

MINUTES

BOARD OF ARCHITECTURE AND INTERIOR DESIGN

The Adam's Mark Hotel Orlando

1500 Sand Lake Road

Orlando, FL 32809

407-859-1500

October 29, 2003

Committee Meetings

October 29, 2003

9:00 a.m.

The meeting began at 9:15 a.m. Ms. Del Bianco reviewed the agenda schedules for both days and the possibility of reviewing settlement stipulations on a consent agenda.

ARCHITECTURE COMMITTEE

Chair – Ellis Bullock

Mr. Bullock called the meeting to order.

Call to Order

Board Members Present:

Ellis Bullock

Sharon Del Bianco

Mary Jane Grigsby

Miguel Rodriguez

Kenneth Horstmyer

Garrick Gustafson

Roymi Membiela

Joyce Shore

Rick Gonzalez

Stephen Schreiber

Board Member Absent:

Neil Hall

Others Present:

Paul Martin, Board Counsel

Mary Ellen Clark, Board Counsel

David Minacci, Prosecuting Attorney

Les Smith, Investigator

Terri Estes, Government Analyst

Michael Wirtz
Emory Johnson
Trent Manausa
Aida Bao-Garciga
Bill Kobrynich
Rita Scholz
Susette Crosby
Ann Wingate
Shelley Siegel
Bemmie Eustace
Bill York
Gail Griffin
Nancy Bredemeyer
Zenaida Young
Joyce Butts
Jill Smith

Discussion

E-mail from Jeff Huberman, NCARB, Region 3

No discussion.

Report on which states require “construction administration” for architects – Stephen Schreiber

Mr. Schreiber commented that at the last board meeting he was requested to check into whether other states require construction administration. He commented that he received replies from 32 states and 6 of them require architects to engage in construction administration. He commented that Alabama was a good state to refer to because it requires that the architect complete the job through the construction phase and obtain the certificate of occupancy. He commented that some states have provisions that allow architects to exempt themselves from construction administration.

Mr. Manausa commented that he was using the NCARB model law for rewriting the Florida statute. Mr. Rodriguez commented that he had informed AIA that the board was looking into implementing construction administration into the statutes. Mr. Gonzalez stated that he liked the language that Alabama has in place.

Mr. Minacci commented that if they make the change then it would be very possible that there would be cases opened against homeowners for practicing architecture. Mr. Manausa commented that according to the model law that if an owner did not engage an architect to do the construction administration of the project then they would be required to notify the building department and board. He commented that an owner could use another design professional to perform the inspection. Mr. Bullock asked who was responsible for notifying the owner of that requirement. Mr. Manausa responded that the architects and building official were responsible.

Mr. Martin asked Mr. Manausa if there was a concern by implementing this requirement that the market would be driven to use another design professional or engineer because the language mandates that they use another architect. Mr. Gonzalez responded that they would not be required to use an architect but they would because they would want a good job. Mr. Manausa commented that the county is not necessarily qualified to inspect certain types of jobs, therefore, by engaging the architect they are protecting health, safety, and welfare of the public.

Mr. Martin commented that by implementing this language that another profession may benefit financially because they would be forcing the public to look elsewhere. He commented that he wanted to bring that to the boards attention to consider.

Report on state boards' strategic planning – Stephen Schreiber

Mr. Schreiber commented that California seems to be the only state that has taken a proactive approach.

IDP Coordinator – Stephen Schreiber

Mr. Schreiber commented that according to the NCARB roster there was not an IDP coordinator for this board. He volunteered to be the coordinator.

For the Board's Information

NCARB – U.S. and Australian Architect Associations Kick Off Architectural Practice Agreement

NCARB New Clips – 2003 Survey of Registered Architects

NCARB New Clips – An ARE Evolution Is on Its Way!

No discussion.

New Business

No new business.

Old Business

No old business.

Adjourn

MOTION: Mr. Gustafson moved to adjourn.

SECOND: Mr. Rodriguez seconded the motion.

The meeting adjourned at 9:40 a.m.

INTERIOR DESIGN COMMITTEE

Chair – Mary Jane Reeves

Call to Order

Ms. Grigsby called the meeting to order at 9:40 a.m.

Board Members Present:

Ellis Bullock
Sharon Del Bianco
Mary Jane Grigsby
Miguel Rodriguez
Kenneth Horstmyer
Garrick Gustafson
Roymi Membiela
Joyce Shore
Rick Gonzalez
Stephen Schreiber

Board Member Absent:

Neil Hall

Others Present:

Paul Martin, Board Counsel
Mary Ellen Clark, Board Counsel
David Minacci, Prosecuting Attorney
Les Smith, Investigator
Terri Estes, Government Analyst
Michael Wirtz
Emory Johnson
Trent Manausa
Aida Bao-Garciga
Bill Kobrynich
Rita Scholz
Susette Crosby
Ann Wingate
Shelley Siegel
Bemmie Eustace
Bill York
Gail Griffin
Nancy Bredemeyer
Zenaida Young
Joyce Butts
Jill Smith

Discussion

Educator's Task Force

FIDER Equivalency Standards Task Assignment

ID Task Force Members & IDAF Task Force Integration

Ms. Del Bianco commented that there were two individuals from the 2-year community colleges that would like to be assigned to the task force. She continued to state that she would like to charge the task force with creating an equivalency chart for future use.

Mr. Bullock asked Ms. Del Bianco by assigning individuals from 2-year community colleges if that would strengthen their position for the 2-year program because he believed it was the intention of the board to move away from the 2-year program. Ms. Del Bianco replied that once the FIDER program is implemented the 2-year programs would go away.

Mr. Kobrynich commented that the 2-year community colleges were trying to encourage students to continue to a 4-year program. He commented that the 2-year programs were doing well. Ms. Del Bianco commented that there are many community colleges throughout the state and there was a concern that the community colleges would lose their student base. She commented that she understood that they are working with the 4-year colleges and universities to have agreements that would allow their students to continue to the 4-year program. She commented that community colleges concern about losing their student base has subsided.

Mr. Kobrynich commented that they should not be looking at the 2-year and 4-year programs as being different and instead they should be looking at them as common bodies of knowledge, which would allow 2-year students to advance into 4-year students. He commented that they use the same common body of knowledge, which is FIDER.

Ms. Butts with the Community College in Jacksonville commented that she was on the task force years ago and they determined that the 2-year program was equivalent to the 4-year programs. She commented that the community colleges had 55 credits and the universities have 60 credits. Ms. Del Bianco commented that they were missing the liberal arts. Mr. Bullock commented that a 2-year program is not the same as a 4-year program and in his opinion the community colleges were there to protect their enrollments. He commented that the 2-year degree is not as good as the 4-year degree.

Ms. Del Bianco commented that they were not trying to go back on the 2-year program but have a grid so when their current educator that performs the FIDER equivalency the new educator will have something to work with. Mr. Schreiber commented that as in architecture, an interior designer must have the base knowledge then obtain the specific body of knowledge.

Mr. Johnson commented that in 1994 a 4-year program only was submitted to the legislature and met opposition. He continued by stating that if they try to implement this 4-year only program they will more than likely meet opposition again. He commented that community colleges are important to the legislation and to allow them to be removed will be important. He continued by stating that the reason 2-year programs were not FIDER accredited was because they did not apply for accreditation and that the task force was made up of only 4-year degree programs. He commented that he had accredited many 2-year programs throughout the U.S. and Canada that he would put them up against any 4-year program. He commented that this was a difficult choice and that the board needed to prepare for a difficult battle with the legislature if they move forward with this change.

Ms. Smith with the Seminole Community College commented that they have an agreement with Florida State University, which requires an Associate of Arts and Science to be eligible to transfer as a senior to Florida State.

IDCEC Meeting Issues

Ms. Grigsby commented that she spoke with Jeanine King and they do not have the agenda ready at this point.

For the Board's Information

Proposed Council Resolution No. 2003-01

2004 Board of Directors Election & Resolution 2003-01 Clarification

Language Clarification for Resolution No. 2003-01

Ballot – 2004 Slate of Directors

Leadership Profiles:

Anne H. Browning

David Hanson

Janice Young

Mr. Wirtz commented that this was for the board's information. He commented that this was clean-up language.

New Business

Mr. Wirtz commented that the call center was giving wrong information. He commented that the call center was informing interior design applicants that the work that they are doing under a licensed architect is not acceptable for the experience requirement.

Old Business

No old business.

Adjourn

MOTION: Mr. Gonzalez moved to adjourn.

SECOND: Mr. Rodriguez seconded the motion and it passed unanimously.

The meeting adjourned at 10:03 a.m.

The board decided to open and suspend the rules committee meeting and begin the general business portion.

General Board and Business Meeting

Call to Order

Ms. Del Bianco called the meeting to order at 10:05 a.m.

Board Members Present:

Ellis Bullock

Sharon Del Bianco

Mary Jane Grigsby

Miguel Rodriguez
Kenneth Horstmyer
Garrick Gustafson
Roymi Membiela
Joyce Shore
Rick Gonzalez
Stephen Schreiber

Board Member Absent:

Neil Hall

Others Present:

Paul Martin, Board Counsel
Mary Ellen Clark, Board Counsel
David Minacci, Prosecuting Attorney
Les Smith, Investigator
Terri Estes, Government Analyst
Michael Wirtz
Emory Johnson
Trent Manausa
Aida Bao-Garciga
Bill Kobrynich
Rita Scholz
Susette Crosby
Ann Wingate
Shelley Siegel
Bemmie Eustace
Bill York
Gail Griffin
Nancy Bredemeyer
Zenaida Young
Joyce Butts
Jill Smith
GW Harrell, DBPR
Douglas Sunshine, Prosecuting Attorney FEMC

Review and Approval of Minutes and To Do List

April 3, 2003, Telephone Conference Call
June 23, 2003, Telephone Conference Call
July 30, 2003, Committee Meetings
July 31, 2003, General Business Meeting
August 29, 2003, Telephone Conference Call
September 8, 2003, Telephone Conference Call

MOTION: Mr. Bullock moved to approve all minutes as presented.

SECOND: Mr. Rodriguez seconded the motion and it passed unanimously.

Mr. Schreiber requested that a correction be made to reflect Mr. Magyar was with Florida Atlantic University.

To Do List

Ms. Estes reviewed and reported the status of the To Do List. She informed the board that she had updated the NCARB database regarding disciplinary cases for the past 2-years. Mr. Minacci informed the board that his office had also been working on disciplinary issues and the difficulties with the NCARB database. Mr. Smith commented that he received notification from NCARB that an individual's license was revoked and a discipline case has now been opened based on that revocation. Mr. Manausa commented that there are licensees that are not NCARB certified.

MOTION: Mr. Bullock moved to send an e-mail to all states when licenses are revoked or suspended.

SECOND: Mr. Gustafson seconded the motion and it passed unanimously.

Ms. Del Bianco commented that there were minutes from the October 30th meeting that needed to be approved.

MOTION: Mr. Rodriguez moved to approve.

SECOND: Ms. Shore seconded the motion and it passed unanimously.

Ratification List (handout)

Architect Certificate of Authorization

Mr. Gonzalez asked about associates in the name of the firm. Mr. Martin commented that they could use the name associates because they may have secretaries, assistance. Mr. Rodriguez commented that they approved to use that term meetings ago but require if the name is plural that they must have more than one architect.

The board decided to ratify the certificate of authorization applications the next day so the reviewer could be present to answer questions.

Architecture Exams Passed

MOTION: Mr. Rodriguez moved to approve items 1-3.

SECOND: Mr. Gustafson seconded the motion and it passed unanimously.

Architecture Endorsement

MOTION: Mr. Rodriguez moved to approve items 1-24.

SECOND: Mr. Bullock seconded the motion and it passed unanimously.

Architecture Business Name Change

MOTION: Mr. Rodriguez moved to approve.

SECOND: Mr. Schreiber seconded the motion and it passed unanimously.

Interior Design Endorsement

MOTION: Ms. Grigsby moved to approve items 1-12.

SECOND: Ms. Shore seconded the motion and it passed unanimously.

Interior Design Dual Licensure

MOTION: Mr. Gonzalez moved to approve items 1-3.

SECOND: Mr. Rodriguez seconded the motion and it passed unanimously.

Interior Design Dual Certificate of Authorization

MOTION: Ms. Grigsby moved to approve.

SECOND: Mr. Rodriguez seconded the motion and it passed unanimously.

Interior Design Certificate of Authorization

MOTION: Mr. Gonzalez moved to approve items 1-9.

SECOND: Mr. Gustafson seconded the motion and it passed unanimously.

The board recessed at 10:30 a.m. and reconvened at 10:50 a.m.

Mr. Horstmyer asked the board to explain the plural usage in the name and the fictitious name information because he was confused. Mr. Martin read Rule 61G1-12.001(3) which indicates that the name of the firm must be in conjunction with the word architect or architectural. He commented that Ms. Estes had informed him that the board has allowed applicants to meet these criteria as long as they reflect those services on their letterhead. He commented that the statute does not indicate that they can require that the plural usage be prohibited.

Mr. Horstmyer asked Mr. Martin if that implied the board had the exposure to be challenged. Mr. Martin replied that if the board denied someone because they have architects plural in their firm name it would be difficult to defend. Mr. Manusa commented that this has always been a policy that if the firm does not have more than one individual then it is misleading to the public that the firm is larger than they are. He commented that the board has always said if you use the term architects, which is plural, then they must have more than one architect.

Mr. Martin commented that the statutes and rules do not reflect that they have the authority for that requirement. He commented that the board could propose a rule to outline the board's policy of the board for review by JAPC to determine if they have the authority.

Discussion

DBPR – Financial Report June 30, 2003 and 2002

Ms. Chastain will review for the board October 30, 2003.

Review of Enforcement Contract

Copy of the Invitation to Negotiate (ITN)

Smith, Thompson, Shaw & Manausa, P. A. response to the ITN

Copy of Contract with Smith, Thompson, Shaw & Manausa, P.A.

Copy of the Annual Report

Letter from Mr. Minacci – Budget November 1, 2003 through October 31, 2004

Prosecuting Attorney's Report – David K. Minacci

Status Report of Cases

Licensed Architects Legal Cases

Licensed Interior Designers Legal Cases

Unlicensed Architects Legal Cases

Unlicensed Interior Designers Legal Cases

Licensed Architects Investigative Cases

Licensed Interior Designers Investigative Cases

Unlicensed Architects Investigative Cases

Unlicensed Interior Designers Investigative Cases

Pending Final Orders

Licensed/Administrative Hours

July 2003

August 2003

September 2003

Unlicensed Billable Hours

July 2003

August 2003

September 2003

Results of July 29, 2003 PCP Meeting

Results of July 31, 2003 Board Meeting

Results of September 10, 2003 PCP Meeting

Press Releases/Speaking Engagements/Other Correspondence

Mr. Minacci reviewed the annual report and commented that this was a requirement as well as the budget for the 2-year contract. He commented that it was the intent to renew the contract for another 2-years when this contract has expired.

Mr. Minacci gave an overview of the annual report for the first 8 months. He reviewed the investigative process and finding legal sufficiency or insufficient. He commented that they set a goal to determined legal sufficiency within 7 days. He commented that they are doing that with half of the cases. He stated that was a high goal to set and if they are not meeting that goal they are meeting it as soon as possible.

Mr. Minacci commented that they had to go to the department and enter complaints in the beginning because they did not have access to the computer system. He commented that

they had set another lofty goal of completing investigations within 60 days. He commented that they are not meeting that goal.

Mr. Minacci reviewed the numbers of probable cause cases and explained the process. He commented that if probable cause was not found then the case is closed. He commented that if probable cause was found, either a cease and desist order is issued or an administrative complaint is filed. He explained the cease and desist process and the affidavit that is filed to verify compliance.

Mr. Minacci commented that every administrative complaint is brought before the board. He stated that the numbers they are looking at for administrative complaints should continue to increase. He reviewed the process of informal and formal hearings, motion for default and settlement stipulations.

Mr. Minacci commented that the board is reviewing information for the first 8 months of the contract and they would receive information reflecting a full year worth when the audit is complete. He commented that he felt there would be more complaints in the future because the word is getting out that the board is taking action against licensed and unlicensed individuals and businesses.

Mr. Minacci commented that they are paid on an hourly basis for unlicensed cases. He commented that they are not meeting the deadline for closing cases within 60 days. He commented that he has given thought to hiring a second investigator but did not see the need at this time since the probable cause panel was getting as many cases as they can handle.

The board discussed rotating board members of the probable cause panel. Mr. Minacci commented that he thought it would be informative for the board members. Mr. Martin commented that for the continuity purposes that they should consider rotating once a year. Mr. Minacci agreed and commented that rotating one member at a time.

Ms. Clark commented that staggering was critical and continuity is essential and the rule states that the panel member is for one year. She commented that she would not recommend lowering that time frame but the board could exercise rotating after the one year has expired. Mr. Minacci commented that it does take time to understand the process.

MOTION: Mr. Schreiber moved for the Chair to develop a matrix for rotating board members.

SECOND: Mr. Bullock seconded the motion.

Ms. Grigsby commented that the Chair changes yearly and they are the individuals that appoint members to the panel. Ms. Del Bianco reviewed the panel process and that some of the members have been on the panel for numerous years.

Mr. Bullock commented that he has a problem with a former board member being on the panel for 8 years. Mr. Manausa agreed that maybe 8 years was a long time but they needed

continuity. The board discussed the problem of having 2 board members on the panel because of quorum issues. Mr. Martin commented that the board chair could appoint an individual and set the term, which would not require a rule change.

The board discussed the need to have an interior designer on the probable cause panel. The board determined they would rotate one current member off in January.

Mr. Schreiber withdrew his motion and Mr. Bullock withdrew his second.

Mr. Minacci advised the board that he would be sending a financial audit when it was available. Mr. Horstmyer asked Mr. Minacci if the revenues and expenses included administrative expenses of the firm and if the difference was pretax bottom line. Mr. Minacci replied in the positive. Mr. Horstmyer commented that was roughly \$8,000 per month approximately \$100,000 per year bottom line.

Mr. Bullock asked from those cases what was the amount generated and collected in fines. Mr. Minacci replied that the board had only ruled on 10 cases so it was not fair to evaluate what he had collected in fines. Ms. Del Bianco asked Mr. Minacci of the cases they have ruled on how much was the amount in fines. Mr. Minacci replied that based on the cases for tomorrow's review there is \$96,000 in fines to be levied. He continued by stating that does not include what he may get lucky on collecting because unlicensed cases are more difficult to collect.

Mr. Minacci commented that he had collected \$32,000 on 40 cases for final orders taken over from the department. He commented that they must take into consideration the applications that come before the board based on a complaint that they filed. He continued by stating he was referring to the fines as a condition of licensure.

Ms. Del Bianco commented that she thought the collectable information would be helpful for determining the amount of the contract for licensed and unlicensed cases. She commented that certain information would be helpful regarding what the contract should be for prosecutorial and investigative services for licensed and unlicensed cases and the cost. She commented that it would be helpful to know if they knew the costs involved and if they are replenishing the funds to be able to pay the contract.

Mr. Minacci commented that he would prepare a chart that reflects what the panel recommended, what the board approved, and what has been collected. Mr. Bullock asked for a percentage of collectable and non-collectable fines. Mr. Minacci commented that he takes cases to the probation committee to determine if he should continue on cases that may not be collectable i.e. person is dead or out of the country.

Ms. Del Bianco commented that her fear is that as the cases increase the funds may not be available to pay for the contract. Mr. Miancci commented that the board needed to consider that licensed cases would more than likely pay or we revoke the license. He continued by stating that for unlicensed cases the board may never see the funds. He commented that

when he brings a settlement stipulation before the board when he has collected money on the case the board should take the money and run.

Ms. Del Bianco commented that she has seen an improvement in production of cases both licensed and unlicensed. Mr. Minacci commented that his office has specialization and they have financial incentive to prosecute unlicensed cases because they are paid hourly.

Ms. Clark commented that Mr. Minacci and his staff is doing a great job. She continued by stating that the review of the annual report is an excellent opportunity to review and revise the terms of the contract so they will continue to have improved progress. She commented that others would be looking at what the contract says and what the contractor is doing. She commented that there were good numbers presented before the board however there are areas where they are not meeting the contract requirements. She commented that the board might be open for scrutiny because the contractor is not meeting the performance standards. Ms. Clark commented that the board should consider revising some of the terms.

Mr. Rodriguez commented that this contract was written with no historical basis. Ms. Clark commented that the board is also opening themselves up for scrutiny and criticism for not monitoring the contract.

Ms. Del Bianco asked Mr. Minacci to review the contract and let the board know what may need to be changed. Mr. Minacci commented that the performance measures are a guide and a goal to meet. Ms. Membiela commented that the performance measures come from the board not the contractor. Ms. Del Bianco commented that Mr. Minacci could give the board a better idea of those measures because he is in the trenches. Mr. Martin commented that he agrees with Ms. Membiela that board members are involved.

Mr. Rodriguez and Ms. Clark were appointed to work with Mr. Minacci to review the performance measures for revisions.

Letter from Samuel Garmizo and Pedro Perez

Ms. Del Bianco commented that this was not an accredited course through the board, AIA, or IDCEC. Mr. Rodriguez commented that he understood that a course could be approved up to weeks before the course is offered. He commented that he felt the board should not approve or deny courses based on political agendas.

The board recessed at 12:10 p.m. and reconvened at 1:15 p.m.

Rules Committee

Discussion

Prototype Building

Anne Marie Bemmie Eustace and Bill York were present regarding the issue. Mr. Rodriguez commented that this issue was brought to the board's attention and there is a concern that there may be problems with the Building Code and the board's rule regarding the responsible supervisor in control or successor architect for Prototype Buildings.

Mr. Rodriguez commented that Mr. York has the contract with the Department of Community Affairs to review and approve Prototype Buildings, which are the same design used statewide. He continued by stating the buildings are reviewed for code compliance, which allows the owner to go anywhere in the state of Florida and receive building permits without re-reviewing the plans. He commented that only the site work or site adaptation would be reviewed for compliance. He commented that Ms. Eustace is before the board seeking unofficial clarification whether they should be using the responsible supervisor in control or the successor architect. He commented that this issue has raised flags for Mr. Minacci as well as himself.

Mr. Rodriguez commented that the board might need to modify an existing rule or create a new rule on how to handle Prototype Buildings. Mr. Martin commented that he does not understand what the difference was than any other set of plans. Mr. Rodriguez replied that if he took a set of Ms. Eustace's drawings for a client and applied them to a site in Miami then he would have to assume control as a successor architect, unfortunately, not every architect acts appropriately and does not follow the laws.

Ms. Eustace commented that corporate clients have Prototype Buildings that they use throughout the country and that Building may be used numerous times within Florida. She commented that currently they are working with several different architects on the same plans, which requires redrawing and signing and sealing each time. She commented that the corporation retains control of the design. She commented that essentially Mr. York would have the same plan submitted 4 times for review and approval. She commented that they were looking for a rule that would allow for a streamline review and permitting program which was what the Prototype Building program was designed to do. She commented that they are running into difficulties with signing and sealing and ownership of the drawings.

Ms. Clark commented that they are suggesting that because the plans go through a rigorous review with DCA that there might be an allowance for that and the board implement lesser requirements. Mr. York commented that an architect submits plans to the state and once they are reviewed and approved those plans are filed electronically with the state and he maintains the hard copy. He continued by stating that the state originally envisioned this to be electronic then they had a difficulties because architects do not have the ability to submit signed and sealed plans electronically. He commented that DCA would work with legislation to implement the electronic signing and sealing for architects like engineers.

Mr. York commented that to satisfy the requirement of the statutes and rules that architects could submit the hard copy as well as electronic. He commented that they envisioned that when an individual wanted to use the plans they would submit the request in writing to Mr. York's office and they would make sure that the plans where site specific and approved. He commented that they print numerous copies of the plans and they are Prototype Building approved. He commented that an architect cannot change the plans because it changes the Prototype approval. He commented that a corporation might own the plans and the architect of record might not be the architect overseeing the project.

Ms. Eustace commented that the problem arises when there are multiple architects involved. Mr. Bullock commented that modifications should only be to the foundations and site specific requirements and the building stays the same. Ms. Eustace commented that was correct and if they are the only architect of record then that is how it happens. She commented that the complication comes is when there are multiple architects involved in local site adaptation.

Mr. York commented that the plans are reviewed for the highest standards in the state and believe that they comply with the building codes. He commented that the intent is to build the same building not change it. He commented that an example is toll booths, Walgreen's, McDonalds, as well as homes. Mr. Martin commented that he understood the plans to be complete designs regardless of whether they are Prototype or not that if another architect wanted to used those plans they would have to follow the successor architect rule.

Mr. York commented that their question was how they would allow a successor architect to take Prototype plans and not change them to the point that they lose the Prototype approval. Ms. Eustace commented that 10% or 15% of the jurisdiction have aesthetic requirements that must be met and they were asked how they would address that issue. She commented that the problem is that 80% of the construction is happening in that 10% or 15 % of those jurisdictions. She commented that they are working around that because they are trying to have a local review of the exterior or aesthetics.

Mr. Gonzalez asked who inspects the building. Mr. York responded that the local inspectors would inspect the building. Mr. Manasa commented that there is no such thing as a typical building that can be built anywhere.

Mr. Bullock asked about the architect's liability, if the successor architect was responsible for the entire building or only the piece that he changed to meet local ordinances to meet site adaptation. Mr. Martin responded that they would be responsible for all it.

Ms. Eustace commented that there is a provision for revisions. Mr. Rodriguez commented that under the provision of successor architect that rule was written clearly for a system that does not take into consideration the Prototype Building approval. He continued by stating it was intended for when an architect takes over another architect's work, which leaves the process and is relieved of the responsibility. He commented that in this system the approved set of drawings should be allowed to be taken and assume responsibility for services performed and not the entire project. He commented that the current successor architect rule does provide a mechanism however it requires that the architect take full responsibility.

Mr. Schreiber asked what the measure was that a Prototype Building could be changed. Mr. York replied that there was nothing defined except for changes must be reviewed at the local level. Mr. Bullock commented that they could not bifurcate the architect's responsibility.

Mr. Martin commented that there seems to be a continuous and clear line of responsibility to avoid finger pointing. He commented that the building code's program is that the building meets certain code requirements. He commented that this board and DCA were trying to

benefit the profession, not realizing who has ultimate responsibility. Mr. Rodriguez commented that any given project might have more than one architect, engineer, etc.

Mr. Manausa commented that the successor architect takes full responsibility. If the roof leaks, waterproofing, and walls leak the responsible party is the final architect of record.

Mr. York commented that there should be a way for the program to work and that the plans they produce are blue lines and not reproducible. He commented that they have the prototype stamp on each page. Mr. Gonzalez commented that essentially they want us to legalize plan stamping. Mr. Bullock commented that the successor architect rule works for this board and state and that maybe they have a reproduction problem.

Mr. Rodriguez commented that he would like to give guidance on how to proceed under the successor architect rule. He commented that there are some items that fly in the face of the system that the building commission has put into place. He commented that the title block issue could be resolved by establishing a typical standard title block. He commented that putting aside the liability issue, a suggestion was made to place a note in the file that the architect relied on the prototype review and did not perform two weeks of reviews. He commented that there was not a need to send a certified letter to the successor architect. He commented that there should be some minor tweaking and that the board should not turn a blind eye to today's times whether the board likes it or not. He commented that they should adapt to changes.

Mr. York asked the board that in the short term they could work with going to the local building department for permitting. Ms. Eustace commented that she felt this program could work and she understands that there are hurdles to overcome.

This discussion was tabled for the February architecture committee meeting.

The rules committee meeting was suspended. The general business meeting was opened.

Administrative Privatization Status – Sharon Del Bianco FEMC legislation

GW Harrell with the Department of Business and Professional Regulation and Douglas Sunshine, Prosecutor for the Florida Board of Professional Engineers were present to answer questions regarding the current department legislative language and FEMC.

Mr. Harrell commented that the Management Privatization Act has not been implemented. He commented that years ago the board and the department did not agree on a vendor when they previously looked at privatization. He commented that the current model provides for privatization for profit or non-profit. He commented that the board and the department must agree upon a vendor. He commented that the department does have concerns about the Act and they considering making some changes regarding the Act. He commented that both the FEMC model and the prosecutorial model had pros and cons.

Mr. Harrell commented that the Act requires that all services be contracted with one entity. Ms. Del Bianco commented that the Management Privatization Act does not work for the board because they have a contract for the prosecutorial services with a separate entity.

Ms. Clark commented that Mr. Harrell feels that the Management Privatization Act and the board's prosecutorial contract under Chapter 481 is in conflict because the Act gives the department the right to contract for the services the board has already contracted for. She commented based on the last conference call the board determined that they would like to review the FEMC model in addition to the Management Privatization Act and Chapter 481, F.S.

Mr. Sunshine commented that FEMC was created by legislation not for profit and the budget is handled through the department receiving appropriations. He commented that upon proof of meeting the contract requirements their money is distributed quarterly and the contract is renewed annually. He stated that the employees are not employees of the state. He commented that the FEMC model works and they handle licensed and unlicensed activity. He commented that they are working with Accenture and implementing the use of LicenseEase. He commented that they are efficient, streamline, and very lean.

Mr. Gustafson asked what the weaknesses were. Mr. Sunshine responded that the budget was the primary weakness. Mr. Minacci commented that he worked in the position of negotiating the budget for FEMC and they must justify employees and travel. Mr. Harrell commented that the board currently does that process with the department.

Mr. Martin commented that the FEMC model was not as it exists today. He stated that they have refined the process through working with the department to make it work. He commented that examples were the Executive Director is now solely with FEMC and the unlicensed activity that was handled through the department is now with FEMC. He commented that the department has a contract monitor and they are responsible to the state to make sure FEMC is complying with the contract. Mr. Sunshine commented that FEMC works for the board and they have a track record and comfort level, which is beneficial to FEMC.

Mr. Harrell commented that the department agreed to the FEMC changes. Mr. Gustafson asked Mr. Harrell what he thought FEMC's weaknesses were. Mr. Harrell replied that the board might want to direct their attention to what role or how much control the board would have in a FEMC model verses the current model. He commented that currently FEMC has a board of directors that appoints the majority of the board members and handles management and performance issues. He commented that the department is in a monitoring mode with FEMC. Mr. Sunshine commented that the FEMC Board of Directors and the Board of Professional Engineers meet annually to review the operations and management process. He commented that it was a nice blend and they work together.

Mr. Martin commented that the FEMC board has more of a business background for overseeing a non-for profit business. Mr. Sunshine commented that FEMC performs all of the functions that were previously performed by the department. Mr. Manausa commented that the weakness is negotiating with the department for a budget because they are not actually receiving the money directly for what the licensees pay. Mr. Sunshine commented that the

legislature created FEMC and he did not believe that the department would disrupt the budgetary issue.

Mr. Martin commented that the department handles the fiscal aspect of all boards by lobbying for appropriations from the legislature. He commented that if the board were to get out from under the department the board would be required to lobby the legislature for their appropriations. Mr. Harrell commented that the department made the appropriations request for Mr. Minacci's contract, which will be the same amount for the next fiscal year.

Mr. Harrell commented that if the board wanted more funds for Mr. Minacci's contract they would have to lobby for that. Mr. Sunshine commented that FEMC is prohibited from lobbying the legislature. Mr. Schreiber commented that with more engineers it would appear they would have more lobbying power. He commented that losing the lobbying power of the department the architects would be affected.

Ms. Clark commented that regarding staffing and prosecutorial services, not budget, the traditional way the services are administered to the board is through the department and the board is allowed to make decisions regarding the work that needs to be done but they are hired by the department. She commented that under Chapter 481, F.S. the board was allowed to hire who they wanted to offer prosecutorial and investigative services. She commented that under the FEMC model the board does not decide who is hired to perform functions, it is FEMC. She commented that the only model that allows the board to enter into a contract with a vendor is Chapter 481 not FEMC.

Mr. Minacci commented that the FEMC model is better than what they currently have with the department. He commented that the state holds people down. He commented that he feels the system they have with him is better because there is a financial incentive. He commented that under his model he is able to keep the money and FEMC turns the money saved back to the state.

Mr. Horstmyer commented that based on the information he had he thought the board's notion of privatization was profit motive and most efficient. He commented that the FEMC model appeared to be an improvement of the bureaucratic process based on the sums of money returned to the state. He commented that he was not sure if the improvement was because of the specialization aspect or based on Mr. Minacci's contract profit driven. He commented it appeared the board was moving in the right direction by already having a portion of the functions privatized through Mr. Minacci's contract and that was the direction they were going with the administrative functions.

Mr. Schreiber commented that he works at a University and he notices that there are problems with accountability. Mr. Sunshine commented that FEMC is accountable to the board or department. He commented that FEMC hires individuals that are very knowledgeable and specialized.

Mr. Martin commented that the FEMC model allows the board a lot of control because FEMC hires the individuals that perform the administrative functions and the board appoints the

FEMC directors. He commented that if they go through the process under Chapter 481, F.S. they would be able to select a vendor, however, the day to day operations would be negotiated based on the amount of money the board brings in. He commented that ultimately the control under the FEMC model is with the board. He commented that the for profit motivation might be harder to sell to licensees when you reflect where their dollars are being spent. He commented that it might be easier to sell if it was not for profit because the licensees would know that their licensure is being handled at the bare bones bottom line and cannot perform any lower.

Mr. Bullock commented that he thinks that the Governor wants less government and he wants the job to be done by the private sector. He commented that the FEMC model appears to work, however, it is double layered. He commented that he would like to expand the current Chapter 481 language to include administrative functions.

Ms. Del Bianco asked how the board would handle the prosecuting attorney and board counsel. The board determined that would be structural within the contract.

Mr. Harrell commented that the board needed to consider that they would have more control under the FEMC model. Mr. Rodriguez commented that initially when Mr. Minacci's contract was published for bid it was based solely on experience and knowledge not cost. He commented that he agreed with Mr. Harrell that the most control the board would have would be through the FEMC model and also agreed with the profit incentive.

Mr. Martin commented that price is an eliminate regarding expanding the language under Chapter 481, which, would be subject to challenges and certain perimeters. Ms. Membiela commented that she has observed that profitability and prosecution aspects she understands, however, she recalls that the aspect of lack of customer service has not been discussed. She asked if there were studies done before FEMC regarding customer satisfaction and the relationship as to how this impacts customer service or effectiveness on the overall profession. She commented that profitability was one aspect of the entire picture.

Mr. Minacci commented that OPPAGA did a survey of licensees and FEMC did very well. Ms. Membiela asked if there was a survey performed before FEMC to compare so they have a benchmark to determine what they are actually doing better than before.

Mr. Miancci commented that there was not data to compare between the department and FEMC. He commented the survey reflected that the cost was up but the service had dramatically improved. Mr. Rodriguez commented that when he was with AIA Florida they requested data to base a responsive bid when they initially looked at privatization. He commented that it was very clear that the service had improved.

Mr. Manasa commented that the bottom line is that their licensees are continually complaining about the call center, central intake, and lack of service from the administrative staff. He commented that the board has decided to offer those services based on the funding they have. He commented that the board is looking at the FEMC model and Chapter 481, F.S. to provide the board the most control.

Mr. Martin commented that the board might think that they have ultimate control under the current contract they have with Mr. Minacci. He commented that he and Mr. Harrell wanted to point out to the board that from a public procurement stand point that this was not ultimately controllable. He commented that if the board wanted something more guaranteed then the FEMC model would be better because it is legislatively mandated and it functions. He commented that there is an element of risk when they expand the Chapter 481, F.S. language they currently have.

Mr. Gustafson asked if there was any limitation to having the FEMC model with incentives. Mr. Martin commented that the legislation would not create for profit within the government.

No board member voted to move forward with the Management Privatization Act. Primarily FEMC model, one vote. Chapter 481, F. S. six votes. FEMC with incentive model, three votes.

Mr. Schreiber commented that maybe they were looking for a model for profit oversight. Mr. Rodriguez commented that the missing link was not for profit because it was missing the incentive. Mr. Sunshine commented that unfortunately the board assumes that they will not get great services with a not for profit model. Mr. Rodriguez commented that he does not agree with having to sit down with the department to negotiate staff and travel dollars. He commented that was one of the reasons he began down the road for privatization.

Mr. Martin commented that there has been no model put forward that frees them from financial control. Mr. Miancci commented that the board does have much more control under his control because they were appropriated a certain amount of money and they can spend it how they choose. He continued by stating that FEMC is told how much they can spend on travel, staff, etc. Mr. Martin commented what happens when the department comes to them and says they now have less money to spend on his contract, that does not show the board has more control under the current set up.

Mr. Rodriguez commented that the legislature controls the purse strings and the department controls the purse. He commented that an example was the department informed the board that they could not send 4 people to a meeting and they had no say. He continued by stating that if the board had control over their budget then they could determine if this trip took precedence over another. He commented that the board was not given that option, they were told. He commented that FEMC has that control.

Ms. Membiela commented that at the end of the day whether there is profit or non-profit it is irrelevant. She commented that the board should be focusing on protecting the profession and serving the state.

The board recessed at 3:25 p.m. and reconvened at 3:40 p.m.

Court Reporter

Cindy Green, 2939 Peel Avenue Orlando, Florida 32806

407.228.1119, 407.228.1125 fax

Dwight D. Ellinwood

Ms. Clark commented that they would discuss the matter and vote tomorrow. She commented that the case had been around since 2000 and the application was considered in 2001. She commented that Mr. Ellinwood appealed the board's decision to deny his application and the board upheld their decision. Ms. Clark commented that Mr. Ellinwood filed an appeal with the First District Court of Appeals and that matter was resolved in February when they ruled that the board denied based on improper interpretation on the Florida statutes. She commented that the board again reviewed the application in May and the order that set forth the reasons for denial was issued in September.

Ms. Clark commented that Mr. Ellinwood filed a Petition for Evidentiary Hearing and a Petition for Writ of Mandamus. She commented that she recommends that the board amend the September order.

Petition for Evidentiary Hearing

Ms. Clark commented that under Chapter 120.57, F.S., anytime an agency impacts a citizen's substantial rights they have the right to a legal proceeding to challenge. She commented that the board has impacted Mr. Ellinwood's right by denying his licensure. She commented that an evidentiary hearing goes before the Division of Administrative Hearings when there is an issue of disputed facts. She commented that if there are no facts in dispute then it is the board's decision what is the proper application of law.

Ms. Clark commented that when someone petitions for a hearing there has to be a determination of disputed facts and she is the one that would make that determination. The board has the authority to deny the petition. She commented that she believes there is no dispute of material fact and they should deny his petition to go to DOAH. She referred and reviewed for the board her memorandum in the agenda that outlined her reason for no dispute of fact that would entitle him to an evidentiary hearing. She commented that she recommends that they deny him the petition for evidentiary hearing before DOAH and grant him a hearing before the board to determine the application of the law.

Request for Authority to amend the September 4, 2003 Order

Ms. Clark commented that she referred and reviewed her memorandum in the agenda outlining the reason to amend the order. She commented that Mr. Ellinwood graduated with a Bachelor of Architecture and Design in 1977. She commented that she provided the law in 1977 and this board required a 5 year degree. She stated that Mr. Ellinwood did not apply for licensure in Florida in 1977 and he would have been denied at that time because his degree is for 4-years. She commented that he was licensed in Georgia and there were three ways to be licensed in Georgia and she reviewed those methods. She commented that in Florida in 1986 the law still required a 5-year curriculum and NAAB is mentioned but they are not the defining criteria. She continued by stating the defining criteria is the 5-year degree.

She commented that he applied for endorsement in 2000 and referred the board to Chapter 481.213(3), F.S., which provides three ways to endorse to the state of Florida. She

commented that she provided the Georgia and Florida laws for the board to compare. She commented that the order focused on the NAAB degree instead of the 5-year degree.

She advised the board they should compare Mr. Ellinwood's license as under the law of an initial applicant to determine if he was eligible for licensure based on Georgia and Florida's law. She commented that they should determine that Florida had one route to be eligible for licensure as an initial applicant and Georgia had three routes.

Petition for Writ of Mandamus

Ms. Clark commented that Mr. Ellinwood is seeking that the courts order the board to issue his license. She commented that this request was submitted based on his theory that the board did not properly process his application in a timely manner. She stated that she felt this application was handled properly. She commented that she had replied to the Writ of Mandamus in a timely manner and she would notify them when the court made a decision.

Ms. Del Bianco closed the general business meeting at 4:20 p.m.

RULES COMMITTEE/WORKSHOP

Call to Order

Ms. Del Bianco called the meeting to order.

Rules Report

Rule Tracking

Ms. Clark commented that she would stay on top of the rule notice so they do not run out of time for rules revisions. She reviewed her report and tracking. Mr. Martin advised the board that Rule 23.010 Responsible Supervisory Control was effective July 3, 2003.

Rule Discussion

Rule 61G1 –11 –Organization and Purpose

Draft Language, 11.013(3)(a) Definitions

Current Language

MOTION: Mr. Rodriguez moved to approve Rule 11.013(3)(a) draft language as presented.

SECOND: Mr. Gustafson seconded the motion and it passed unanimously.

Draft Language, 11.017 (New) Time for Compliance with Final Order

Mr. Martin commented that this language was presented to assist the board in streamlining the process for compliance with final orders. He commented that would allow the board to suspend a license if they do not comply with the final order. An example would be, if they did not pay a fine. He commented that this would eliminate the additional step of opening an additional administrative complaint. Mr. Martin commented that they might want to consider have an additional panel for probation rather than having that committee be the probable cause panel as it is currently.

Mr. Minacci commented that it was more convenient to have the panel serve as the probation committee and they are moving probation cases timely. He commented that the panel picks the projects and Mr. Abbott performs an initial review of the plans when an individual is on probation then the probation panel reviews. Mr. Manausa commented that the probationer pays for the consultant's review of plans.

Mr. Martin commented that this draft language allows the panel or committee to extend the probation time until the individual satisfactorily meets the requirements of the probation.

MOTION: Mr. Gustafson moved to accept the draft language Rule 61G1-11.017 as presented.

SECOND: Ms. Shore seconded the motion and it passed unanimously.

Mr. Martin commented that he would delete (3) as necessary and some operational language. The board agreed. Mr. Minacci suggested they change the language of (5)(a) to read may instead of shall. Mr. Martin commented that JAPC does not like the word may.

Rule 61G1-12 – Grounds for Disciplinary Proceedings

Draft Language, 12.001 Grounds for Disciplinary Proceedings

Draft Language, 12.004 Disciplinary Guidelines: Range of Penalties; Aggravating and Mitigating Circumstances

Current Language

MOTION: Mr. Gustafson moved to approve draft language as presented for Rule 61G1.12.001.

SECOND: Mr. Rodriguez seconded the motion and it passed unanimously.

Mr. Martin commented that Rule 61G1-12.004 language was effective in September. Ms. Del Bianco requested that the board vote on the language.

MOTION: Mr. Rodriguez moved to approve draft language as presented for Rule 61G1-12.004.

SECOND: Mr. Bullock seconded the motion and it passed unanimously.

Rule 61G1 –13 – Education and Experience Requirements

Current Language

No action.

Rule 61G1 - 14 – Architecture Examination

Draft Language, 14.001 Written Examination Designated, General Requirements

Current Language

MOTION: Mr. Rodriguez moved to include the word architecture in the title, strike the word written in 14.001 title, include shall take and pass in subsection (1) first sentence, and leave the rest of the rule as is.

SECOND: Mr. Schreiber seconded the motion and it passed unanimously.

Rule 61G1 – 16 – Seals and Plans
Draft Language, 16.003 Use of Seal
Current Language

MOTION: Mr. Rodriguez moved to approve draft language as presented.

SECOND: Mr. Schreiber seconded the motion and it passed unanimously.

Rule 61G1 – 17 – Fees
Draft Language, 17.001 Professional Fees and Penalties for Architects
Draft Language, 17.002 Professional Fees and Penalties for Interior Designers
Draft Language, 17.001 & .002, Mary Jane Grigsby's draft for fee increase and/or duplication
Current Language

MOTION: Mr. Rodriguez moved to table.

SECOND: Mr. Bullock seconded the motion and it passed unanimously.

Rule 61G1 – 18 – Responsible Supervising Control Over Architectural Practices in the Architect's Office
Current Language
No action.

Rule 61G1 – 20 – Interior Design Examination and Grading System
Draft Language, 20.001 Written Examination Designated
Current Language

MOTION: Mr. Rodriguez moved to approve, strike the word written.

SECOND: Mr. Seconded the motion and it passed unanimously.

Rule 61G1 – 21 – Continuing Education/Interior Designers
Draft Language, 21.001 Continuing Education for Interior Designers
Current Language

MOTION: Mr. Rodriguez moved to approve draft language as presented.

SECOND: Mr. Bullock seconded the motion and it passed unanimously.

Rule 61G1 – 22 – Interior Design Experience and Education
Current Language
No action.

Rule 61G1 – 23 – Responsible Supervising Control

Letter from Mary Ellen Clark to Ms. Printy

Letter from Ms. Printy regarding Proposed Amendments to Rules 61G1-23.025, .030, .040 & .060.

**Notice of Proposed Rule Making / Full Text of Proposed Rule
Draft Language, Sharon Del Bianco's draft for proposed rule
Current Language**

Mr. Martin reviewed the letters from Ms. Printy regarding Rules 23 and the new Rule 26. He commented that the board must demonstrate specific rule making authority. Mr. Martin advised the board that when the board amends rules that JAPC will look at many areas and they may have to defend the request even when that rule has been in effect for many years.

Mr. Martin commented that the specific authority may be under Chapter 481.221 and they were going to try that statute to move forward. Ms. Clark commented that this language has already been noticed and published and if they would like to make changes then they would have to start from the beginning.

The board requested that Ms. Clark move forward and respond to Ms. Printy's concerns.

Rule 61G1 – 24 – Continuing Education for Architects

Draft Language, 24.001 Continuing Education for Architects

NCARB and other state's continuing education requirements

Current Language

MOTION: Mr. Rodriguez moved to approve draft language as presented.

SECOND: Mr. Bullock seconded the motion and it passed unanimously.

Rule 61G1 – 25 – Responsibility Rules of Architects Providing Threshold Building Inspections

Current Language

No action.

Rule 61G1 – 26 – Certificate of Authorization for Architecture or Interior Design Businesses (New)

Letter from Mary Ellen Clark to Ms. Printy

Letter from Ms. Printy regarding Proposed Rules 61G1-26.001 & .002

Notice of Proposed Rule Making / Full Text of Proposed Rule

Discussed under Rule 61G1-23.

Discussion

Members of Armed Forces in good standing with administrative boards – Juanita Chastain

Ms. Clark stated that she would bring language back to the board at the next meeting.

Letter from Mr. James Rappoport

Mr. Minacci was requested to look into items number 1, 4, and 6 of Mr. Rappoport's letter and report back to the board at the next meeting. Mr. Rodriguez requested that Mr. Minacci send a thank you letter to Mr. Rappoport.

Definitions all need to be centralized – Assignment to board members from July 30, 2003, Rules Committee Meeting

The board members were directed to submit language updates to Ms. Estes for the next board meeting.

Florida Building Code - Advanced Core Course number of hours

Mr. Rodriguez commented that he would like to propose zero hours because they currently take building code courses with their current continuing education requirements. Mr. Rodriguez stated he would submit a white paper as to why they should require zero hours and the board can review at the next board meeting.

Fee increase verbiage

Next board meeting.

**Continuing Education Handbook Revisions – Miguel Rodriguez and Mary Jane Grigsby
Continuing Education Course renewal process i.e. every two years from date of approval**

Next board meeting.

**Architectural and Interior Design Incidental Practice language
Architectural and Interior Design Contract Construction Administration**

Requires statutory changes.

Officers signing contracts on behalf of a Company or Firm (PCP)

Mr. Manausa commented that unlicensed officers of corporation are signing contracts. He commented that the panel would like to have the rule include language saying they cannot sign contracts. Mr. Martin commented that businesses obtain certificates of authorization, which allows the business to practice. He commented that the business can execute contracts for that business and a president or officer can sign the contract. Mr. Gonzalez agreed.

Mr. Manausa asked Mr. Martin about the contract being an AIA contract. Mr. Martin responded that the certificate of authorization allows the business to practice architectural services through a licensed architect. He commented that the legislation enacted the language to allow businesses to be licensed by a qualified individual otherwise they would not be able to practice. Mr. Schreiber commented that they should look at this as signing as an architect individual or architect business and they are discussing architect business.

Mr. Manausa commented that the contracts reflect the business name but the individual signing is signing as a licensed architect and they are not. Mr. Minacci commented that the certificate of authorization statute requires that anyone offering or practicing architecture must be licensed. Mr. Martin commented that whomever signs the contract the qualifier is ultimately responsible.

Mr. Manausa commented that the qualifying architect is responsible for that certificate of authorization and that qualifier should be the individual signing the contracts. Ms. Clark commented that an individual that signs a contract with a licensed firm believes they will be receiving architectural services. She continued by stating reading the law narrowly as Mr. Manausa does versus Mr. Schreiber's analysis which is more broad, the board should discuss the potential harm.

Mr. Smith commented that by signing a contract the individual infers to the public that that individual is licensed. Mr. Manausa commented that the rule should require the qualifying architect to sign. Ms. Clark commented that she and Mr. Martin do not feel the board has statutory authority to require that the qualifier sign every contract and their opinions would not change. She commented that the board could direct her to draft language and submit for review by JAPC. Mr. Martin commented that the board could not specify who must sign contracts for the business.

Mr. Manausa commented that the business should change their contracts to reflect the individual signing the contract is not a licensed architect but an officer of the company. Mr. Bullock commented that the contract reflects architectural services throughout. Mr. Martin commented in that scenario the architect is the corporation.

Mr. Rodriguez commented that his concern was with signing contracts AIA or not they are agreeing to render architectural services. He commented that the person signing that contract is binding that company to provide services and that person is not the architect then they are binding the qualifier to perform the services and the qualifier is bound to the contract. Ms. Clark commented that then the architect or qualifier should not enter into a relationship with a firm that will allow that.

Florida Corporations with names requiring Florida licensed architect/Foreign Corporations with use of name i.e. goodwill (PCP)
IDP language clean up, IDP required prior to education or after
Continuing Education 100% Monitoring (Letter from GW Harrell)
Mentoring Program – Miguel Rodriguez to work with counsel on language
Items held for the next board meeting.

New Business

No new business.

Old Business

No old business.

Adjourn

MOTION: Mr. Gustafson moved to adjourn.

SECOND: Mr. Rodriguez seconded the motion and it passed unanimously.

The meeting adjourned at 6:00 p.m.

AGENDA

BOARD OF ARCHITECTURE AND INTERIOR DESIGN

The Adam's Mark Hotel Orlando

1500 Sand Lake Road

Orlando, FL 32809

407-859-1500

October 30, 2003

8:00 a.m.

General Business Meeting

Call to Order

Ms. Del Bianco, Chair, called the meeting to order 8:13 a.m.

Board Members Present:

Ellis Bullock, Vice-Chair
Miguel Rodriguez
Rick Gonzalez
Stephen Schreiber
Mary Jane Grigsby
Sharon Del Bianco, Chair
Joyce Shore
Kenneth Horstmyer
Garrick Gustafson
Roymi Membiela

Board Member Absent:

Neil Hall

Others Present:

Juanita Chastain, Executive Director
Paul Martin, Board Counsel
Mary Ellen Clark, Board Counsel
David Minacci, Prosecuting Attorney
Les Smith, Investigator
Trent Manausa

Emory Johnson
Terri Estes, Government Analyst
Donald Morris
Mitchell Olin
Dwight Ellinwood
Stephen Page
Tim Tripp
Cyrus Cox
Steve Clack
Peter Arvetta
Henry Thompson
Darrin Schutt
Helmuth Geiser
Juan Gomez
Andrew Gold
Johnny Moore
Paige Billings Shoemaker
Suzanne Brownless
C. Everett Boyd
Dean Bolaris
Douglas Mummaw
Arthur Koski
Peter Snyder
Rolando Sosa
Joseph Rispoli
Michelle Borst
Albert Vidal
Julie Schiff
Suzette Crosby
Rita Scholz
Jorge Bouza
Aida Bao-Garciaga

Court Reporter:

Leslie McGiluray, American Court Reporting, 321 East Lane, Sanford, FL 32771.
407.324.4290

Executive Director's Report – Juanita Chastain

Ms. Chastain presented to the board the department's year end financial report. She commented that the methodology for the trust fund sweep has not been determined. She commented that she would no longer have 7 boards and she would be the director for only 4 boards. Mr. Rodriguez asked Ms. Chastain about where the unlicensed activity fines are being deposited. Ms. Chastain responded that the department was aware of their concerns and they were looking into the issue.

Letter from Samuel Garmizo and Pedro Perez

MOTION: Mr. Gustafson moved to direct Ms. Chastain to respond to Mr. Garmizo's letter.

SECOND: Mr. Rodriguez seconded the motion and it passed unanimously.

Newsletter

Ms. Chastain commented that she would prepare a newsletter and requested that the board members submit articles to the board office no later than November 30, 2003.

Unlicensed Activity Video – new airtime slots

Ms. Membiela inquired about the history of Public Service Announcements and the efforts of the board. She commented that she would like to see some information distributed regarding the work effort of the prosecuting and investigator's office has done. She commented that they should have a 60-second or less PSA and print advertising. She commented that she would contribute to that effort of developing a PSA. Mr. Rodriguez commented that the PSA's that the Construction Industry Licensing Board had done in the past were effective.

Building Code Administrators meeting dates

Ms. Chastain commented that she would attend the next Building Code Administrators board meeting that will be held in Tallahassee. Attending the board meetings is beneficial to continue an open communication between the boards.

Next Board Meeting and future travel (dates and locations)

The board discussed possibly having 5 meetings per year and would like to have a strategic plan retreat. The board requested a toll free number for future telephone conference calls.

West Palm Beach, FL, February 4-5, 2004

Tampa, FL, May 5-6, 2004, Mr. Schreiber invited the board to hold the meeting at the University and recommended Embassy Suites for the hotel location.

Jacksonville, FL, August 4-7, 2004 in conjunction with AIA.

IDCEC, Seattle, WA, May 14-16, 2004 (Mary Jane Grigsby will attend)

NCARB, Deadwood, SD, March 24-27, 2004 (Miguel Rodriguez and Ellis Bullock will attend, Stephen Schreiber and Sharon Del Bianco alternates)

NCARB, Portland, OR, June 23-25, 2004

Reports

Interior Design Committee Report

Architecture Committee Report

Ms. Chastain presented the 100% monitoring letter from the Secretary.

Chair's Report – Sharon Del Bianco

No report.

Board Counsel's Report – Paul Martin/Mary Ellen Clark

No report.

IDAF Report – Susette Crosby

Ms. Crosby commented that IDAF was going to form a committee to establish an equivalency program based on the current rules in place. She commented that the equivalency would be based on the curriculum program not the number of hours. She stated that they were working with the colleges. She commented that their goal was to have statute revisions to Mr. Manausa by mid-January.

Mr. Schreiber asked Mr. Minacci if there was a pattern of complaints related to the educational backgrounds of interior designers regarding a 2-year degree verses a 4-year degree. Mr. Minacci replied that there was not a need to inquire about that information. He commented that the he could work with the board office to obtain that information for previous discipline cases.

AIA Report – Scott Shalley

No report.

Elections

MOTION: Mr. Rodriguez nominated Mr. Bullock as Chair and Mr. Gonzalez as Vice Chair.

SECOND: Mr. Gustafson seconded the motion and it passed unanimously.

New Business

Mr. Bullock commented that if the board was going to privatize that they needed to be on a timeline for the legislative session. He commented that the board needed to get out from under the constraints of the department. He commented that profit regarding the administrative portion of the board is not a factor. He commented mixing different models i.e. for profit and/or not for profit together was not a good structure.

MOTION: Mr. Bullock moved that the administrative and other functions that result in the complete privatization of this board implemented under Chapter 481.205 be modified if required.

Mr. Gustafson asked if that was similar to FEMC. Mr. Rodriguez replied in the negative.

SECOND: Mr. Horstmyer seconded the motion.

Ms. Del Bianco commented that was a for profit model. Mr. Bullock commented to modify as required. Ms. Del Bianco commented that would require statutory change and the board could not lobby for statutory change. Mr. Rodriguez commented that AIA would accomplish the statutory change. Ms. Del Bianco commented that the board wanted Chapter 481.205 model modified to include not for profit. Mr. Bullock replied to modify as needed. Ms. Del Bianco requested that a member from IDAF be included in the discussions with AIA regarding the statutory language.

The question was called and it passed unanimously.

Mr. Minacci requested that the board consider handling disciplinary cases that could be handled on a consent agenda.

The board recessed at 9:05 a.m.
The board reconvened at 9:15 a.m.

Ratification List

Ms. Del Bianco commented that the board wanted to hear from the Mr. Hicks that when there are more than one name listed or if the firm's name contains a plural that he checks to make sure there is more than one architect. Mr. Gonzalez commented that number 9 had been working in West Palm Beach.

Architecture Certificate of Authorization

MOTION: Mr. Rodriguez moved to approve items 1-8 and 10-16 and asked staff to do a further review on item 9.

SECOND: Mr. Bullock seconded the motion and it passed unanimously.

Disciplinary Cases

Ms. Del Bianco commented that the board discussed handling the settlement stipulations on a consent agenda. She commented that if a board member has a concern with an item they could pull from the consent agenda and discuss individually. Mr. Rodriguez recused himself from the disciplinary portion of the meeting.

Ms. Clark commented that Mr. Rodriguez was not on the Probable Cause Panel for cases 2 and 11. She continued by stating that the board members consider that if the board would like to in the future handle stipulations on consent agendas that they should make notes and be prepared. She commented that consent agendas are a good idea however they require advanced planning and thought.

Mr. Rodriguez commented that his involvement with case 11 was that he brought the matter to the board's attention. He commented that the matter was brought forth as a result of a response for qualifications on a public job in Broward County. He commented that his firm was one of the short-listed firms that had a vested interest and therefore he was recussing himself.

Ms. Grigsby commented that she noticed that the stipulations were lower than the probable cause panel's recommendations and she wanted to hear what the respondent had to say. She commented that she would like to prepare for the next meeting for consent agendas.

Ms. Clark commented that in the materials the board should find the settlement stipulations and the panel's recommendations on the memorandum that was prepared at the time of finding probable cause. She commented that they should have the rules readily available and a separate case listing for notations.

Motion for Final Order by Hearing Not Involving Disputed Issues of Material Fact

DBPR vs. Donald L. Morris
Case Number 2002-014031
(PCP: Wirtz and Hall)

Mr. Morris was present, sworn in, and represented by Mitchell Olin, P. A. Mr. Minacci presented the case and commented that the respondent disputed the issues and during the discovery phase Mr. Morris requested an informal hearing. Mr. Minacci commented that the allegations were that the respondent accepted a \$10,000 payment from a contractor without the client's knowledge. The respondent was operating through a business entity that did not have a certificate of authorization. He commented that the respondent returned the \$10,000 and has applied for the certificate of authorization. He commented that he felt the respondent did not realize what he did was a violation and did not believe this would happen again.

Mr. Minacci recommended that the board enter into an order that the respondent admits the allegations in the administrative complaint, impose discipline of 4-years probation, \$5,000 fine, and \$324 costs. Mr. Bullock asked why there was a difference in the PCP recommendation and his. Mr. Minacci commented that he met with the respondent and based on his belief that there was not malicious intent and he was cooperative in another case.

Mr. Bullock asked if the \$10,000 was solicited. Mr. Minacci responded in the negative. Mr. Olin confirmed that the funds were not solicited. Mr. Olin commented that Mr. Morris had completed what he believed was his contract obligation. He continued by stating that the complainant asked Mr. Morris for contractor recommendations. He commented that months later after the project was complete the contractor approached Mr. Morris regarding the \$10,000. He commented that there was a breakdown between the contractor and the client not Mr. Morris.

Mr. Olin commented that he questioned the rule interpretation regarding the violation. He commented that they met with Mr. Minacci regarding the interpretation and Mr. Morris did not intend to violate the law. Mr. Olin commented that he does not feel that Mr. Morris is subject to any penalties other than a reprimand and fine.

Mr. Martin asked Mr. Olin that if they feel that because Mr. Morris was not aware of the rule and therefore he should not be penalized. Mr. Olin responded that the mitigation was that there was a rule in place, however the purpose or intent of the rule was not violated. Mr. Martin commented that the purpose of the rule was to define misconduct not to avoid improprieties.

Mr. Martin commented that if the architect accepts gratuities and does not inform the client then you are guilty of misconduct. Mr. Olin asked when is the relationship with the client terminated. Mr. Martin commented that he violated the rule. Mr. Olin commented that Mr. Morris has never done this before and would not do again.

Mr. Gustafson asked Mr. Minacci if he confirmed with the contractor that the payment was a gratuity or solicited. Mr. Minacci responded in the negative. Mr. Gonzalez commented that he would have liked Mr. Minacci to have interviewed the contractor. Mr. Minacci commented that by Mr. Morris requesting the informal hearing he has admitted guilt and did not want to incur

additional costs for interviewing the contractor. He continued by stating that Mr. Morris is before the board for mercy.

Mr. Minacci reviewed his recommendation and the panel's recommendation.

MOTION: Mr. Bullock moved to accept 4-years probation, \$5,000 fine, and cost \$324.

SECOND: Ms. Membiela seconded the motion and it passed unanimously.

Dwight D. Ellinwood

Mr. Ellinwood was present and sworn in. Ms. Clark commented that the board reviewed this issue October 29, 2003, however, no vote was taken. She presented the materials on the agenda.

Petition for Evidentiary Hearing

Ms. Clark commented that he properly filed the petition based on the board's order of September 2003 denying licensure. She commented that he disputes the issues of material facts and requests a hearing based on Chapter 102.57(1), F.S. She commented that her legal opinion is that he has failed to establish disputed facts and is not entitled to a hearing before the Division of Administrative Hearings. She recommended that the board deny his request for a petition for evidentiary hearing and that he be allowed to receive a hearing based on Chapter 120.57(2), F.S.

MOTION: Mr. Schreiber moved to deny the petition for evidentiary hearing and accept counsel's recommendation.

SECOND: Ms. Grigsby seconded the motion.

Ms. Clark explained Chapter 120.57(1)(2), F.S. and reviewed his request for hearing. She referenced the educational requirements and the timeliness of the application process.

The question was called and passed unanimously.

Request for Authority to amend the September 4, 2003 Order

Ms. Clark commented that based on their discussion in May, the order failed to accurately state that the primary difference in the law between Florida and Georgia in 1986 was the requirement for the 5-year degree. She referred the board to the memorandum in the agenda materials that outlined the differences. Ms. Clark stated for the record that Mr. Sellers advised her that neither he nor Mr. Ellinwood would be attending the meeting.

Ms. Clark commented that the proper comparison for a candidate applying by endorsement is to look at the laws that were in affect in the state in which the licensure was first obtained and compare to the laws in Florida for the same year. She commented that Mr. Ellinwood was initially licensed in Georgia in 1986 and the requirements are found in OCGA43-4-11(b). She commented that that law was in the board's materials and it reflects that there are 3 different manners a candidate could be eligible for examination. She continued by stating that the first is

that the candidate hold a professional degree in architecture from a school or college approved by NAAB, the second being that the candidate have a minimum of 10-years of practical experience including academic training following completion of high school. She continuing by stating that the third manner would be that they hold a Bachelor degree in architecture or engineering technology from a school or college approved by the accrediting board of engineering technology and 6-years experience.

Ms. Clark commented that in 1986 Florida required under Chapter 481.209(2)(b), which provides only one manner in which a candidate could meet the educational requirements. She continued by stating that the candidate be a graduate from an approved architectural curriculum of 5-years or more evidenced by a degree from a school or college of architecture that meets standards of accreditation adopted by the board by rule based on a review and inspection by the board of the curriculum of the accredited college or school of architecture in the United States including those schools approved by NAAB. Ms. Clark commented that of the two laws in affect in 1986 in Georgia and Florida that the board is required to determine if the laws were substantially equivalent. She referred the board to Chapter 481.213(3)(b), F.S., which provides that the applicant shall hold a valid license to practice architecture issued by another jurisdiction in the United States if the criteria for the issuance of such license were substantially equivalent to the licensure criteria which existed in this state at that time. Ms. Clark commented that making the substantially equivalent comparison there was only one way to meet the educational requirements in Florida and that was the candidate must have a 5-year degree and in Georgia there were 3 different ways. She commented that based on her legal opinion that the laws were not substantially equivalent and she asked the board to grant her the authority to enter an order noticing the applicant the intent to deny licensure by endorsement based on the information presented.

MOTION: Mr. Rodriguez moved to amend the order to deny and accept counsel's recommendation.

SECOND: Mr. Bullock seconded the motion.

Mr. Ellinwood commented that in 1986 Chapter 481.211(2), F.S., states that an applicant can sit for an exam with 7-years practical experience and no education necessary. He commented that he personally knows someone that was licensed under that statute. Mr. Ellinwood commented that at the second meeting regarding his case Mr. Sellers presented a list of reasons that he meets the requirements for licensure. Ms. Clark reviewed the 1986 Chapter 481.211(1), F.S., and disagreed with his interpretation of the law.

The motion was called and it passed unanimously.

Ellinwood's Petition for Writ of Mandamus - Status Report

Ms. Clark commented that she entered a response to the First District Court of Appeals on October 7, 2003 and she was not sure when the Court would rule on the matter. She commented that Mr. Ellinwood was seeking the Court to direct the board to issue a license because the board failed to act on his application within 90-days. Ms. Clark commented that

she disagreed with his 90-day legal theory. She stated that her response was in the agenda materials for the board's review.

Mr. Rodriguez requested to be excused from the meeting. Ms. Del Bianco excused Mr. Rodriguez from the rest of the board meeting.

**DBPR vs. Stephen M. Page, Nichols/Page Design Associates
Case Number 2003-066419 (unlicensed)
(PCP: Wirtz, and Hall)**

Mr. Page was present and sworn in. Mr. Minacci presented the case and commented that Mr. Page's license went delinquent March 1, 2001 and then null and void March 1, 2003. He commented that in a letter dated February 21, 2003 to the Broward County Purchasing Division, the respondent was held out as a licensed architect. He commented that probable cause was found to file a 4 count administrative complaint. He commented that Mr. Page continued to renew his certificate of authorization and failed to renew his individual license. Mr. Minacci commented that the panel recommended a \$25,000 fine, plus costs, and revocation of the certificate of authorization. He commented that he spoke with Mr. Page and he made every effort to come into compliance. Mr. Minacci commented that the actions did not justify a \$25,000 fine and entered into stipulation for \$5,000 fine, plus costs, and there is an individual application before the board for consideration.

Mr. Hicks commented that he meets all requirements and Ms. Estes confirmed that he had completed the required continuing education. Mr. Bullock asked how long Mr. Page had been practicing. Mr. Page responded since 1985.

Mr. Page commented that he did not receive his renewal notice and if the board had notified him this would never have happened. Mr. Martin commented that it was not the board's responsibility to make sure a licensed is renewed.

MOTION: Mr. Schreiber moved to accept the stipulation of \$5,000 fine plus cost \$264.

SECOND: Mr. Bullock seconded the motion and it passed unanimously.

**Application Review
Stephen M. Page**

MOTION: Mr. Gonzalez moved to approve Mr. Page's endorsement application.

SECOND: Mr. Gustafson seconded the motion and it passed unanimously.

**Application Review
Tim K. Tripp**

Mr. Tripp was present and sworn in. Mr. Minacci commented that this application was on the agenda based on prior disciplinary action for practicing on a null and void license. He commented that the board heard his case at the July board meeting and Mr. Tripp has paid the

finer in reference to the settlement stipulation. He commented that he saw no reason for Mr. Tripp not to receive his license.

MOTION: Ms. Grigsby moved to approve.

SECOND: Mr. Schreiber seconded the motion and it passed unanimously.

**Application for Architecture Certificate of Authorization
Alberto J. Comas Architectural Design Studio, Inc.**

Mr. Alberto J. Comas was present and sworn in. Mr. Hicks commented that he recommends approval, however, it appeared that they may have been practicing since June 15, 1987 and wanted the board to review. Mr. Comas commented that he was not aware that he needed a certificate of authorization. He commented that he used his full legal name in the title of the firm and thought he was in compliance. Ms. Del Bianco commented that he has been practicing for 9 bienniums, i.e.\$9,000. Ms. Clark commented that the maximum penalty for unlicensed activity was \$5,000. Mr. Comas stated that he came forward and has only practiced by himself.

MOTION: Mr. Gonzalez moved to approve the certificate of authorization with a \$3,000 fine with mitigating factors that he came forward, his full and complete name was in the title of the firm, and the size of the company.

SECOND: Mr. Gustafson seconded the motion and it passed unanimously.

Ms. Grigsby commented that she did not feel comfortable because they were not being consistent. Mr. Bullock commented that not all cases are the same and not always black and white. Ms. Clark commented that precedent is a strong consideration and when the board varies then they should very clearly state the reasons. She commented that the board should discuss the appropriate fines in cases and following a cookie cutter approach to fining someone that has practiced for numerous years could result in an unreasonable situation. She commented that Ms. Grigsby's comments are well taken and as a matter of concern to vary from precedent should be done with caution and clearly stated reasons.

The question was called and it passed unanimously.

Mr. Bullock commented that he would introduce in the future that a corporate seal be required in addition to individuals on contract documents.

Donald L. Morris & Associates, P. A.

Mr. Morris was present, sworn in, and represented by Mitchell Olin, P.A. Mr. Hicks commented that the application reflected work prior to licensure and a fine may be due. Ms. Grigsby asked Mr. Morris why he did not have a certificate of authorization for the company. Mr. Morris responded that he had an attorney set up his firm and believed that he was in compliance. He commented that he read the laws and rules and thought he was exempt because his full name was in the title of the firm. He commented that he understood ignorance is no excuse.

MOTION: Mr. Gustafson moved to approve the application with a \$3,000 fine, based on the same logic of the previous case.

SECOND: Ms. Membiela seconded the motion and it passed unanimously.

Ms. Clark reviewed for a point of clarification that the previous case was based on the fact that the individual voluntarily came forward, size of the firm, and full and complete name was in the title of the firm. Mr. Minacci commented that he did not come forward until an administrative complaint was filed. Mr. Gustafson commented that he would consider the size of the firm and the full and complete name in the title of the firm.

Ms. Del Bianco commented she would like to amend the motion to approve with a \$5,000 fine because he did not come forward.

MOTION: Mr. Gustafson accepted Ms. Del Bianco's amendment to approve with a \$5,000 fine based on the size of the firm and his complete and full name is in the title of the firm.

SECOND: Ms. Membiela seconded the motion and it passed.

Mr. Gonzalez abstained from voting.

CVC & Associates, Inc.

Ms. Grigsby commented that they have applied for a dual application. Mr. Hicks commented that he did not notice any irregularities to this application and that Mr. Minacci pulled this application from the September ratification list. Mr. Minacci commented that they had a complaint pending for offering services without a license. He commented that the respondent could testify under oath how long they have practiced without a certificate of authorization and contingent upon paying the fine be granted the license.

Cyrus Cox and Steve Clack were present and sworn in. Mr. Cox commented that in 2001 & 2002 that CVC & Associates offered interior design and at that time they had an employ with the firm that was a licensed interior designer. He commented that they reviewed the laws and rules and determined they were in compliance because of the licensed interior designer. He commented that they were offering interior design services through a licensed interior designer. He commented that a complaint was filed against the firm because they had a business card that noted an individual being an interior designer when she was not. He stated that as soon as they realized that was incorrect they ceased offering services and corrected their web site.

Mr. Minacci commented that it was a violation for the firm to be offering interior design services. Mr. Cox commented that they are not contesting that they were in violation. Mr. Gonzalez asked if they had general contractors in the office. Mr. Cox replied in the positive.

MOTION: Mr. Gonzalez moved to approve the certificate of authorization with a \$2,000 fine.

SECOND: Ms. Grigsby seconded the motion and it passed unanimously.

Ms. Del Bianco commented that the motion was for both applications, architecture and interior design certificate of authorization.

MSTSD, Inc.

Mr. Henry Thompson was present and sworn in. Mr. Hicks presented the file and commented that the application reflects projects that were on going. Mr. Gustafson asked Mr. Thompson when they begin practicing in Florida. Mr. Thompson responded 1992. Mr. Thompson commented that they knew they needed to be licensed in Florida and honestly this fell through the cracks. He commented that he was doing a review of the offices files and discovered they were not licensed and submitted the application immediately. He commented that he corresponded with Pat Ard with the board office in 1990.

Mr. Gustafson asked Mr. Thompson if they had been practicing in Florida since 1992. He replied in the positive and that he thought he was licensed for the business. He commented that there was no intent to not comply. Ms. Del Bianco commented that they practiced for 7 bienniums.

MOTION: Mr. Schreiber moved to approve with a \$3,500 fine based on the letter of 1990 asking for clarification and the fact that the response letter did not supply appropriate information and he came forward voluntarily.

Mr. Martin commented that the letter said they were going to apply. Motion fails.

MOTION: Ms. Grigsby moved to approve with a \$7,000 fine.

SECOND: Mr. Gonzalez seconded the motion and it passed. Mr. Bullock opposed.

Stantec Architecture, Inc.

Mr. Peter Arvetta was present and sworn in. Mr. Hicks presented the file, commented that it appeared that the company solicited for business prior to licensure and referred the board to a letter that was submitted by the applicant. Mr. Arvetta commented that the firm is licensed to practice engineering in Florida and the project listed was an engineering project.

MOTION: Ms. Grigsby moved to approve.

SECOND: Mr. Gustafson seconded the motion and it passed unanimously.

Application for Interior Design Endorsement

Tania Fiorani

Ms. Grigsby commented that she brought this application to the board for clarification. She commented that Mr. Butler reviewed and approved the architecture education equivalency for interior design.

MOTION: Mr. Schreiber moved to approve.

SECOND: Mr. Gustafson seconded the motion and it passed unanimously.

**Continuing Education for denial
Virginia Tech. Dept. of Architecture, Cuba's Built Heritage
Rene Pittaro – MBA, master in Business Administration**

MOTION: Ms. Grigsby moved to deny based on the continuing education committee reviewer's comments.

SECOND: Ms. Shore seconded the motion and it passed unanimously.

Hearing on Petitioner's Exceptions to Recommended Order

**DBPR vs. Helmuth Geiser
Case Number 2002-012622
(PCP: Rodriguez, Wirtz, and Hall)**

Mr. Helmuth Geiser was present, sworn in and represented by Mr. Darrin Schutt. Mr. Minacci commented that this was a 4 count administrative complaint for unlicensed activity and Mr. Geiser requested a formal hearing, which was held June 18, 2003. He commented that the hearing officer found that Mr. Geiser held himself out as an architect on 2 counts and assessed a \$2,000 fine with no cost. He commented that he has filed exceptions to the recommended order.

Ms. Clark advised and instructed the board on how to handle Division of Administrative Hearing cases. She commented that the purpose of the proceeding is to consider the recommended order issued by the Administrative Law Judge. She commented that there would be no new evidence to consider, the deliberations today must be confined to the recommended order and the record that is contained in the board's materials. She commented that the board may adopt a recommended order as the final order or they may reject the specific finding of fact or conclusion of law. She referred the board to Mr. Minacci's exceptions for review.

Ms. Clark advised the board how to proceed if they wanted to change or substitute the conclusion of law or the penalty that must be sited specifically and stated for the record why the change is more reasonable.

Mr. Minacci referred the board to the order that was entered by the Administrative Law Judge. In paragraph 45, it reads in part "Mr. Geiser is an architect, albeit one without a Florida license who, lawfully applies his skills to the design and construction of single-family residences. It is difficult to see how he can describe his services to potential clients without employing the term "architecture". Mr. Minacci commented that in his legal opinion the conclusion of law flies in the face of Chapter 481.223(1)(c), F. S., which specifically prohibits the use of the term architect or words to that affect from anyone that is unlicensed. He continued to state that he is not licensed and therefore he should not be able to describe his services using the term

architecture. He commented that he could use the term drafting services to describe his services. Mr. Minacci stated there is case law that prohibits the use of that term.

Ms. Del Bianco commented that she understood he was also performing commercial work. Mr. Minacci confirmed. Mr. Minacci is asking that the board reject the conclusion of law.

Ms. Clark commented that she agrees with Mr. Minacci that the conclusion of law contained in paragraph 45 of the recommended order should be stricken. She continued by stating the Administrative Law Judge's recommendation, is in direct conflict with his findings. Ms. Clark commented that the board must confine their consideration today to the findings of facts established the Administrative Law Judge and not what was alleged in the administrative complaint.

Ms. Del Bianco pointed out that the Administrative Law Judge refers to single family residence in paragraph 45. Mr. Minacci commented that there was a large amount of evidence regarding advertisements that Mr. Geiser used in relation to his residential practice. He commented that he believes the Administrative Law Judge was responding to that evidence presented as opposed to the commercial contracts and services.

Mr. Minacci commented that he wanted to file exceptions to the Administrative Law Judge's recommended penalty. He commented that the Administrative Law Judge found violations on 2 counts and imposed \$1,000 per count. He commented that the maximum for each count is \$5,000 and requested that the board enter the maximum plus costs. He commented that it was clearly against public policy to have unlicensed activity involving a \$310,000 contract.

Mr. Minacci made a motion to request that the board adopt the hearing officer's findings of fact but grant his motion to modify the conclusion of law and increase the fine to \$10,000 and award costs.

Mr. Schutt commented that he would object to the findings of new violations. He commented that the Administrative Law Judge heard the testimony of the parties and reviewed all of the documents. He commented that the allegations were brought forth 4 years after the fact and the problems were rectified, which was paramount to the Administrative Law Judge's decision to only fine \$1,000. He stated in other words there is compliance and the problem was resolved without board action. He commented that Mr. Geiser is a representative or director in both of the contracts, therefore he is representing to himself that he is an architect.

Mr. Schutt commented that the contract in question was performed in 1996 between him and his business partner, where they were both directors. He commented that the hearing officer based his findings on the facts of the testimony and the elapsed time of the situation and that it had been rectified. He commented that they do not agree with the finding of the violation but felt if a violation was found that the fine was appropriate.

Mr. Martin asked Mr. Schutt if he had any response to the cost affidavit. Mr. Schutt commented that there were only 2 counts of the 4 that were found to be violations. He commented that there was investigative time of 28 ½ hours and that they do not have a break

down as to how the investigator's time was spent regarding counts 1, 2, 3, or 4. He also discussed the charges for the deposition and the consultant's time. He commented that it was important to note for the record that the Administrative Law Judge whenever he made a finding of fact he based it on the document, specific testimony, and nowhere does he base it on the testimony of a consultant. He commented that it was based on the contract to, which the parties stipulated. He commented that he does not believe that the investigative or consultant time should be awarded because there is no support as to how it was used for which counts. He commented that the transcript of the deposition should not be assessed because it was not used as part and parcel to the hearing.

Mr. Minacci commented that the deposition of Mr. Geiser was submitted into evidence as noted as exhibit 17. He commented that the statement that Mr. Geiser did not hold himself out as an architect to his business partner was clearly noted in paragraph 25 of the findings of fact. He continuing by stating the testimony of the consultant, Mr. Manausa, is referenced in the recommended order. He commented that felt the Administrative Law Judge fell short on finding that Mr. Geiser was practicing architecture based on the drawings submitted.

Mr. Martin commented that administrative proceedings are different from civil proceedings regarding the cost affidavit. He commented that the cost for the time spent on each count is not required to be broken down, the consultants time was necessary to review the sufficiency of the complaint and the deposition was apparently used. He commented that the Administrative Law Judge does not have to site the basis of use or not use.

Mr. Gonzalez asked Mr. Geiser if he was a licensed Florida architect. Mr. Geiser replied in the negative.

MOTION: Mr. Schreiber moved to accept the recommendation and strike the conclusion of law in paragraph 45.

SECOND: Ms. Grigsby seconded the motion and it passed unanimously.

Ms. Clark commented that if it was the board's desire to modify the recommendation of the penalty then they must site the specifics on the record supporting evidence found. She commented that if they accept Mr. Minacci's argument that to accept a \$2,000 fine for a \$310,000 contract is against public policy then she would need that referenced.

Mr. Martin commented that the board may increase or decrease penalty but they must site specifically why.

Mr. Minacci referred the board to page 176, paragraph 10 and 11, which reads "Paragraph 10 of the Recommended Order finds that the Respondent entered a contract for \$310,000.00. Paragraph 41 of the Recommended Order finds that by entering into this contract, Respondent engaged in the practice of architecture. It is against public policy to fine an individual \$2,000.00 for entering into an illegal contract for \$310,000.00. A fine of this amount could be considered by many as a cost of doing business as opposed to a punishment to deter such conduct in the future."

MOTION: Mr. Bullock moved to accept the opinion of Mr. Minacci.

SECOND: Mr. Gustafson seconded the motion and it passed unanimously.

Mr. Martin referred the board to the affidavit of costs that are outlined. He commented that the board should determine the appropriate costs. Mr. Minacci commented that the costs listed are reasonable and do not include attorney time. He continued by stating it reflects 28 ½ hours of investigative time at \$60.00 per hour, transcript of the deposition, transcript of the hearing, and Mr. Manausa's time 17 ½ hours, which are reasonable and permitted under the law. Ms. Del Bianco asked why he did not include attorney's fees. Mr. Minacci replied that he is not allowed.

MOTION: Mr. Bullock moved to accept the affidavit of costs as present.

SECOND: Mr. Gustafson seconded the motion and it passed unanimously.

The board recessed at 11:50 a.m.

The board reconvened at 12:45 p.m.

Motion for Relief from Final Order

DBPR vs. Juan Orlando Gomez

Case Number 2001-02287

(PCP: Rodriguez, Wirtz, and Hall)

Mr. Juan Gomez was present, sworn in and represented by Andrew Gold. Ms. Clark referred the board to the final order filed June 24, 2003. She commented that the time to properly appeal an order such as this was 30 days within the final order. She commented that after that time jurisdiction is gone. Ms. Clark stated that Mr. Gomez filed for a motion for relief from the final order, which is not a proper appeal. Mr. Minacci commented that Mr. Gomez filed a notice of appeal through the District Court of Appeals. He commented that a motion to stay the execution of the final order was filed. He commented that the notice of appeal was timely filed and the respondent filed a motion for reconsideration.

Mr. Minacci commented that the board has heard all of the allegations and evidence in a proper manner and the final order should be final. He commented that the final order reflects that the findings of facts that the respondent did not timely contest the material facts in the administrative complaint. He stated that this particular case the respondent did respond to the administrative complaint but did not respond to the request for admissions.

Mr. Minacci requested that the board reconsider this matter for the purpose to clarify and amend the final order to properly reflect that it was based on his failure to timely file admissions.

Mr. Martin asked Mr. Minacci if there was a material error in the findings of fact in the final order. Mr. Minacci replied in the positive. He commented that the final order that was filed

was incorrect. Ms. Del Bianco asked Mr. Minacci if he was asking the board to amend the final order with the verbiage that the respondent did not timely file admissions. Mr. Minacci replied that the respondent did not respond to the request for admissions, therefore, they are deemed admitted meaning there are no longer disputed issues of fact.

Mr. Gold commented that Mr. Gomez did at every stage of the proceeding request a hearing before an Administrative Law Judge. He commented that he has vigorously denied and contests the allegations under the original complaint. Mr. Gold commented that there was a glaring error in the administrative procedure in this case. He commented that the only issue is whether the board had the authority to enter into default. He commented that he asked for a hearing in front of an Administrative Law Judge and was denied.

Mr. Gold commented that the administrative complaint was filed in May 31, 2001 not 2002. He commented that Mr. Gomez responded to the administrative complaint by filing an election of rights specifically requesting a hearing before an Administrative Law Judge to deny the allegations and submitted a letter regarding the allegations.

Mr. Gold commented that Mr. Minacci responded to Mr. Gomez acknowledging receipt of Mr. Gomez's letter and election of rights. He continued by stating the Mr. Minacci requested that Mr. Gomez respond to a request for admissions. Mr. Gold commented that Mr. Gomez faxed admissions to Mr. Minacci that same day. He commented that Mr. Gomez filed an affidavit that said, "I spoke to Mr. Minacci and that same day I filed faxed responses for admissions".

Mr. Gold commented that a motion for final order not involving issues of disputed facts was filed by Mr. Minacci where he claims he did not receive the response to the request for admissions. He commented that the board heard the case and Mr. Gomez was not represented by counsel and the board entered a final order. He commented that the order reflected that the respondent did not contest the complaint. Mr. Gold commented that the order specifically suspends Mr. Gomez's right to practice his livelihood specifically finds that it is based on his failure to respond to the complaint.

Mr. Gold commented that he does not feel that the order should be amended. He commented that Mr. Gomez responded to the complaint so there was not basis for default. He continued by stating that Mr. Gomez responded to the complaint but not the admissions in a timely manner. He commented that the default was not properly entered. Mr. Gold stated that there were three ways to set aside the default the first being excusable neglect. He commented that Mr. Gomez filed an affidavit, which supports excusable neglect. He commented that he contacted Mr. Thaddeus Clark with the department and he stated that the wrongdoer had come forward. He commented that the second was Mr. Gomez's health as well as his parents were in poor health, which he was the primary caregiver.

Mr. Gold commented that Mr. Paredes practiced under the firm of Gomez and Paredes, which generated the allegation that Mr. Gomez was aiding and abetting unlicensed practice. He commented that Mr. Paredes acted without Mr. Gomez's knowledge.

Mr. Martin commented that the counsels have a concern regarding the previous meeting in May. He commented that he felt it would be helpful for the board to have the transcripts of that meeting. Mr. Minacci commented that the original motion for an informal hearing was the fact that he failed to respond to the request for admissions and not for failure to respond to the administrative complaint. He commented that this is a clerical error in the final order.

Mr. Martin commented that they did not feel comfortable advising the board based on the materials they have in front of them. Ms. Clark commented that she did not feel comfortable filing an order without the proper record.

MOTION: Ms. Grigsby moved to continue the case until the board has appropriate information.

SECOND: Mr. Bullock seconded the motion.

Mr. Gold commented that Mr. Gomez has an extensive expense and they have before them an affidavit of his innocence and sworn testimony. He commented that he does not feel the board needs that information to make a ruling on this issue.

Ms. Clark commented that the advice to the board is that they would need a transcript prior to granting this request. Mr. Minacci confirmed that he would pay for the transcript.

The question was called and passed unanimously.

**Motion for Final Order by Hearing Not Involving Disputed Issues of Material Fact
DBPR vs. Johnny Moore and Quick Draw Designs, Inc.**

Case number 2003-045230

(PCP: Rodriguez and Wirtz)

Mr. Moore was present, sworn in and represented by Paige Billings. Mr. Schreiber was recused from this case because he is the Dean at the University of South Florida and Mr. Moore attends classes at the University. Mr. Minacci presented the case and the respondent has requested an informal hearing. He commented that the individual offered architectural services via a contract and the Internet. He commented that probable cause was found on two counts and the panel recommended \$10,000 fine plus costs. Mr. Minacci's recommendation was to enter a final order for \$7,500 fine plus costs.

Ms. Billings commented that there were several mitigating circumstances. Mr. Moore commented that he was a residential designer. He commented that he was in the service for 24 years and received a Bachelor degree in architecture from Texas. He commented that he studied the Florida laws and rules and has tried to improve his knowledge of architecture. He commented that he obtained an engineer to sign and seal his construction drawings. Mr. Moore commented that they developed a company together with the understanding that Mr. Zechiel was a licensed engineer and architect. He commented that they only had one contract.

Mr. Moore commented that him and Mr. Zechiel went their separate ways and he took over the one contract along with the money. Mr. Moore commented that Mr. Zechiel took the money and never completed the job. He commented that the Internet advertising was Mr. Zechiel's idea and as soon as Mr. Minacci informed him of the complaint they removed the architecture language from the web site. He commented that he did not receive architectural contracts from the web site. Mr. Moore commented that he was a victim of circumstance. He commented that he was trying to finish his degree to be licensed.

Ms. Billings commented that he was asking the board to consider the mitigating circumstances including financial hardship. Mr. Minacci commented that Mr. Zechiel provided sworn testimony that he never held himself out as an architect to Mr. Moore. He commented that it was clear that Mr. Moore practiced architecture.

Mr. Martin commented that the facts were not disputed and the board needed to determine the facts.

MOTION: Mr. Gonzalez moved to approve with \$7,500 fine plus costs \$675.

SECOND: Mr. Bullock seconded the motion.

Ms. Clark advised the board they must adopt the findings of facts alleged law in the administrative complaint.

MOTION: Mr. Bullock moved to adopt the findings of facts.

SECOND: Ms. Grigsby seconded the motion and it passed unanimously.

The question was called and it passed unanimously.

Ms. Billings requested that the board consider a payment plan of 1 year.

MOTION: Mr. Gonzalez moved to accept a payment plan of equal payments.

SECOND: Ms. Membiela seconded the motion and it passed unanimously.

**DBPR vs. Barbara Suzanne Nichols and Suzanne Nichols Design Group, Inc.
Case Number 2003-004574
(PCP: Rodriguez, Wirtz, and Hall)**

Ms. Suzanne and Tim Nichols were present and sworn in. Mr. Minacci presented the case and stated that the respondent admitted allegations of practicing without a certificate of authorization and he would recommend \$1,000 per biennium plus cost.

MOTION: Mr. Gonzalez moved to adopt the findings of facts.

SECOND: Mr. Bullock seconded the motion and it passed unanimously.

Ms. Nichols commented that she was licensed individually then she applied for the corporation license. She commented that she understood that she was licensed after she responded to the deficiency notices. She commented that she received a letter from Mr. Minacci and she did not understand why she was in violation because she thought she had provided all of the required documentation.

MOTION: Ms. Membiela moved to accept \$2,000 fine plus costs \$216.

SECOND: Mr. Gonzalez seconded the motion and it passed unanimously.

Motion for Default

DBPR vs. Jeffrey D. Platt and Platform Management

Case Number 2002-008597

(PCP: Rodriguez, Wirtz, and Hall)

Mr. Platt was not present. Mr. Minacci presented the case and stated that this was a one-count complaint for unlicensed activity. He commented that the probable cause was found for practicing without a license and the panel recommended \$5,000 fine plus costs. Mr. Minacci commented that the respondent was served July 1, 2003 with the administrative complaint and as of today's date there has been no response.

Mr. Martin commented that the board must determine if the respondent was properly served and failed to respond timely to the complaint prior to entering a motion for default.

MOTION: Mr. Gonzalez moved to adopt the motion for default.

SECOND: Ms. Grigsby seconded the motion and it passed unanimously.

MOTION: Ms. Grigsby moved to adopt the findings of fact.

SECOND: Ms. Shore seconded the motion and it passed unanimously.

MOTION: Mr. Gonzalez moved to approve \$5,000 fine plus costs.

SECOND: Ms. Membiela seconded the motion and it passed unanimously.

DBPR vs. Donald Stansell

Case Number 2003-001559

(PCP: Rodriguez, Wirtz, and Hall)

Mr. Stansell was not present. Mr. Minacci presented the case, referred the board to the service notice, and commented that as of today's date he has received no response.

MOTION: Mr. Gustafson moved to adopt the motion for default.

SECOND Ms. Shore seconded the motion and it passed unanimously.

Mr. Minacci commented that probable cause was found on 14 counts.

MOTION: Mr. Gustafson moved to accept the findings of fact.

SECOND: Mr. Gonzalez seconded the motion and it passed unanimously.

Mr. Minacci commented that the panel recommended a 2-year suspension, \$2,000 fine plus costs.

MOTION: Mr. Gustafson moved to accept the recommendation of 2-years suspension, \$2,000 fine plus costs.

SECOND: Ms. Membiela seconded the motion and it passed unanimously.

Settlement Stipulation

DBPR vs. Alvah Breitweiser

Case Number 2000-03544

(PCP: Wirtz and Hall)

Mr. Breitweiser was not present but represented by Suzanne Brownless. Mr. Minacci presented the case, commented that probable cause was found for a 5-count administrative complaint, and the panel recommended 1-year suspension, 3-years probation, and \$5,000 fine plus cost. He commented that after he and Mr. Manausa met with Ms. Brownless they entered into a stipulation agreement for 6 months suspension, 5-year probation, \$3,000 fine plus cost. Mr. Minacci requested the board to approve the settlement stipulation.

Ms. Del Bianco recused herself from the case because he is an uncle of a family friend.

MOTION: Mr. Gustafson moved to accept the settlement stipulation as presented.

SECOND: Ms. Grigsby seconded the motion and it passed unanimously.

DBPR vs. Randall E. Barnes

Case Number 2002-012488

(PCP: Rodriguez, Wirtz, and Hall)

Mr. Barnes was not present but represented by C. Everett Boyd. Mr. Minacci presented the case, commented that probable cause was found on a 5-count administrative complaint, and the panel recommends a reprimand, 3-years probation, \$4,000 fine plus costs. He commented that the settlement stipulation reflects the probable cause panel's recommendation.

MOTION: Ms. Membiela moved to accept the settlement stipulation as presented.

SECOND: Mr. Gustafson seconded the motion and it passed unanimously.

DBPR vs. Dean A. Bolaris and Bolaris & Associates Architects, Inc.

Case Number 2002-01268

(PCP: Rodriguez, Wirtz, and Hall)

Mr. Dean Bolaris was present, sworn in and represented by Michelle Kane. Mr. Minacci presented the case, commented that he was found in violation for practicing without a certificate, and recommended that the board accept the settlement stipulation for \$2,000 fine plus costs.

MOTION: Mr. Gustafson moved to accept the settlement stipulation as presented.

SECOND: Mr. Bullock seconded the motion and it passed unanimously.

Motion for Relief from Final Order

DBPR vs. Douglas A. Mummaw

Case Number 2003-042282

DBPR vs. Mummaw and Associates, Inc.

Case Number 2003-042289

(PCP: Rodriguez, Wirtz, and Hall)

Mr. Mummaw was present, sworn in, and represented by Arthur Koski and Peter Snyder. Mr. Minacci presented the case commented that probable cause was found on a 5-count administrative complaint for unlicensed activity. He commented that the panel recommended \$10,000 fine plus costs and revocation of the certificate of authorization. Mr. Minacci commented that the settlement stipulation was for \$5,000 fine plus cost and relinquishment of the certificate of authorization or business name change.

MOTION: Mr. Gustafson moved to accept the settlement stipulation as presented.

SECOND: Mr. Bullock seconded the motion and it passed unanimously.

Settlement Stipulation

DBPR vs. Joseph A. Rispoli

Case Number 2003-002397

(PCP: Rodriguez, Wirtz, and Hall)

DBPR vs. Rolando Sosa

Case Number 2003-002403

(PCP: Rodriguez, Wirtz, and Hall)

DBPR vs. Rispoli-Sosa Architecture, Inc.

Case Number 2003-002391

(PCP: Rodriguez, Wirtz, and Hall)

Mr. Rispoli and Mr. Sosa were present, sworn in, and represented by Albert Vidal. Mr. Minacci presented the case, commented that neither Mr. Rispoli or Mr. Sosa were licensed to practice in the state of Florida, and probable cause was found for a 3-count administrative complaint against Mr. Rispoli and 5-count administrative complaint against Mr. Sosa. He commented that the probable cause panel recommendation for each count was \$5,000 fine per count plus costs with revocation of the certificate of authorization. Mr. Minacci commented that he entered into a settlement stipulation for \$5,000 fine plus cost with each Mr. Rispoli and Mr. Sosa and they voluntarily relinquished the certificate of authorization.

Mr. Minacci commented that he and Mr. Manausa met with the Mr. Sosa, Mr. Rispoli, the attorney, and the new qualifier regarding their practice and the responsibility of the responsible supervisory control.

MOTION: Mr. Gustafson moved to accept the settlement stipulation for Mr. Rispoli as presented.

SECOND: Ms. Shore seconded the motion.

Ms. Del Bianco asked Mr. Minacci why there was such a difference in the panel's recommendation and the settlement stipulation. Mr. Minacci replied they have the money in trust and they held themselves out as an architect on a resume and the firm holds a current certificate of authorization. He continued by stating that after he met with the firm that the problem has been corrected.

Mr. Minacci commented that a complaint was filed numerous years ago and it was investigated but closed. He stated that the firm believed they were in compliance because the complaint was closed. Mr. Bullock asked how long they have had a qualifier. Mr. Minacci responded that they have always had a qualifier.

Mr. Rispoli commented that Mr. Sosa is a licensed architect in California. He commented they contacted the department regarding the name and filed for the certificate of authorization, which was granted. Mr. Vidal commented that Mr. Sosa and Mr. Rispoli have endeavored from the beginning to comply with the statutory requirements. He commented that architects in the area filed a complaint and it was investigated with a finding of no probable cause and the case was closed.

Mr. Manausa commented that the laws and rules allow for the certificate of authorization for foreign corporations. He commented that they had a qualifier and will practice diligent responsible supervisory control.

Motion failed. Mr. Bullock commented that he has a problem with this case because he feels they are deceiving the public.

MOTION: Mr. Bullock moved to accept the Probable Cause Panel recommendation.

SECOND: Ms. Membiela seconded the motion.

Mr. Rispoli commented he understood that they as officers were required to sign the contracts and they are doing what is necessary to comply with the laws. Mr. Gonzalez commented that they have been practicing for 8-years.

Mr. Sosa commented that he understands the board's concerns and they have made it clear to their clients regarding the ownership and are not architects in Florida. He commented that

their previous attorney advised them they were required to sign contracts. He commented that their intent was never to mislead anyone to believe that they were licensed Florida architects.

MOTION: Mr. Gustafson moved to accept the settlement stipulation as presented.

SECOND: Ms. Shore seconded the motion.

Motion failed.

MOTION: Mr. Bullock moved to reject the stipulation as presented.

SECOND: Mr. Schreiber seconded the motion and it passed.

Ms. Grigsby and Mr. Gustafson opposed.

MOTION: Mr. Bullock moved to counter offer the Probable Cause Panel's recommendation of \$15,000 fines plus cost to Mr. Rispoli.

SECOND: Ms. Membiela seconded the motion and it passed.

Ms. Grigsby and Mr. Gustafson opposed.

Mr. Minacci advised the board if they reject the stipulation then they might to formal hearing. Mr. Bullock replied that was fine. Mr. Rispoli commented that he would like to put this behind him and move forward. Mr. Manausa commented that the Probable Cause Panel's recommendation was presented to the respondent and they initially rejected. Mr. Rispoli accepted the counter stipulation.

MOTION: Mr. Gonzalez moved to reject the stipulation for Mr. Sosa.

SECOND: Mr. Bullock seconded the motion and it passed.

Ms. Grigsby and Mr. Gustafson opposed.

MOTION: Mr. Gonzalez moved to accept the Probable Cause Panel's recommendation of \$25,000 plus costs.

SECOND: Mr. Bullock seconded the motion.

Mr. Sosa commented that the board was asking him to pay \$5,000 per count and the board previously looked at this and was found not to be in violation. He commented that he does not understand why years later he is being fined \$5,000 per count now for what he was doing previously when he was not in violation. Mr. Vidal commented that the department found that they were investigated and found no violation. Ms. Clark commented that this was not the outcome they expected and if they would prefer not to resolve this today they could have the case pulled from the agenda. She commented that would give them an opportunity to present the case to the board regarding the fact hat they were found not to be in violation back in 1994.

The motion was called and it passed. Ms. Grigsby and Mr. Gustafson opposed. Mr. Sosa commented that he would accept the counter stipulation and requested that the payments be made over 12 months.

MOTION: Mr. Gonzalez moved to allow Mr. Sosa to make payments over 12 months.

SECOND: Mr. Bullock seconded and it passed unanimously.

Mr. Rispoli requested the same 12-month payment plan be allowed. The board accepted to allow Mr. Rispoli to pay over a 12-month time frame.

Mr. Minacci presented the case 2003-002391, Rispoli-Sosa Architecture, Inc. He commented that the panel's recommendation was revocation of the certificate of authorization and \$11,000 fine plus costs. He commented that the stipulation reflected that the respondent should create a new corporation and a new name, which shall be approved by the department. He continued by stating that upon approval and issuance of the new certificate of authorization under the new name the old license shall be relinquished.

MOTION: Ms. Grigsby moved to accept the stipulation.

SECOND: Mr. Gustafson seconded the motion.

Mr. Vidal commented that issues have come up with creating a new corporation regarding accounting and taxes. He requested that they have filed articles of amendment to the corporation to change the firm name from Rispoli-Sosa Architecture, Inc. to Architecture Studios, Inc. He commented that they have submitted to the board an application to change the name of the firm as an alternative to creating a new corporation. He requested that the board allow them to do a business name change application, which would allow them to retain the same license number instead of applying with a new application.

The board discussed the identification using AIA or President, Vice-President.

Mr. Minacci agreed to accept the revision of the stipulation to allow for a business name change.

MOTION: Ms. Grigsby moved to amend the stipulation to allow the firm to apply for a business name change.

SECOND: Mr. Gustafson seconded the motion and it passed unanimously.

DBPR vs. Julie L. Schiff
Case Number 2003-042285
(PCP: Rodriguez, Wirtz, and Hall)

Ms. Schiff was present, sworn in and represented by Mr. Peter Snyder. Mr. Minacci presented the case and commented that this was an unlicensed activity case where the respondent held

herself out as an architect. He commented that probable cause was found for using the title of “architect” without being properly licensed. The panel’s recommendation was \$5,000 fine plus costs. He commented that the stipulation was for \$3,000 fine plus costs, which the respondent has paid.

MOTION: Mr. Gonzalez moved to approve the stipulation as presented.

SECOND: Mr. Bullock seconded the motion and it passed unanimously.

**DBPR vs. Joseph R. Vislay
Case Numbers 2002-01985 and 2003-001695**

**DBPR vs. Jillian-Douglas Architects
Case Number 2003-001717**

(PCP: Rodriguez, Wirtz, and Hall)

Mr. Vislay was not present or represented by counsel. Mr. Minacci presented the case and commented that probable cause was found for 5 counts. He commented that the panel’s recommendation was 1-year suspension, 2-year probation, 4-hours of continuing education, \$4,000 fine plus costs. He commented that the stipulation reflected 6-months suspension, 2-years probation, 4-hours of continuing education, \$2,000 fine plus costs.

Mr. Minacci recommended to the board that they accept the stipulation as presented. Mr. Bullock asked Mr. Minacci why the stipulation was different from the panel’s recommendation. Mr. Minacci replied that the panel’s recommendation is a guideline to work with and from. He commented that this individual was dealing with residential work and he has advised him of the laws and rules regarding supervisory control and documents prepared outside of his office.

Mr. Minacci commented that the panel’s recommendation is normally the maximum. He commented that when the board suspends an individual’s license, which is their sole source of income, the board is getting the individual’s attention whether it is for 1-year or 6 months. Ms. Del Bianco commented that it was the panel’s practice to recommend the maximum to allow Mr. Minacci negotiating room. Ms. Clark commented that since she has returned to the board she has noticed that the panel does not use discretion in carefully considering each case with regards to its penalty recommendations. She commented that she would be encouraging them not to recommend the maximum every time.

MOTION: Mr. Schreiber moved to accept the stipulation as presented.

SECOND: Mr. Gustafson seconded the motion and it passed unanimously.

Mr. Horstmyer requested that the panel advise the board on how they reach their decisions and guidelines. Mr. Martin commented that the panel discussed at their October 28, 2003 meeting that their recommendations are starting points. He continued by stating the board should look at it as a recommendation for the board to consider and the board makes the end decision. Mr. Horstmyer commented he would like the panel to advise the board how they reach their decisions and philosophy so the board understands.

Mr. Manausa commented that the panel looks for the truth and facts to make a decision based on what is in the statutes and guidelines. He commented that when Mr. Minacci presents the recommendation to the respondent, the panel would not hear the additional information because it is brought to the board for consideration. He commented that it was not for the board to accept the panel's recommendation, it was for the board to review the recommendation from the panel, from Mr. Minacci, additional information, and make a determination on the penalty based on all information presented. He recommended that the board not place all of the weight of their decision on the panel's recommendation.

Motion for Relief from Final Order

DBPR vs. Monroe Lee

Case Number 2002-013382

(PCP: Rodriguez and Wirtz)

Mr. Lee was not present or represented by counsel. Ms. Clark advised the board how to proceed regarding the case. She commented that Mr. Minacci would be representing the department and this hearing was being conducted pursuant to Chapter 120.569 and 120.57(1), Florida Statutes and Chapter 28-5, Florida Administrative Code. She commented that no new evidence would be presented and that the board's deliberations must be confined to the recommended order and the record presented today.

Mr. Minacci commented that the only exception filed was related to the penalty. He continued by stating he thought it was against public policy to enter into an agreement for a \$1,000 fine and that the fine should be a cost of doing business. He requested that the board include costs in the order. Mr. Minacci requested that the board accept the Hearing Officer's findings of fact and conclusion of law and grant the petitioner's motion to increase the fine and include costs.

MOTION: Mr. Gustafson moved to adopt the findings of fact and conclusions of law as presented.

SECOND: Mr. Gonzalez seconded the motion and it passed unanimously.

Mr. Minacci recommended a \$5,000 fine plus costs based on the argument that it is against public policy to fine an individual only \$1,000 for entering into an illegal contract for \$7,000.

Mr. Gonzalez commented that \$1,000 was sufficient because the gentleman was only paid \$1,300 and did not feel the board would recover the \$1,000. Mr. Minacci commented that the board has set a precedent. Mr. Gonzalez commented that it was not to collect but for Mr. Minacci to make a point. Mr. Gonzalez withdrew his motion.

Ms. Membiela commented that the board should look at the merits of the case and not the fact that an individual could or could not pay the penalty based on the money they have in the bank. Ms. Grigsby commented that she agreed and the board should be consistent with the penalties and not base a penalty on their financial ability to pay. Mr. Martin referred the board to the ranges of penalties set by the legislation. He commented that the penalty was up to \$5,000. He commented that the board should state specifically the reason they would raise the penalty from \$1,000 to \$5,000.

Mr. Minacci commented that he does not feel that respondent understands that he is in violation and would request the board to grant the \$5,000 fine plus costs.

MOTION: Mr. Gonzalez moved to accept Mr. Minacci's recommendation of \$5,000 fine plus costs.

SECOND: Mr. Schreiber seconded the motion and it passed unanimously.

Settlement Stipulation

**DBPR vs. Rick Argov and Interior Design Center & Manufacturing
Case Numbers 2003-002640 and 2003-001382**

**DBPR vs. Rami Argov and Interior Design Center & Manufacturing
Case Numbers 2003-002389 and 2003-050456**

**DBPR vs. Uri Gavish and Interior Design Center & Manufacturing
Case Number 2003-002387**

(PCP: Rodriguez, Wirtz, and Hall)

No one was present for the above cases. Mr. Minacci presented the cases and commented that the cases were combined with the Division of Administrative Hearings. He commented that this was an egregious case where the respondent's held themselves out as interior designers and offered services. He commented that the panel recommended up to \$45,000 in fines plus costs, which was the maximum for each count. He commented that the stipulation was for \$15,000 fine plus costs, which \$10,000 has been paid to date and he will collect the additional \$5,000 once the board approves the settlement stipulation. He commented that the firm was in financial trouble and he felt it was the most the board would be able to collect.

MOTION: Mr. Schreiber moved to accept the stipulation as presented.

SECOND: Mr. Gonzalez seconded the motion and it passed unanimously.

DBPR vs. Mitch Baxley

Case Number 2003-057718

(PCP: Rodriguez, Wirtz, and Hall)

Mr. Baxley was not present or represented by counsel. Mr. Minacci presented the case and commented that the stipulation was the same as the panel's recommendation.

MOTION: Mr. Gonzalez moved to accept the stipulation as presented.

SECOND: Mr. Gustafson seconded the motion and it passed unanimously.

DBPR vs. Patricia Davidson, Interior Design Center of Tampa

Case Number 2003-056009

(PCP: Rodriguez, Wirtz, and Hall)

Ms. Davidson was not present or represented by counsel. Mr. Minacci presented the case and commented that this was an interior design unlicensed case. He commented that the respondent was remorseful and has been in constant contact with the prosecutor's office. He commented that panel's recommendation was \$7,000 fine and the stipulation reflected a fine of \$1,120.84.

MOTION: Mr. Gonzalez moved to accept the stipulation as presented.

SECOND: Mr. Bullock seconded the motion and it passed unanimously.

DBPR vs. Broderick Husserl, Husserl Design Group

Case Number 2003-054292

(PCP: Rodriguez, Wirtz, and Hall)

Mr. Husserl was not present or represented by counsel. Mr. Minacci presented the case and commented that this was an architecture unlicensed case. He commented that the panel's recommendation was \$5,000 fine plus costs and the stipulation reflects \$3,000 fine plus costs, which has been paid.

MOTION: Mr. Gonzalez moved to accept the stipulation as presented.

SECOND: Ms. Shore seconded the motion and it passed unanimously.

DBPR vs. Julie Kovach

Case Number 2003-069215

(PCP: Rodriguez, Wirtz, and Hall)

Ms. Kovach was not present or represented by counsel. Mr. Minacci presented the case and commented that the stipulation reflects the panel's recommendation.

MOTION: Mr. Gustafson moved to accept the stipulation as presented.

SECOND: Ms. Grigsby seconded the motion and it passed unanimously.

DBPR vs. Thomas G. Lynn

Case Number 2003-044434

DBPR vs. Lynn & Partners

Case Number 2003-044420

(PCP: Rodriguez, Wirtz, and Hall)

Mr. Lynn was not present or represented by counsel. Mr. Minacci presented the case and commented that the stipulation reflects the panel's recommendation.

MOTION: Mr. Gustafson moved to accept the stipulation as presented.

SECOND: Ms. Membiela seconded the motion and it passed unanimously.

Discussion

The board confirmed that a conference call would be scheduled for November 25, 2003 to begin at 10:00 a.m. EST and December 17, 2003 to begin at 10:00 a.m. EST

Adjourn

MOTION: Mr. Schreiber moved to adjourn.

SECOND: Mr. Gustafson seconded the motion and it passed unanimously.

The meeting adjourned at 3:40 p.m.