could be reviewed by the boards to determine if any of the provisions could be implemented into regulations to be able to expedite the boards' investigation and prosecution processes.

Ms. Kirchmeyer indicated that another project DCA is pursuing is licensing reform to license an individual quicker so that they can contribute to California's workforce. She stated that in phase one, DCA gathered statistics from programs for reports to show the number of licenses that were issued and the length of time it took for them to be issued. She said that phase two will review the licensing processes currently in place and determine whether certain aspects could be improved. She

continued that there will be licensing performance measurements implemented similar to the CPEI performance measurements. However, she indicated that each board will need to establish its own performance measurements, as the licensing procedures vary from one board to another. She stated that the laws and regulations that govern the licensing process will be reviewed to determine if any changes need to be proposed to improve the process. She stated that the last area of the licensing reform project will be to determine if there are any best practices that could be utilized by all of the boards.

D. CLOSED SESSION – DISCIPLINARY DECISIONS AND EXAM DEVELOPMENT ISSUES
[CLOSED SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126(C)(1) AND (3)]

The Board went into closed session in order to consider action on four disciplinary cases and the June 16, 2010 Board meeting closed session minutes. The Board: 1) continued the Default Decision and Order in the Matter of the Citation against Tony Tzuping Lin; 2) adopted the Proposed Stipulation Surrender of License and Order in the Matter of the Accusation against Matthew Robert McKisson; 3) adopted the Proposed Stipulation Settlement and Disciplinary Order in the Matter of the Accusation against Bryan Albert Osborn; and 4) adopted the Default Decision and Order in the Matter of the Accusation against Thomas Navarre Perry.

The Board also approved the June 16, 2010 Board meeting closed session minutes.

F.* APPROVE THE JUNE 16, 2010 BOARD MEETING MINUTES

Mr. Gutierrez inquired for clarification about the different statements made in the minutes on page eight versus page seven on which members would be presenting the Sunset Review Report to the Legislature. Mr. McCauley clarified that when the Board has a president who is an architect, the president and the EO can present the report. He said currently, the Board president is a public member and would need the assistance of an architect member officer (vice-president) to assist the president and the EO in presenting the report to the Legislature.

Mr. Heller asked whether the presentation of the Sunset Review Report is the time to testify before the Senate Business, Professions and Economic Development Committee (Committee) and whether other members could testify. Michael Merino stated that at these types of hearings, there is a public comment period where Mr. Heller could testify. Mr. McCauley said that the hearing was the time to testify, but that it would not be in the best interest of the Board to have multiple testimonies and stated that a unified message (i.e., the official Board Sunset Review Report and the presentation of the report) from the Board is the preferred approach.

Ms. Cochlan called for a motion to approve the June 16, 2010 Board Meeting Minutes.

- **Michael Merino moved to approve the June 16, 2010 Board Meeting Minutes.**

Marilyn Lyon seconded the motion.

The motion passed 7-0.

G.* EXECUTIVE OFFICER'S REPORT

Mr. McCauley provided his report and stated that the December 15-16, 2010 meeting will be in San Diego. He indicated that there was no new update on the state budget, as the Legislature and the Governor are still working to resolve the multi-billion dollar state deficit. He said that staff furloughs were still in place on the second, third, and fourth Fridays of each month until a budget is signed.

Mr. McCauley indicated that there are three Board members who are in their grace periods that end June 30, 2011. Ms. Voigt asked what the Board needs to do if a member who is an officer is not reappointed once their grace period ends. Mr. McCauley stated that the Board would reference the *Board Member Administrative Procedure Manual* to see if it specifies if an officer member is not reappointed, the subsequent officers move up in the rank (i.e., vice-president would become the president, the secretary would become the vice-president, etc.) and the secretary's position would need to be researched in the manual as to the procedure of a replacement. He stated that the issue will be discussed at the December 2010 meeting.

Mr. Merino suggested that the Board prepare some type of proactive transition plan in the event that the current administration does not appoint or reappoint members to the Board and opts to have the new administration perform this task. Mr. McCauley suggested that the Board prepare a white paper to brief the new administration on the current issues facing the Board and to address the appointment/reappointment issue and further prepare and plan for the administration change. He indicated that the Board had not recently had a transition plan in place for a new administration and suggested conferring with DCA to obtain additional counsel in the preparation for the change.

Ms. Lyon stated that her concern was that without the appointments and reappointments, the Board may lose the ability to have a quorum and at that point, the public health and safety would be at risk. Mr. McCauley indicated that without the reappointments, the number of members is reduced from nine to six and every member would need to attend in order for the Board to have a quorum and conduct business. Mr. Merino clarified that the six members who would be remaining included Larry Guidi, who had not consistently participated in meetings over the past two years. He continued that without Mr. Guidi's participation, it would reduce the member numbers down to five, where a quorum would not be established. Mr. Heller asked if the appointments/reappointments do not occur and the numbers drop to where a quorum cannot be established, can the Board adopt emergency measures to where a simple majority of the members could establish a quorum and continue to conduct business. Don Chang indicated that the Board could not implement emergency measures to establish a quorum, as it is in the statutes of the Business and Professions Code (BPC) for the number of members needed to establish a quorum. He said for this Board, it is established in statute that six members constitute a quorum. Ms. Lyon suggested that the Board request assistance from DCA if there are issues in establishing a quorum due to a lack of appointments/reappointments, as the public's health and safety is at risk. Ms. Kirchmeyer indicated that DCA would go to the Appointments Office to inform them of the quorum issue and that of great concern to DCA is boards falling below their statutory quorum.

Mr. McCauley reviewed current legislation and indicated that there were bills [Assembly Bill (AB) 1659 and AB 2130] that defined the Sunset Review process for the future in terms of the committee, the type of report that is submitted, and the type of data collected awaiting action by the Governor.

He indicated that the continuing education (CE) bill (AB 1746), which changes the CE verification process to audits, is also on the Governor's desk awaiting his action.

Mr. McCauley reported that the Board has been working with the AIACC to produce ongoing outreach presentations for the Academy of Emerging Professionals which consist of discussions on the new California Supplemental Examination (CSE), the Comprehensive Intern Development Program (CIDP), and for both organizations to collaborate and present information to unlicensed individuals (i.e., applicants, interns, and students) working to obtain a license.

Mr. McCauley reported that the LATC has had ongoing communications with the Association of Professional Landscape Designers (APLD). Specifically, the conversations focused on an enforcement issue with investigative letters regarding unlicensed practice. He stated that a prior Landscape Architects Technical Committee (LATC) employee misapplied a provision of the Practice Act, so the cases had to be reviewed a second time and the letters clarified. He noted that APLD is interested in a specific exemption in the Practice Act for landscape designers. He stated that discussions with APLD will be ongoing and that the issue will be addressed in LATC's Sunset Review Report.

E.* PUBLIC COMMENT SESSION

Maureen DeCombe of APLD addressed the Board and provided a synopsis of APLD informing them of their history, what they promote, their demographics, and their role within the landscape profession and residential landscape design. She stated that APLD, as a constituent organization of Landscape Architects Technical Committee (LATC), shared the commitment with LATC to educate and safeguard consumers and the general public, protect the environment, and ensure the quality of landscape design services. She continued that APLD is also committed to defining the legal scope of practice for APLD residential landscape designers in the state. She also clarified the written record (specifically the definition of tangible objects and landscape features) that had been taking place between APLD and LATC in regard to the exempt area of practice under BPC section 5641.

Ms. DeCombe continued to present APLD's issues to the Board and informed them that there has been dialog between APLD and LATC over the past year. She emphasized that there is an ongoing LATC enforcement issue on a few APLD members for their advertisement practices that should have been resolved quicker. She indicated that APLD will continue to represent the goal of legal recognition for the profession of residential landscape design. She also stated that APLD recognized the unique and essential role LATC has and supports them in their Sunset Review process.

Mr. Cooknick commented that, in regard to the members' terms of service, AIACC would offer any assistance to achieve appointments/reappointments to avoid Board quorum issues, as they have worked diligently with the Appointments Office to stress the understanding and importance of a quorum for the meetings.

G. EXECUTIVE OFFICER'S REPORT (continued)

Mr. McCauley reported that there is no need for any action on the proposed fee regulations, as they were acted upon at the June 2010 meeting and DCA has approved them; nor is there a need for any

action on the legislation presented, as they are update items and are currently on the Governor's desk awaiting his action.

J.2* ENFORCEMENT PROGRAM

Daryl Walker, Chief of DOI, gave a presentation that provided what DOI is, who forms the DOI, what DOI does, and what services they provide to the various boards and bureaus within DCA. He indicated that DOI is the investigative and police force of DCA and can process criminal as well as administrative cases through their investigations. He explained that all of their investigators are sworn officers that are equivalent to any other sworn officer in the state.

Mr. Walker stated that DOI had just started an unlicensed activity unit which specifically targets those individuals who are providing services to the public illegally. He indicated that the unit has been running for approximately five or six months and have begun sting operations to apprehend unlicensed providers of services. He stated that it is a collaborative effort between DOI and the board to pursue unlicensed individuals and DOI will not provide the investigative services unless a board requests them.

Mr. Walker indicated that DOI offers training for enforcement staff through DCA's enforcement academy, which is especially helpful to provide training for enforcement and non-sworn staff that will be conducting desk investigations for their board.

Mr. Walker stated that his plan to improve DOI from what had occurred in the past is to: 1) improve the communication between the boards and DOI; 2) set a goal to have no cases older than six months; 3) create case acceptance criteria to triage the appropriate types of cases to be referred to DOI and others that can be investigated by a board; and 4) maintain a manageable caseload (no more than 30 cases) for each of the investigators so that they can complete their investigations in a timely manner acceptable to the boards. He said the primary goal for DOI from the procedural changes is to give the boards a quality product within a reasonable amount of time.

Ms. Cochlan inquired as to how DOI bills a board for its services. Mr. Walker indicated that DOI bills on a two-year roll-forward process where the current year DOI budget is based upon the amount of DOI charges incurred from two years ago. He stated that the reasoning for the payment of DOI charges in this manner is to provide stability for the DOI budget so a board does not need to immediately address acute spikes in DOI expenditures in a given year and had two years to pay for the charges above their budgeted amount.

G. EXECUTIVE OFFICER'S REPORT (continued)

Mr. McCauley asked Mr. Baker if there were any new updates from the National Council of Architectural Registration Boards (NCARB). Mr. Baker stated that in November 2010, NCARB will be conducting a meeting of the Member Board Chairs/Member Board Executives (MBC/MBE) where a comprehensive review of their strategic plan will occur. He stated that the emphasis on the strategic plan would be modifications to their practices, policies, and procedures and will focus on realignment in working with state boards. He continued that the input from the state boards as well as the MBEs has helped the NCARB Board of Directors make better, informed decisions. He cited

one example is the CE issue on a nationwide basis where there are disparities of requirements between jurisdictions and several have their own unique CE requirements, such as California, Florida, and Texas. He stated that it can become an enormous task to track the specific jurisdictional CE requirements for those licensees who choose to practice in multiple states. He indicated that topics such as these will be discussed at the November MBC/MBE meeting.

Mr. Baker stated that the NCARB nationwide practice analysis would begin later in the year which will specify many of the processes that will be utilized in the Architect Registration Examination development, Intern Development Program (IDP) evolution and management, and feed into the National Architectural Accrediting Board accreditation process. He stated that NCARB is also delaying the implementation of its fee increases due to the economic climate and in recognition of the feedback they received from the state boards, board executives, AIA, and the profession in general.

Mr. Merino asked whether NCARB is attempting to create something similar to the prior "passport program" to establish a baseline for architects across the nation to simplify the process of obtaining a license in another jurisdiction. Mr. Baker indicated that he believed NCARB's philosophy is to reduce the obstacles for national practice and would work with member boards and MBEs to determine the impetus of the specific licensure requirements for each jurisdiction and attempt to mitigate them to streamline the process. He also stated that NCARB is trying to streamline and consolidate records management, CE unit management, and licensing records information and working in conjunction with AIA to find methods to consolidate these types of records and activities for both organizations.

Mr. McCauley resumed his report with an update on the Board policy for Board members' attendance at meetings. He stated that the policy is in the *Board Members Administrative Procedure Manual*. He asked Vickie Mayer to read an excerpt from the manual about meeting attendance. Ms. Mayer stated that there are two sections in the manual that address this issue. She indicated that in the section of the manual pertaining to Board member meeting attendance, the manual states, "A member shall attend each meeting of the Board. If a member is unable to attend, he or she must contact the Board president or EO and ask to be excused from the meeting for a specific reason." She continued that under the second section regarding Board Member Participation, the manual states, "The Board president may ascertain from members whose level of participation is below standard whether or not the member is no longer able to continue serving as an active member of the Board. In such a case, the president may suggest that the member resign. If such resignation is not forthcoming within a reasonable time, the Board, by resolution, may request the appointing authority to have the member replaced. However, the member shall be given the opportunity to present to the Board his or her arguments against the resolution prior to such a resolution being adopted by the Board."

The members discussed the issue of Board member attendance at meetings and agreed to have the Board president contact Mr. Guidi and follow-up with a letter to address his future intentions as a Board member. The issue arose from the concern of the members to have a quorum at meetings, as a couple of them were either cancelled or no action taken due to a lack of a quorum in the last year.

Mr. McCauley continued with his report on the Sunset Review Report. He stated that the Report is due to the Legislature by October 1, 2010 and the current draft includes two elements that were not included in the prior draft reviewed by the Board in June: the Consumer Education and Outreach

section and the Complaint Satisfaction Survey. He stated that the Board's sunset hearing date is November 10, 2010 where the president, EO, and vice president for the Board will present an executive summary of the Report to the Senate Business, Professions & Economic Development Committee. He indicated that two weeks prior to the Board's sunset hearing, the Committee will forward a list of issues that they had questions on from the Report that need to be addressed at the sunset review hearing. He continued that if the Report is approved by the Board, there also needs to be a motion to provide discretion for the president, vice-president, and EO to make any necessary changes in the Report to address the Committee's issues.

Mr. McCauley reported that there will be a second sunset review hearing where DCA provides information to the Committee about the Board and possibly raise new issues that the Board will need to address. He stated that the dates for the second hearing have not been announced, but anticipated that they will be in the spring of 2011. He also indicated that there will be a third hearing where the Committee will vote on all of the boards under review to determine whether they should be authorized to continue, extend the sunset date, and if any conditions should be implemented if the program is continued. He then indicated that legislation would be created in support of the committee's decision to go through the legislative process and eventually the Governor's desk for approval.

Mr. McCauley proceeded to review the draft Sunset Review Report with the members for any additional suggestions or issues. The members discussed the Report in great detail and made minor edits.

- **Sheran Voigt moved to approve the 2010 Sunset Review Report and delegate authority to the president, vice-president, and EO to make any necessary changes to the report.**

Michael Merino seconded the motion.

The motion passed 7-0.

H. UPDATE ON CALIFORNIA SUPPLEMENTAL EXAMINATION DEVELOPMENT

Mr. McCauley reported that the CSE is in its final stages of development. He indicated that the first cycle of exam development workshops had been completed, which included establishing a passing score. He continued that the Office of Professional Examination Services (OPES) was finalizing the exam documents to transition them to a computer-based format to be available at the testing centers. He reported that the exam conversion timeline is still on track to be implemented in February 2011 at the computer testing centers.

Justin Sotelo indicated that staff is working on the CSE candidate handbook that will function as an eligibility notification document to the candidates so they can schedule an exam with the vendor. He explained the process an exam candidate will need to do in order to schedule an exam and that scheduling can be completed via internet or telephone. He stated that the exam development workshops for the next form of the exam would begin in February 2011 and will be done on an ongoing basis rather than every two years.

I. UPDATE AND POSSIBLE ACTION REGARDING THE COMPREHENSIVE INTERN DEVELOPMENT PROGRAM

Mr. McCauley reported that the Comprehensive Intern Development Program (CIDP) issue had been discussed in prior meetings (i.e., May 2009 Professional Qualifications Committee (PQC) meeting and June 2010 Board meeting) regarding whether it was still needed due to the improvements in IDP 2.0. Mr. Gutierrez indicated that IDP 2.0 will be fully implemented in January 2011 and that with the improvements of the new IDP 2.0, CIDP may no longer be needed. The members discussed the future of CIDP and determined that it should be an issue that the PQC re-evaluate and then return to the Board with a recommendation.

J.1 ENFORCEMENT PROGRAM

An update on the CPEI was continued until the December 2010 meeting.

K. LANDSCAPE ARCHITECTS TECHNICAL COMMITTEE (LATC) REPORT

Mr. McCauley reported on LATC's Sunset Review Report and reviewed the Report with the Board members for any additional suggestions or changes that may be needed. The members discussed the Report and made minor edits.

Ms. DeCombe commented that she and APLD would like to understand the patterns of unlicensed complaints that LATC receives so that they can educate their members so complaints are not filed against them. She also stated that there could be a preventative approach and decrease in the enforcement cost if there could be details provided as to what an unlicensed individual could do legally in the profession under the exempt area of practice (i.e., clarification of BPC section 5641).

- **Michael Merino moved to approve the 2010 LATC Sunset Review Report and delegate authority to the president, vice-president, and EO to make any necessary changes to the report.**

Sheran Voigt seconded the motion.

The motion passed 7-0.

L. REVIEW OF TENTATIVE SCHEDULE

Mr. McCauley announced that the next meeting would be December 15-16, 2010 in San Diego where the Board will conduct their Strategic Planning and set the dates for the 2011 meetings.

Mr. Gutierrez clarified that the AIACC Monterey Design Conference is scheduled for October 2011 (October 7-9, 2011), not October 2010.

M. ADJOURNMENT

The meeting adjourned at 2:35 p.m.

**Agenda items for this meeting were taken out of order to accommodate the guest speaker. The order of business conducted herein follows the transaction of business.*