

MINUTES

UNIFIED BOARD OF DESIGN PROFESSIONALS DIVISION WITHIN THE DEPARTMENT OF BUSINESS REGULATION (DBR)

Unified Board Meeting

Public Meeting

February 27, 2008, 3:00 PM

Department of Administration Building

Conference Room C

Voting Board Members present were:

Richard A. Bernardo, PE

L. Robert Smith, PE

Wilbur E. Yoder, AIA, PE, NCARB

James R. Carlson, NCARB, AIA

Richard S. Lipsitz, PLS

Thomas D. Drury, Jr., PLS

John C. Carter, LA

Sara Bradford, LA

Non-Voting Board Members present were:

Barbara Feibelman, NCARB, AIA

James J. Reddington, Jr., PLS

Others present were:

Richard W. Bernstein, DBR Executive Counsel

**Peter N. Dennehy, Department of Administration (DOA), Deputy Chief
Legal Counsel**

Dawne Broadfield, Recording Secretary

1. Called to Order

• Chair Bernardo called the meeting to order on February 27, 2008 at 3:00 p.m. At the 3:00 p.m. time, there were five (5) out of eight (8) voting members present which constituted a quorum.

2. Approval of the Open Session Minutes of the Meeting.

• Mr. Smith moved to accept the minutes of the January 23, 2008 meeting. Mr. Yoder seconded. Motion carried.

3. Discussion on the Preparation of “Operating Procedures and Guidelines” for the Unified Board

Chair Bernardo asked Attorney Bernstein if this Board could continue

this item as each individual Committee is currently working on its “Rules and Regulations”. This Board would be in a better position to formulate its own “Rules and Regulations” once those individual Committees are completed and those “Rules and Regulations” have been accepted by DBR.

This item has been continued. The progress of the individual Committees will be discussed at the next regularly scheduled meetings.

4. Creation of Committees and designation of voting Committee members

- DBR legal counsel, Richard W. Bernstein, will address the issue of the Unified Board being comprised of eight (8) voting members including the Chair or eight (8) voting members in addition to the Chair.**

Chair Bernardo stated that there was a question that was directed to Attorney Bernstein as to whether or not the statute allows the Unified Board to be comprised of eight (8) voting members including the Chair or eight (8) voting members in addition to the Chair. Chair Bernardo then asked Attorney Bernstein for his legal opinion.

Attorney Bernstein stated that the statute is vague and he addressed this issue with DBR Director Marques. They believe that the Chair

cannot have two (2) votes. If Chair Bernardo is voting on this Board, then he cannot also sit and vote as a member of his Committee. He would then be a non-voting member of his individual Committee. If he continued voting on this Board, then this Board would be comprised of eight (8) votes, even though he is the Chair, he will be voting as a member of his Committee within the Unified Board.

Chair Bernardo posed the question that if someone else from the Engineers Committee were to work with Mr. Smith as a voting member, would that person become a voting member of the Unified Board for a ninth (9th) vote. Attorney Berstein replied “no”.

Attorney Berstein stated that if this Board wanted to keep it status quo where there are eight (8) votes, and if there was ever an impasse, Director Marques has agreed to resolve it and be the ninth (9th) vote. This would be an item that would be addressed in the “Operating Procedures” as this Board develops them over time.

Chair Bernardo will discuss this voting issue with the Engineers Committee.

5. Report of Land Surveyors Committee meeting of February 12, 2008

- Approval of Open Session Minutes of the February 12th Meeting.**

Mr. Lipitz moved to accept the minutes of the Land Surveyors

**Committee Meeting of February 12, 2008. Mr. Drury seconded.
Motion carried.**

- **Approval of Executive Session Minutes of the February 12th Meeting.**

Chair Bernardo stated that only the open session meeting minutes will come before this Board with whatever votes were taken when the Committee got out of executive session. This Board legally cannot be reviewing anything that the Committees were doing in executive session, because this Board was not in that meeting and it would violate the sealing of those minutes. Future agendas will not have a line item of "Approval of Executive Session Minutes" and it was crossed off this agenda.

Attorney Berstein indicated that this Board could still have approval of executive session minutes in general. For example: an individual Committee had an open meeting and an executive meeting. At the executive meeting, four (4) complaints were discussed, four (4) monitoring items were discussed and three (3) items were continued. That general executive session summary would be presented to this Board and this Board would ratify it in executive session.

Chair Bernardo indicated that each individual Committee will have three (3) sets of minutes; open, executive and executive session summary. Then this Board will go into executive session to accept

the individual Committees' executive session summaries.

This will be implemented for next month's regularly scheduled meeting.

6. Report of Architects Committee meeting of February 20, 2008

- Approval of Open Session Minutes of the Meeting of the February 20th Meeting**

Mr. Yoder moved to accept the minutes of the Architects Committee Meeting of February 20, 2008. Mr. Lipitz seconded. Motion carried.

- Approval of Executive Session Minutes of the February 20th Meeting.**

Executive Session minutes cannot be accepted by this Board since this Board was not in attendance at that executive session. In doing so, this would violate the sealing of the executive session minutes. This item has been removed from future agendas.

7. Report of Landscape Architects Committee meeting of February 20, 2008

- Approval of Open Session Minutes of the Meeting of February 20th Meeting**

Ms. Bradford moved to accept the minutes of the Landscape Architects Committee Meeting of February 20, 2008. Mr. Carter seconded. Motion carried.

- **Approval of Executive Session Minutes of the February 20th Meeting**

Executive Session minutes cannot be accepted by this Board since this Board was not in attendance at that executive session. In doing so, this would violate the sealing of the executive session minutes. This item has been removed from future agendas.

8: Posting Executive Session Items on the Open Session Agenda.

- **Executive Session Agenda**

Chair Bernardo indicated that from this point on this Board is going to have the acceptance of the Committees' executive session summaries. This Board should not and will not get the full executive session minutes because that would be a violation of the sealing of the executive session minutes.

- **Postings of the Meeting Agendas**

Attorney Bernstein indicated that the Committees had received a

previous opinion from Adam Sholes, Special Assistant Attorney General (SAAG), that when the Committees posted items on the open session agenda, those items included complaints that included names. DBR disagrees because once a complaint is filed, it is confidential until a final order is entered. Attorney Bernstein indicated that the Committees need to revert back to the way that they used to operate by not posting individual names because everyone is innocent until proven guilty.

Chair Bernardo stated that he did not have a problem doing that but stated that he will need that directive from Attorney Bernstein on his letterhead, because currently the Committees are operating under the directive from the Attorney General's Office which was submitted to the Committees in writing. If the Committees receive the directive from Attorney Bernstein, in writing, then the Committees and this Board would move forward posting open session agendas under the directive of DBR.

9. Any other business

- Mr. Smith indicated that at the Engineers Committee meeting, he suggested to Attorney Bernstein that for a more powerful and more proper form that the Engineers Committee be referred to as the "Professional Engineers board, a Committee of the Unified Board of the Division of Design Professionals" for the purpose of signing as the "Board" and for the statutory right. Attorney Bernstein will speak**

to the Director about this.

- **Attorney Bernstein questioned the Attorney General no longer having any official role with the Committees and this Board now that they are a Division of DBR. Chair Bernardo indicated that it was his understanding that the Attorney General's office was not giving up their legal responsibilities. The Engineers Committee, as recently as today, sent some issues to them since those involved are not registrants and the Engineers Committee does not have jurisdiction over them and the Attorney General's Office will continue with that. Chair Bernardo stated that as far as representation at the Unified Board meetings, the Chief of the Division, Mr. James Lee, has indicated that they will not be participating in the monthly meetings.**

Mr. Smith requested that Chair Bernardo question that decision in writing given the fact that the Attorney General representation is a statutory requirement in the Engineers Committee's law.

Mr. Carter stated that the Landscape Architects Committee wrote to the Attorney General's office and requested that their Attorney General Representative be allowed to continue attending their Committee meetings and received a response from Mr. Lee that the Attorney General Representative will not be allowed to continue and that he would be able to advise the DBR staff.

Chair Bernardo will send another letter to the Attorney General's

office from the Unified Board requesting Attorney General Representation.

- Mr. Carlson commented on Mr. Smith's previous comment about "titles". Mr. Carlson indicated that he thought that the Committees and this Board should follow the law. The Architects Committee discussed this issue as well. The law discusses this group as being the "Division". There is no such wording of "Unified Board" anywhere and the law refers to the other four (4) groups still as the "Boards". Mr. Carlson would support Mr. Smith's comments that they believe that the four (4) Boards should retain the title of "Boards" and that this group should be known as the "Division of Design Professionals" within the DBR. Mr. Carlson indicated that is the opinion of the Architects Committee.

Chair Bernardo thanked Mr. Carlson for his comments and indicated that he referred it to Attorney Berstein.

Attorney Berstein stated to Mr. Carlson that he brought this up several times both in writing and in other meetings and the Director is adamant that he believes that the intent of the legislation should only be one Board. Director Marques feels the one Board is this "Unified Board," and that the other former Boards are now "Committees" of this one "Unified Board." Attorney Berstein stated that the Director has that right, since this is now a Division of DBR. Attorney Berstein stated that Mr. Smith made a suggestion that he and Director

Marques will consider. Attorney Bernstein stated that Director Marques has taken his authority as the Director of the Division and has made a decision. Director Marques feels that this is the only remaining Board and that, as such, the Unified Board has designated four (4) Committees to conform with their prior statutory duties.

Chair Bernardo indicated that the only legal opinion that matters is that of Director Marques and his legal counsel for this Board. If an individual member of this Board wants to challenge it, this Board is not going to be the forum for it.

Mr. Carlson stated that he would like to request a written opinion relative to the "titles". Attorney Bernstein stated that opinion was given in Director Marques' December 11, 2007 letter. Mr. Carlson felt that was not a legal opinion. Attorney Bernstein assured Mr. Carlson that letter was reviewed and accepted by him and requested that Mr. Carlson defer to his Chair who does not want to waste anymore time on what has become a very old issue. Mr. Carlson stated that he did not consider it a waste of time. Chair Bernardo suggested that Mr. Carlson meet with Director Marques individually and not with this Board. Attorney Bernstein stated that the Director is asking for cooperation and Mr. Carlson stated that on an ongoing basis he would be cooperative. Mr. Carlson stated that he intends to be but he does not intend not to challenge things that he disagrees with. Attorney Bernstein suggested to Mr. Carlson that his remedy was with the legislature. Mr. Carlson stated that he will request a meeting Mr.

Marques.

10. Adjourn to Executive Session, if necessary

- **Chair Bernardo asked this Board if there was any need for executive session. Mr. Smith stated that the Engineers Committee at their meeting today had an item that requires this Board to go into Executive Session.**
- **Mr. Smith moved to convene into executive session at 3:25 p.m. pursuant to RI General Laws, §42-46-5 (a)(2) for sessions or work sessions pertaining to collective bargaining or litigation and §42-46-5 (a)(4) for investigative proceedings regarding allegations of civil or criminal misconduct. Mr. Carter seconded. Motion carried.**
- **Mr. Drury moved to adjourn from executive session and to reconvene to an open meeting at 3:27 p.m. pursuant to RI General Laws §42-46-4. Mr. Lipitz seconded. Motion carried.**
- **Mr. Drury moved to seal the executive session and record the votes taken in executive session pursuant to RI General Laws §42-46-4 and §42-46-5. Mr. Lipitz seconded. No votes are recorded at this time. Motion carried.**
- **Mr. Drury moved pursuant to RI General Laws §42-46-4 that the Board defer disclosure of all votes in executive session until such**

time as such disclosure would not jeopardize any strategy, negotiation, or investigation undertaken pursuant to RI General Laws §42-46-5(a). Motion carried.

11. Adjourn

The next Unified Board meeting will be held on March 26, 2008 at 3:00 p.m. at the Department of Administration Building, Conference Room C, One Capitol Hill, 2nd Floor, Providence, RI 02908. With no further business coming before this board, Mr. Carter moved to adjourn the meeting at 3:30 p.m. Mr. Lipsitz seconded. Motion carried.

Respectfully submitted,

Richard A. Bernardo, P.E.

Chair

Prepared by: Dawne Broadfield, Recording Secretary