

**Minutes of a Meeting of the
Tennessee Board of Architectural and Engineering Examiners
Davy Crockett Tower
Nashville, Tennessee**

December 9, 2010

Board Members Present

Hal Balthrop, Professional Engineer
Robert Campbell, Jr., Professional Engineer
James Hastings, Registered Architect
Philip Lim, Professional Engineer
Bill Lockwood, Registered Landscape Architect
David Schuermann, Registered Architect
Leslie Shankman-Cohn, Registered Interior Designer
Richard Thompson, Registered Architect
Brenda Wood, Public Member

Associate Board Members Present

Dennis Henderson, Professional Engineer
Alton Hethcoat, Professional Engineer
Carlton Norris, Professional Engineer

Staff Present

Robert Herndon, Legal Counsel
John Cothron, Executive Director
Wanda Phillips, Administrative Manager
Wanda Garner, Administrative Assistant

Guests

The following were present for all or part of the meeting:

Candy Toler, Tennessee Society of Professional Engineers/American Council of
Engineering Companies of Tennessee (TSPE/ACEC-TN)
Don Baltimore, Tennessee Interior Design Coalition (TIDC)
Ronald Corum, Professional Engineer

CALL TO ORDER

Brenda Wood, chair, called the meeting to order at 9:05 a.m. A quorum of Board members was present, and the meeting, having been duly convened, was ready to proceed with business.

It was announced that Nathan Ridley, Tennessee Chapter American Society of Landscape Architects (ASLA -TN), had been present at the Grants to Higher Education Committee Meeting, but was unable to stay for the Board meeting.

No changes were made to the meeting agenda.

CONSENT AGENDA

1. *Approval of Minutes (attached)*

Motion was made by Mr. Lockwood and seconded by Ms. Shankman-Cohn to accept the minutes of the October 22, 2010, meeting as written. The motion passed unanimously.

2. *Approval of the Staff Complaint Report (attached)*

Motion was made by Mr. Schuermann and seconded by Mr. Thompson to accept the Complaints for Board Decision as presented. The motion passed unanimously.

Complaint data was also reviewed.

PROFESSIONAL SOCIETY REPORTS

Candy Toler, TSPE/ACEC-TN, stated that

- the bill to extend the "sunset" date of the Board of Architectural and Engineering Examiners will be one of primary interest in the coming months;
- a committee to discuss the industrial exemption is still being formed, and
- Engineers' Day on the Hill is scheduled for March 8, 2011, with a Legislative Reception planned for the preceding day.

The Engineer Committee expressed interest in the industrial exemption issue, and stated their willingness to serve as a resource.

Don Baltimore, TIDC, reported that

- TIDC will give attention to the bill to extend the "sunset" date of the Board of Architectural and Engineering Examiners;
- TIDC will address education and grandfathering provisions in the Interior Design legislation;
- he and Connie Wallace (AIA-TN) will work together to resolve intra-industry issues, and
- he visited the Georgia Board to look at their recently passed Interior Design legislation.

Mr. Hastings noted that the appointment of a new state architect may be announced in a few weeks.

DIRECTOR'S REPORT

1. Mr. Cothron submitted the following report:

- David Schuermann and I attended the National Council of Architectural Registration Boards (NCARB) Member Board Chairs/Member Board Executives Conference in New Orleans, LA on November 4-6, 2010.

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- Consistent with discussions at the October meeting, renewal notices are now being mailed out 60 days in advance of the registration expiration date rather than 75 days.
 - I met with Assistant Commissioner Steve Majchrzak on November 17 regarding the grants appropriation increase and allowing grants for candidacy programs. He was supportive of the changes and is researching the possibility of drawing the \$50,000 increase directly from our reserves.
 - Grant contracts have been drafted and are currently under review.
 - The Fall/Winter 2010 newsletter should be distributed soon.
 - A recent financial and compliance audit of the Department of Commerce and Insurance by the Comptroller's office yielded no findings.
2. *Licensing Data* (attached) was submitted for informational purposes only.
 3. *Financial Report* (attached) was submitted by Mr. Lim for informational purposes only.

OLD BUSINESS

1. *Action Items* (attached)
Action items from the October 22, 2010 meeting had either been completed or were in progress.
2. *Proposed Rule Changes/Application Review Guidelines* (attached)
Motion was made by Mr. Campbell and seconded by Ms. Shankman-Cohn to approve the proposed application review guidelines. The motion passed unanimously. Proposed rule changes will be held until after the legislative session.

NEW BUSINESS

1. *Report on the National Council for Interior Design Qualification (NCIDQ) Annual Meeting* (attached)
Ms. Shankman-Cohn submitted a written report.
2. *Report on the National Council of Architectural Registration Boards (NCARB) Board Chairs/Member Board Executives Meeting* (attached)
Mr. Cothron and Mr. Schuermann submitted a written report.

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3. *Sealing Energy Code Compliance Statements* (attached)

Board members concurred that it is not necessary for registrants to seal energy code compliance statements, but they had no objection to reviewing authorities requiring a seal.

LEGAL CASE REPORT (presented by Robert Herndon) (attached)

Results of Board Member Reviews

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|---------------------------------|----------------------|
| 1. Case #L10-AEL-RBS-2010010171 | Complaint #201001017 |
| Case #L10-AEL-RBS-2010023391 | Complaint #201002339 |

Motion was made by Mr. Thompson and seconded by Mr. Lockwood to dismiss and close the cases. The motion passed unanimously.

New Cases

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|---------------------------------|----------------------|
| 1. Case #L10-AEL-RBS-2010034011 | Complaint #201003401 |
|---------------------------------|----------------------|

Motion was made by Mr. Hastings and seconded by Mr. Lim to authorize a Consent Order for a civil penalty in the amount of \$4000 in consideration of the number of projects sealed while his engineer certificate of registration was expired and with a requirement to take and pass the laws and rules examination. The motion passed with Mr. Thompson

In answer to a question by Mr. Herndon, motion was made by Mr. Thompson and seconded by Mr. Schuermann to allow privilege tax delinquency cases, when referred for a formal hearing, to be prosecuted before an Administrative Law Judge sitting alone. The motion passed unanimously.

New Privilege Tax Delinquency Cases

On the following cases, motion was made by Mr. Lockwood and seconded by Mr. Hastings to authorize Consent Orders to suspend registration until all delinquent privilege taxes are made current. The motion passed unanimously.

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| 1. Case #L10-AEL-RBS-2010035501 | Complaint #201003550 |
| 2. Case #L10-AEL-RBS-2010035521 | Complaint #201003552 |
| 3. Case #L10-AEL-RBS-2010035531 | Complaint #201003553 |
| 4. Case #L10-AEL-RBS-2010035551 | Complaint #201003555 |
| 5. Case #L10-AEL-RBS-2010035561 | Complaint #201003556 |
| 6. Case #L10-AEL-RBS-2010035571 | Complaint #201003557 |
| 7. Case #L10-AEL-RBS-2010035581 | Complaint #201003558 |
| 8. Case #L10-AEL-RBS-2010035591 | Complaint #201003559 |
| 9. Case #L10-AEL-RBS-2010035601 | Complaint #201003560 |
| 10. Case #L10-AEL-RBS-2010035631 | Complaint #201003563 |

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11. Case #L10-AEL-RBS-2010035641	Complaint #201003564
12. Case #L10-AEL-RBS-2010035651	Complaint #201003565
13. Case #L10-AEL-RBS-2010035661	Complaint #201003566
14. Case #L10-AEL-RBS-2010035671	Complaint #201003567
15. Case #L10-AEL-RBS-2010035681	Complaint #201003568
16. Case #L10-AEL-RBS-2010035691	Complaint #201003569
17. Case #L10-AEL-RBS-2010035701	Complaint #201003570
18. Case #L10-AEL-RBS-2010035711	Complaint #201003571

The Board recessed for lunch at 11:00 a.m. and reconvened at 2:40 p.m.

Laura R. Betty, litigation attorney for the Board, presented two Agreed Orders for Board disposition (attached):

1. Case #L10-AEL-RBS-2010017761	Complaint #201001776
2. Case #L10-AEL-RBS-2010007391	Complaint #201000739

Motion was made by Mr. Balthrop and seconded by Mr. Lockwood to accept the Agreed Orders. The motion passed unanimously.

The Board recessed until 2:55 p.m.

FORMAL HEARING

Frederick C. Dunagan, P.E.
Case # L10-AEL-RBS-2010007381

Docket #12.10-109195A
Complaint # 201000738

A formal hearing began in the matter of Frederick C. Dunagan. Mr. Dunagan is charged with failure to pay the required privilege taxes while properly licensed. The "Proposed Findings of Fact and Conclusions of Law" is attached.

Administrative Law Judge Tom Stovall presided.
Laura R. Betty represented the State.
Frederick C. Dunagan was not present.
The court reporter was Amber Thompson.

Because neither Mr. Dunagan nor his attorney was present, Ms. Betty moved to hold the respondent in default. She distributed evidence (attached) showing that Mr. Dunagan had received the "Notice of Hearing and Charges." Motion was made by Mr. Schuermann and seconded by Ms. Shankman-Cohn to hold Mr. Dunagan in default and to proceed with the hearing. The motion passed unanimously. Judge Stovall found Mr. Dunagan in default and asked Ms. Betty to proceed with the hearing.

John Cothron and Kathy M. Smith were sworn in as witnesses.

Ms. Betty presented four additional exhibits (attached).

The case was heard and final arguments were made. Deliberations followed Judge Stovall's instructions.

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Findings of Fact

Motion was made by Mr. Hastings and seconded by Ms. Shankman-Cohn to amend Proposed Findings Fact #3 to state that Mr. Dunagan was delinquent for three (3) years (2008-2010), and to accept the amended Proposed Findings of Facts as true that Mr. Dunagan, while holding a certificate of registration as an engineer in the State of Tennessee, did not pay the obligatory annual professional tax. The motion passed unanimously.

Conclusions of Law

Motion was made by Mr. Balthrop and seconded by Mr. Schuermann to amend the Proposed Conclusions of Law as follows:

- #6, first sentence: replace the word, "two" with the word, "three" and replace the year, "2009," with the year, "2010."
- #9: replace "2009" with "2010."

The motion passed unanimously.

Motion was made by Mr. Lim and seconded by Mr. Lockwood to accept the amended Proposed Conclusions of Law as applicable to the Proposed Findings of Fact. The motion passed unanimously.

Discipline

Motion was made by Mr. Balthrop and seconded by Mr. Campbell to revoke Mr. Dunagan's certificate of registration to practice engineering in Tennessee, to assess against Mr. Dunagan a civil penalty in the amount of \$3000.00 and all prosecutorial, investigatory and hearing costs incurred in this case. The motion passed unanimously.

Policy Statement

Motion was made by Mr. Schuermann and seconded by Mr. Balthrop to adopt the following policy reasons for the Board's decision:

Based on the Finding of Facts and Conclusions of Law, the Board found Frederick C. Dunagan in violation of the Board's Mission Statement to uphold the laws and regulations of the State of Tennessee.

The motion passed unanimously.

The formal hearing of Frederick C. Dunagan was concluded at 5:00 p.m.
The meeting adjourned at 5:00 p.m.

ATTACHMENTS

Minutes from October 2010 Board Meeting
Staff Complaint Report
Complaint Data
Licensing Data
Financial Data
Action Items
Proposed Rule Changes/Application Review Guidelines
NCIDQ Meeting Teleconference Report

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NCARB Meeting Report
Energy Code Compliance Statements E-Mail
Legal Case Report
Agreed Orders
Formal Hearing Information