

**BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS,
LAND SURVEYORS, CERTIFIED INTERIOR DESIGNERS
AND LANDSCAPE ARCHITECTS MEETING**

MINUTES

The Virginia Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects (APELSCIDLA Board) met on March 22, 2011, at the Department of Professional and Occupational Regulation, 9960 Mayland Drive, Richmond, Virginia, with the following members present:

Architects

James R. Boyd
J. Everette Fauber III
Michael F. LeMay (arrived 9:27)

Professional Engineers

John L. Combs
Nico De León
Wiley V. Johnson, III

Land Surveyors

Paul deC. Holt
Nancy E. McIntyre
W. R. Stephenson, Jr.

Interior Designers

Lorri B. Finn
Cameron C. Stiles

Landscape Architects

Vaughn B. Rinner
Andrew M. Scherzer

Staff present for all or part of the meeting were:

Gordon N. Dixon, Director
Mark N. Courtney, Deputy Director for Licensing and Regulation Division
Kathleen (Kate) R. Nosbisch, Executive Director
Marian H. Brooks, Board Administrator
Justin Garofalo, Board Administrator
Amy Goobic, Administrative Assistant
Earlyne Perkins, Legal Analyst

Steven P. Jack, Assistant Attorney General, was present at the meeting.

Mr. Fauber, Chair, called the meeting to order at 9:10 a.m.

Mr. Fauber advised the Board of the emergency evacuation procedures.

Ms. Stiles moved to approve the agenda as amended. Ms. Finn seconded the motion which was unanimously approved by members: Boyd, Combs, De León, Fauber, Finn, Holt, Johnson, McIntyre, Rinner, Scherzer, Stephenson and Stiles.

Ms. Stiles moved to approve the minutes as amended for the following meetings:

Call to Order

**Emergency
Evacuation
Procedures**

Approval of Agenda

Approval of Minutes

- February 7, 2011, APELSCIDLA Board Meeting;
- February 7, 2011, Regulatory Review Committee Meeting;
- February 8, 2011, Professional Engineers Section Meeting;
- February 9, 2011, Land Surveyors Section Meeting;
- February 17, 2011, Informal Fact-Finding Conference;
- February 22, 2011, Landscape Architects Section Meeting;
- February 23, 2011, Certified Interiors Designers Section Meeting;
- February 24, 2011, Architects Section Meeting; and
- March 17, 2011, Informal Fact-Finding Conference.

Mr. Boyd seconded the motion which was unanimously approved by members: Boyd, Combs, De León, Fauber, Finn, Holt, Johnson, McIntyre, Rinner, Scherzer, Stephenson and Stiles.

There was no public comment.

**Public Comment
Period**

Mr. Mullinax was present to address the board. Mr. Mullinax reviewed information that was presented at the IFF, and further explained the circumstances of disciplinary action taken against him in another state.

**File Number 2011-
01390, Thomas
Mullinax**

Regarding **File Number 2011-01390, Thomas Mullinax**, the Board members reviewed the record of the Informal Fact-Finding Conference, which consisted of the investigative file, transcripts and exhibits, and the Summary of the Informal Fact-Finding Conference as well as the recommendation of the presiding board member. Mr. Stephenson moved to not accept the recommendation of the presiding board member and to approve the reinstatement of Mr. Mullinax's architect license. Ms. McIntyre seconded the motion, but added that Mr. Mullinax should be on probation for a two year period. During the probationary period, Mr. Mullinax would be required to report to the board every six months. The motion was approved by members: De León, Finn, Holt, Johnson, McIntyre, Rinner, Scherzer, Stephenson and Stiles. Mr. Fauber voted against the motion. Mr. Combs and Mr. LeMay abstained from voting. As the presiding Board member, Mr. Boyd, was not present during the discussion or vote.

Regarding **File Number 2010-03145, J.E. Sears, Jr.**, the Board members reviewed the Consent Order as seen and agreed to by Mr. Sears. Ms. McIntyre moved to accept the Consent Order which cites the following violation: 18VAC10-20-380.C.17 (Count 1). For this violation, Mr. Sears agrees to pay the following monetary penalties: \$200.00 for the violation contained in Count 1; and \$150.00 in board costs, for a total monetary penalty of \$350.00.

**File Number 2010-
03145, J.E. Sears, Jr.**

Mr. Holt seconded the motion which was unanimously approved by

members: Boyd, Combs, De León, Fauber, Finn, Holt, Johnson, LeMay, McIntyre, Rinner, Scherzer and Stiles. As the presiding Board member, Mr. Stephenson was not present for the discussion or vote.

Regarding **File Number 2010-02538, Justin Lahman**, the Board members reviewed the record of the Informal Fact-Finding Conference, which consisted of the application, transcripts and exhibits, and the Summary of the Informal Fact-Finding Conference as well as the Section's recommendation. Mr. Stephenson moved to accept the recommendation of the presiding Board member, and approve Mr. Lahman's application for licensure as a Surveyor Photogrammetrist. Mr. Holt seconded the motion which was unanimously approved by members: Boyd, Combs, De León, Fauber, Finn, Holt, Johnson, LeMay, Rinner, Scherzer, Stephenson and Stiles. As the presiding Board member, Ms. McIntyre, was not present during the discussion or vote.

File Number 2010-02538, Justin Lahman

Regarding **File Number 2010-05686, George E. Walters**, the Board members reviewed the Consent Order as seen and agreed to by Mr. Walters. Mr. Stephenson moved to accept the Consent Order which cites the following violations: 18VAC10-20-760.B.6 (Count 1); 18VAC10-20-370.B (Count 2); 18VAC10-20-370.C.3 (Count 3); 18VAC10-20-370.D.1 (Count 4); 18VAC10-20-370.D.2.b (Count 5); 18VAC10-20-370.D.2.c (Count 6); 18VAC10-20-370.D.2.e (Count 7); 18VAC10-20-D.2.f (Count 8); and 18VAC10-20-370.D.2.j (Count 9). For these violations, Mr. Walters agrees to pay the following monetary penalties: \$100.00 for the violation contained in Count 1; \$500.00 for the violation contained in Count 2; \$200.00 (2 violations at \$100.00 each) for the violations contained in Count 3; \$1,000.00 (2 violations at \$500.00 each) for the violations contained in Count 4; \$200.00 (2 violations at \$100.00 each) for the violations contained in Count 5; \$100.00 for the violation contained in Count 6; \$500.00 for the violation contained in Count 7; \$200.00 (2 violations at \$100.00 each) for the violation contained in Count 8; \$100.00 for the violation contained in Count 9; and \$150.00 in board costs, for a total monetary penalty of \$3,050.00.

File Number 2010-05686, George E. Walters

Mr. Holt seconded the motion which was unanimously approved by members: Boyd, Combs, De León, Fauber, Finn, Holt, Johnson, LeMay, Rinner, Scherzer, Stephenson and Stiles. As the presiding Board member, Ms. McIntyre was not present for the discussion or vote.

Regarding **File Number 2011-01593, David M. Hesterlee**, the Board members reviewed the Consent Order as seen and agreed to by Mr. Hesterlee. Mr. Combs moved to accept the Consent Order which cites the following violation: 18VAC10-20-750.C (Count 1). For this violation, Mr. Hesterlee agrees to pay the following monetary penalties: \$150.00 for the violation contained in Count 1; and \$150.00 in board costs, for a total monetary penalty of \$300.00.

File Number 2011-01593, David M. Hesterlee

In addition, Mr. Hesterlee agrees to a one (1) year probation of his license as of the effective date of this Order. The probation is to run concurrent with the probation term outlined in the Final Order entered into by Mr. Hesterlee and the state of Alabama Board of Licensure for Professional Engineers and Land Surveyors on May 20, 2010.

Mr. De León seconded the motion which was unanimously approved by members: Boyd, Combs, De León, Fauber, Finn, Holt, Johnson, LeMay, McIntyre, Rinner, Scherzer, Stephenson and Stiles.

Regarding **File Number 2011-01663, John Franklin Germ**, the Board members reviewed the Consent Order as seen and agreed to by Mr. Germ. Mr. De León moved to accept the Consent Order which cites the following violations: 18VAC10-20-750.B (Count 1) and 18VAC10-20-750.C (Count 2). For these violations, Mr. Germ agrees to pay the following monetary penalties: there was no monetary penalty for the violations contained in Count 1 and Count 2; \$150.00 in board costs; for a total monetary penalty of \$150.00.

File Number 2011-01663, John Franklin Germ

Mr. Combs seconded the motion which was unanimously approved by members: Boyd, Combs, De León, Fauber, Finn, Holt, LeMay, McIntyre, Rinner, Scherzer, Stephenson and Stiles. As the presiding board member, Mr. Johnson was not present for the discussion or vote.

Regarding **File Number 2011-02462, Richard W. McCoy**, the Board members reviewed the Consent Order as seen and agreed to by Mr. McCoy. Mr. De León moved to accept the Consent Order which cites the following violations: 18VAC10-20-750.B (Count 1) and 18VAC10-20-750.C (Count 2). For these violations, Mr. McCoy agrees to pay the following monetary penalties: \$150.00 for the violation contained in Count 1; \$150.00 for the violation contained in Count 2; and \$150.00 in board costs, for a total monetary penalty of \$450.00.

File Number 2011-02462, Richard W. McCoy

Mr. Combs seconded the motion which was unanimously approved by members: Boyd, Combs, De León, Fauber, Finn, Holt, LeMay, McIntyre, Rinner, Scherzer, Stephenson and Stiles. As the presiding board member, Mr. Johnson was not present for the discussion or vote.

The Board members recessed from 9:30 a.m. until 9:40 a.m. to review the Consent Order for File Number 2011-03878, Timothy France, as it was a new addition to the agenda.

Recess

Regarding **File Number 2011-03878, Timothy France**, the Board members reviewed the Consent Order as seen and agreed to by Mr. France. Mr. De León moved to accept the Consent Order which cites the following violation: 18VAC10-20-750 (Count 1). For this violation, Mr. France agrees to pay the following monetary penalties: there was no monetary penalty for the violation contained in Count 1; \$150.00 in board costs; for a total monetary

File Number 2011-03878, Timothy France

penalty of \$150.00.

Mr. Combs seconded the motion which was unanimously approved by members: Boyd, Combs, De León, Fauber, Finn, Holt, LeMay, McIntyre, Rinner, Scherzer, Stephenson and Stiles. As the presiding board member, Mr. Johnson was not present for the discussion or vote.

Mr. Bert Jones, Department of General Services (DGS) was present to address the Board and answer questions they may have. Mr. Boyd explained that he has concerns with municipalities using the DGS Construction and Professional Services Manual (CPSM) as a template, and unlicensed project managers for localities making design decisions. Mr. Boyd also has concern with the use of the term 'architect' in the manual.

Discussion with Bert Jones, Department of General Services

Mr. Jones stated that the terms 'architect' and 'professional' are clearly defined in the CPSM, and that the manual requires licensed professionals for design work. Mr. Jones believes that the localities may be misinterpreting the CPSM, and that DGS has no control over municipalities. Mr. Boyd requested that DGS underscore the "professional" aspect in their manual. Mr. Jones stated that he will review the manual and determine if any changes are warranted so as to offer clearer guidance to the localities.

Mr. Jones commented that the Department of Human Resource Management (DHRM), has established positions with levels of Architect (1, 2 and 3), and levels of Engineer (1, 2, and 3). Ms. Nobsch will write a letter to Sarah Wilson, Director of DHRM, reminding the agency that the titles "architect" and "engineer" are protected titles.

Mr. Boyd also expressed his concern with sealing of record drawings and the last paragraph of CPSM 1024.4. This section of the manual requires that plans, including as-builts, must be signed and sealed by a licensed professional. Mr. Boyd feels this may be an issue because the CPSM permits as-builts to be created by a non-licensed person and the professional, who seals the plans containing as-builts, is sealing work which he did not directly supervise. Mr. Jones stated that Division of engineering and Buildings (DEB) Notice 071708 addresses the issue, and provided copies to the Board. Mr. Jones also stated that the CPSM is currently undergoing a complete rewrite, and that all DEB Notices will be incorporated into the manual.

Mr. Fauber thanked Mr. Jones for coming to the meeting to address the concerns of the Board.

Board members reviewed the draft correspondence to Mr. Emory Rodgers, Department of Housing and Community Development (DHCD), regarding code officials that may not be following the Board's regulations. Mr. Boyd moved to approve the letter. Mr. Johnson seconded the motion which was unanimously approved by members: Boyd, Combs, De León, Fauber, Finn, Holt, Johnson, LeMay, McIntyre, Rinner, Scherzer, Stephenson and Stiles.

Discussion of Correspondence to Emory Rodgers, Department of Housing and Community

Development

The Board members recessed from 10:20 a.m. until 10:35 a.m. to review the proposed guidance document regarding topographic surveys.

Recess

Mr. Fauber asked that Ms. McIntyre lead the discussion on the topographic survey issue. Ms. McIntyre explained there is a 'certification' in the regulations that must be included on a topographic survey, the regulation states that it must be signed by a Land Surveyor or a Surveyor Photogrammetrist. Other licensed professionals feel they cannot sign the certification, even if incidental work. The topic had been discussed by all affected sections, with all sections agreeing to have staff draft the guidance document. Ms. McIntyre stated that the guidance document helped to clarify the issue that Professional Engineers or Architects may also sign the certification. Mr. Johnson moved to approve the guidance document for publication. Ms. McIntyre seconded the motion which was approved by members: Combs, De León, Finn, Holt, Johnson, LeMay, McIntyre, Rinner, Scherzer, Stephenson and Stiles. Mr. Boyd and Mr. Fauber voted not to accept the document. Ms. Nobsch informed the Board that the document would be on the DPOR and Town Hall websites, in the APELSCIDLA newsletter and would be sent to all professional organizations.

Discussion of Topographic Surveys as Part of Site Plan Development and Proposed Guidance Document

Discussion was also held on drafting a guidance document clarifying the use of seal on projects with multiple sets of plans. For example: a land surveyor performs a survey which is then used by an engineer. The surveyor must sign and seal his survey therefore taking responsibility for the survey plans. The engineer then takes the survey and performs engineering design and sign and seals his product (which was based on the originally submitted survey).

Discussion was also held regarding surveys and other design plans done within the same firm. These documents shouldn't be treated any differently than surveys and other designs done by two different firms.

The Board agreed by consensus to have staff draft a guidance document for review by each section prior to the June 2011 full Board meeting. The guidance document will address instances of signing and sealing multiple documents on a single project whether it involves 1) multiple professionals in one firm or 2) multiple professionals from multiple firms.

Sharon Sweet, Director of Exams and Education, was present to address the Board regarding the contract with exam vendor PCS. Ms. Nobsch explained that the Board had approved a one year extension last year, and that the contract was eligible for another one-year extension. Following the second one-year extension, a full RFP would be required. Ms. Sweet explained the process for obtaining bids for the RFP and stated that it would take approximately one year to prepare the RFP due to the complexities of the

PCS Contract

APELSCIDLA Board's five professions.

Mr. Stephenson stated that he was not happy with the service provided by PCS the last 5 or six months. He cited several examples of delays in information from PCS, the vendor providing more questions for the upcoming exam than there was time allotted to provide answers and not being provided with adequate notice to review exam questions.

Ms. Sweet explained that with regards to the delay in exam score reporting, DPOR did not receive the October exam scores from NCEES until January 18, 2011, and then experienced an internal systems error in loading the scores. The Board expressed their concerns to Ms. Sweet and stated that the review panel for the RFP should be made aware of their concerns. Ms. Sweet commented that PCS had been the exam vendor for four years with very few complaints, but that the issues and concerns will be discussed with them.

Ms. Rinner moved to extend the contract with PCS for one year. Ms. Stiles seconded the motion which was approved by members: Boyd, Combs, De León, Fauber, Finn, Holt, Johnson, LeMay, McIntyre, Rinner, Scherzer and Stiles. Mr. Stephenson abstained from voting.

Discussion was held on the upcoming NCARB and NCEES Annual meetings. Mr. LeMay moved to nominate Mr. Boyd as the official delegate at the NCARB Annual meeting in June. Mr. Johnson seconded the motion which was unanimously approved by members: Boyd, Combs, De León, Fauber, Finn, Holt, Johnson, LeMay, McIntyre, Rinner, Scherzer, Stephenson and Stiles.

**NCEES & NCARB
Updates**

Mr. Johnson moved to nominate Ms. Nosbisch as the funded delegate to the NCEES Annual meeting in August. Mr. Stephenson seconded the motion which was unanimously approved by members: Boyd, Combs, De León, Fauber, Finn, Holt, Johnson, LeMay, McIntyre, Rinner, Scherzer, Stephenson and Stiles.

Mr. Boyd moved to nominate Ms. Nosbisch to attend the NCARB Annual meeting funded by Region 2. Mr. LeMay seconded the motion which was unanimously approved by members: Boyd, Combs, De León, Fauber, Finn, Holt, Johnson, LeMay, McIntyre, Rinner, Scherzer, Stephenson and Stiles.

Mr. Boyd moved to submit an application for Mr. LeMay to attend the NCARB Annual meeting using available scholarship funds. Ms. Stiles seconded the motion which was unanimously approved by members: Boyd, Combs, De León, Fauber, Finn, Holt, Johnson, LeMay, McIntyre, Rinner, Scherzer, Stephenson and Stiles.

Mr. Boyd discussed the NCARB Regional meeting that he attended March 11-13 in Jersey City, New Jersey. Mr. Boyd reported that continuing education, and the disparity between the hours required in different states,

was one of the main topics discussed. He stated it would have been helpful to have Ms. Nobsich there. He urged the Board to consider NCARB's model for standardizing continuing education. Ms. Nobsich stated that the Board is somewhat limited, as it would require a change in statute. Mr. Dixon commented that the agency could try to include on the Governor's agenda or a professional organization could try to have the legislation introduced. Ms. Nobsich reported that the statute would need to be more generic for the five APELSCIDLA professions, to allow for more flexibility.

Ms. Nobsich reported that Stanley Harris, Professional Engineer and APELSCIDLA Board member emeritus, would be the recipient of the NE Zone Award for distinguished service. Mr. Harris was one of nine candidates nominated. The award will be presented at the NE Zone meeting May 19-21, in Annapolis, Maryland.

Ms. Nobsich informed the Board that Pearson VUE had been selected as the vendor for the computer based testing for NCEES.

Ms. Nobsich also stated that the Professional Engineer and Land Surveyor sections would meet prior to the NCEES Annual meeting in August so the sections could review all motions and agree on how the Board would vote at the annual meeting.

The board members were provided financial statements for informational purposes.

**Review of Board
Financial Statements**

The board members were provided a comprehensive report of enforcement activity since the last board meeting.

**Review of
Compliance and
Investigations
Division Activity**

The Board recessed for lunch from 12:03 p.m. until 12:45 p.m.

Recess

Mr. Johnson, Chair of the Regulatory Review Committee, gave a brief update on the Committee's work on the proposed regulations. The Board reviewed all of the recommended changes. Ms. McIntyre moved to approve the proposed regulations. Mr. LeMay seconded the motion which was unanimously approved by members: Boyd, Combs, De León, Fauber, Finn, Holt, Johnson, LeMay, McIntyre, Rinner, Scherzer, Stephenson and Stiles.

Regulatory Review

Mr. Scherzer gave an update on the CLARB Spring meeting that he attended March 25-27 in Denver. He stated the meeting was very informative and that the study on defining 'welfare' was presented at the meeting and that he will make the report available to the Board when he receives a copy.

Other Business

Ms. Nobsich reported that she will be giving a presentation to the Virginia

Tech architecture graduate students March 23. She has also been invited to make a presentation to the Society of American Military Engineers, April 27 in Norfolk.

Conflict of Interest forms were completed by all members present.

**Conflict of Interest
Forms**

There being no further business, the meeting was adjourned at 2:09 p.m.

Adjourn

J. Everette Fauber III, Chair

Gordon N. Dixon, Secretary

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