NEW MEXICO BOARD OF EXAMINERS FOR ARCHITECTS

Minutes of Board Meeting
December 19, 2014
Santa Fe, New Mexico

Synopsis of Meeting Topics:
Opening Business
Policy and Proposals
New Business
Board Comments/Announcements
Adjournment

Board Members Present:
Michael Bodelson, Chair
Raymond Vigil, Vice Chair, Architect Member
Geoffrey Adams, Secretary/Treasurer, Educator/Architect Member
Jim Oschwald, Architect Member

Board Members Present by Teleconference:
Robert Calvani, Architect Member
Tara Rothwell-Clark, Architect Member
Mark Glenn, Public Member

Board Members Absent:

Staff Present:
Wren Propp, Director/CFO
Jackie Holmes, Investigator
Melanie Gonzales, Administrative Services Coordinator
Michele Barela, Compliance and Records Clerk/Receptionist
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Others Present:
Joseph Dworak, Assistant Attorney General
James Satzinger, AIA NM
Victor Johnson, AIA NM
Peter Merrill, New Mexico Homebuilders Association

A. Meeting Called to Order/Roll Call

Mr. Bodelson called the meeting to order at the approximate hour of 10:16 a.m. Roll was taken and a quorum was determined to be present.

B. Opening Business

1. Approval of Agenda

   Mr. Bodelson asked for a motion to approve the agenda. Ms. Propp asked for an amendment to the agenda. In one location under D 2A, Settlement Agreement case number NMMEA 2013_22 that a settlement agreement from the respondent’s attorney be considered instead of Settlement Agreement in NMMEA 2013_21, 2014_10 and 2014_12. She said the Board does have permission from the respondent in NMMEA 2013_22 to consider it without further public notice.

Motion: to approve the agenda as amended.
By: Geoffrey Adams
Second: Jim Oschwald
Board Vote: Passed unanimously

2. Introduction of Guests

   Mr. Bodelson welcomed new Public Member Mark Glenn to the Board. The Board and the staff introduced themselves. Mr. Victor Johnson, AIA NM introduced himself. Jim Satzinger, President AIA NM introduced himself. Peter Merrill, CEO of Construction Dispute Resolution Services, NM Homebuilders Association introduced himself.

3. Approval of Minutes from November 21, 2014, Board Meeting

   Mr. Bodelson asked for a motion to approve the November 21, 2014, Board meeting minutes.
Motion: Motion to approve the November 21, 2014 Board Meeting minutes as presented.
By: Tara Rothwell-Clark
Second: Geoffrey Adams
Board Vote: Passed unanimously

Mr. Oschwald noted that the Board will be reviewing statute changes today, should the Board strike the motion votes from the prior meeting minutes?
Mr. Bodelson stated he did not think so.
Mr. Dworak mentioned that this meeting would be amending the prior language that was already approved.

4. Public Comments

Mr. Satzinger reported to the Board that the AIA New Mexico members recommended limiting changes to the Act as much as possible prior to the 2017 sunset, so that there is little controversy going into the Legislature this year. This was the majority opinion of AIA, not necessarily his personal opinion.
Mr. Merrill stated that he was concerned about two issues regarding the proposed changes. One was the term design build. Many contractors use the term design build and it is not proper to just allow architects to call themselves designers or builders, especially with smaller projects. There was past experience with ASID, where they tried to make it that no one could use the term interior decorator or they tried to limit the terms, unless you were licensed by ASID. It was shot down because it was a restraint of trade. The second issue was changing from a four-plex to a duplex. For example, if you were building a four-plex or less, you do not need an architect's seal and with the proposed changes it would change that. There has never been an issue with having to have an architect's seal on a four-plex or duplex and it is not necessary. It would limit and make it more expensive for builders.

C. Policy and Proposals

1. Proposed Changes to Architectural Act

Mr. Calvani stated that Mr. Vigil will discuss the specific topics because Mr. Calvani was attending via teleconference.

Section 61-15-4 Powers and Duties of the Board
Mr. Vigil stated that basically the proposed changes were clean-up. Under Item K of Section 61-15-4, the Board will tie the Architectural Act with the Uniform Licensing Act. Other edits will be worked out with legal counsel. The Governor's Office has already provided some direction.
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Mr. Vigil added that the change was to clarify because the Board has been limited by the Uniform Licensing Act to penalties of $1000.00 for unlicensed activity.
Ms. Propp suggested to the Board go through each paragraph and make sure it is accurate in comparison to the last document, which was the amended resolution. She added that one issue for discussion should be 61-15-6 on the regulation of businesses.
Mr. Bodelson asked if everything before 61-15-6 had been approved and is it unchanged since the last meeting?
Ms. Propp stated yes but that there is Section 61-15-8 Registration Exemptions, in draft form. In 61-15-9 Project Exemptions, the Board could consider dropping it an amendment.
Mr. Vigil also suggested the Board review each one individually and get an agreement on each proposed change.
Mr. Bodelson asked for any discussion on this item? There was no discussion. He stated that the Board already voted on the item at the last board meeting and the Board could move forward.

61-15-6 Additional Duties of the Board
Mr. Vigil stated that this item was general clean-up also, along with a reference to the National Council of Architectural Registration Boards (NCARB).
Mr. Bodelson stated that this item also had prior approval.
Mr. Calvani suggested that the Board should continue communication with NCARB on data sharing, which may include providing the last four digits of a registrant’s social security number.
Mr. Bodelson suggested that this item could be changed to “as approved by rule of the Board” and that it would give latitude down the line to include NCARB at any level, as long as it is done by rule change.
Mr. Calvani agreed.
Mr. Dworak thought that the language was broad enough to allow the Board to do that if they choose, but by putting it specifically as requiring “rule of the board,” this would require the Board to create rules to govern this as opposed to an internal policy or an order of the Board by motion during a meeting. This would allow flexibility.
Mr. Bodelson asked if the explanation is satisfactory?
Mr. Calvani said it was fine.
Mr. Oschwald asked if the Board should add the word “only” after “a roster showing only the names and addresses of all registered architects.” This is so the Board is not divulging any additional information to these sources that the Board may or may not be able to control.
Mr. Adams asked if a roster showing just names and addresses precludes other things being added to that?
Mr. Dworak recommended that if the goal is to have the Legislature pass this proposed change, then getting into specific details would be frowned upon in statute. Statutes are not looked at as micro-managing details of what boards can and cannot do, they prescribe broad authority or if there were specific exemptions or restrictions, they would then be put in. The Board could address the issue in rule and there would be nothing to stop the Board if they wanted to prescribe a rule in its code that says the Board was restricted from these types of things. The reality is that if this policy change
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needs to be expanded or retracted, it would be difficult to do in another statute change but the code could be changed in a matter of a short time.
Mr. Adams said if the Board did not want to be specific, then the Board could say "a roster of all registered architects" and then whatever information is on that roster is what information is provided.
Mr. Vigil added that the roster would be by policy.
Mr. Bodelson stated that the language gives the Board the latitude to distribute by policy or vote of the Board.
Mr. Dworak added that the reason the language of allowing the Board to sell copies is in there because by statute under the Inspection of the Public Records Act, the Board, is obligated to provide these documents anyway and the Board has the option to sell the information in a format that is in demand by outside organizations. It also helps to protect the information.
Mr. Bodelson asked if there was a motion to amend this language? No answer.
Mr. Oschwald recommended a change to 61-15-4 (the previous section). Where the language said "majority of the Board members constitutes a quorum," he recommended considering a change to say, "six of the seven board members constitutes a quorum."
Mr. Calvani asked why the Board would want to make that change?
Mr. Oschwald stated that the Board could raise the level of the quorum so that more Board members could travel, rather than only sending three members.
Mr. Dworak said the Open Meetings Act defines a quorum as greater than 50 percent or more. A change suggested by Mr. Oschwald would make it more difficult to hold a meeting. It is still possible to travel without those issues, as long as the Board is transparent and that they are not discussing specific business.

Section 61-15-6 Requirements for Registration
Mr. Vigil stated that this section has already been discussed in prior meetings. In item G, the Board modified it so that the requirements could be made by rule of the Board. In addition, Mr. Vigil stated that the Board is trying to address different issues on how architectural services are being provided.
Mr. Bodelson asked Mr. Satzinger if this revised language is consistent with what AIA would like to see?
Mr. Satzinger answered that F is basically anticipating what NCARB is proposing in giving latitude to come up with rules in the next year.
Mr. Bodelson stated that NCARB is narrowing the gap in terms of what the Board would like to see.
Mr. Satzinger continued by stating that G basically removes five years and replaces it with "a period of time."
Mr. Bodelson stated that the rule will define that element once the Board has the outcome from NCARB and then the Board can have that discussion with AIA and others it might impact.
Mr. Satzinger stated that G is independent. At the AIA Board meeting, they had asked why the Board would want to change G at all because they can change the rule, like it was changed before.
Mr. Bodelson stated that G is just for consistency in the language.
Mr. Oschwald mentioned that the Board had fixed G with the typo and reinstated G and made it part of the Act. He felt that the Board would be in conflict with the rule. He suggested to immediately change the rule to fit G.

Mr. Bodelson said that as soon as the Board completed the session, they would begin to modify the rule.

Mr. Vigil continued by stating that there are no changes to H and I. The Board is addressing business entities in J. They shall hold a majority interest in the business entity. This is to prevent people from just hiring architects and then influencing decisions related to the health, safety and welfare of the public.

Mr. Calvani stated that as regulators, the Board’s main concern is the health, safety and welfare of the public. He understood the concern about restrictions of trade. He considered that with this language, the Board has no knowledge whether 49 percent of the firm is unlicensed.

Mr. Vigil stated that they have to have majority interest and that would be 51 percent.

Mr. Calvani explained that he is talking about a person who does not have a majority interest and those people can be an unlicensed person, right? That person who owns 49 percent of the firm is directing an architect, who may have 10 percent of the firm. Architects need to have a majority of the firm’s interest and the person who has the majority interest is not licensed that is in conflict with the health, safety and welfare of the public. Other states have looked at the 2/3 rule because it guarantees that the person who can direct someone who is unlicensed, can only have 1/3 of the stock. The person who is unlicensed is directing the person who is licensed because of ownership of the firm. Especially with vehicles like design build, he does see it as an issue and the percentage should be higher of licensed individuals.

Mr. Vigil added that the intent is that a majority of the ownership of business entities are comprised of at least one licensed architect. Those licensed architects are regulated by the Board and have the responsibility to make decisions. The premise is that the Board would want the majority ownership interest to be a licensed architect so that what Mr. Calvani was describing does not occur.

Mr. Calvani does not want an unlicensed individual with too much stock directing an architect with not a lot of stock and jeopardizing the health, safety and welfare of the public. He thought the 2/3 language was stronger.

Mr. Merrill said the Board is precluding a viable architectural firm from being able to make expansion or look for investors to help them grow.

Mr. Vigil responded that in that particular case, if it were a developer scenario, there are different ways to put together a team arrangement. This is for a business ownership, like someone who advertises as an architect, but the entity is owned by 80 percent non-architects, this is what the Board is talking about.

Mr. Merrill commented that he felt this is still preventing this other scenario, because the Board would want that issue covered, then the Board would be shutting the door on any architect who might want to expand and get a financial partner and put together consignment agreements for financial purposes only, they will not be involved in operations or any other part. The Board is precluding that. He just wanted the Board to understand how it will affect these entities.

Mr. Vigil stated that the Board does not want the financial to override a person’s responsibilities.
Mr. Satzinger recommended that it would be clearer in intent if there was a phrase added such as "whose primary business is architecture".
Mr. Bodelson explained that this had been discussed and he recommended "through a business entering offering primarily architectural services".
Mr. Satzinger stated that that language would take the design build type firm out of the equation because then you can have architects on staff that are not majority owners but if the Board is concerned primarily with offering architectural services as your business, then this could apply. In that case the stronger percentage works well. The reason that it has been cut back to the majority has been so as to not preclude some of these design build scenarios.
Mr. Vigil added the primary reason the Board removed the reference to 2/3rds was also recommended by the Governor's office. So then the Board covered it with the intent of majority rule. Mr. Oscwald recommended a motion to change J to say in the case of "practice through a business entity offering primarily (insert primarily) architectural services" and keep J as it is otherwise written.

**Motion:** 61-15-6 Item J add 'practice through a business entity offering primarily (insert primarily) architectural services' and keep J as it is otherwise written.

**By:** Jim Oschwald  
**Second:** Ray Vigil  
**Board Vote:** Passed unanimously

Mr. Adams asked Mr. Dworak if the legal description of "primarily" would be 50 percent of their business?
Mr. Dworak stated no. The words are subjective and that is part of the issue. Right now the Board doesn't license business entities so part of this is that it is a two step process and the second step is not there yet in terms of who is liable if these types of business entities are practicing. Who do you go after, the owner? There is nothing in this section that contemplates that and what if it is owned by multiple people? There is no indication if there is any liability on an architect, on the majority ownership. There are no penalties contemplated whether civil or criminal. And maybe that could be worked out in the Legislature. Maybe the Legislature could take this as an idea and they will do work on it.
Mr. Bodelson commented that when the Board has cases where there are issues with firms, the Board only addresses them through the individuals. If they were unlicensed, then the Board addresses them through an unlicensed practice complaint. The Board had made a distinction on the report to the sub-committee that the Board is not taking action against the firms, the Board is taking action against the individuals.
Mr. Merrill asked about the word majority owner's interest and that hypothetically if the architect held 40 percent and sold to two others 30 percent each, does he have majority of owners' interest? What does majority owner interest mean? There is no definition of that.
Mr. Vigil explained that in the world of dealing with small business, the ownership is defined as 51 percent.
Mr. Merrill asked if this is ambiguous?
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Mr. Dworak cannot answer questions from the public.
Mr. Bodelson commented that he was curious as to whether the majority language would read typically as 51 percent.
Mr. Dworak stated that the argument could be made but there also could be the number of individuals too. It is not clearly defined.
Mr. Bodelson asked what if the Board revised it to a 'greater than 50 percent'?
Mr. Dworak stated that the question is whether that interest is percentage or the number of people interest? There is room for discussion and this is part of the issue.
Mr. Vigil emphasized that he has encountered these questions through business practices in the industry and to have owners interest and make decisions on behalf of the firm, you would have to have that majority percentage of ownership interest. So if two architects had 20 percent and 20 percent and the other person had 60 percent, there is no way that person could make decisions unless they had 50 percent or greater.
Mr. Merrill asked what if the non-licensed person had 40 percent and each of the architects had 30 percent and 30 percent, neither one of them has majority interest?
Mr. Vigil stated that maybe that is where there needed to be clean up because the intent is at least the majority of one or more, so if two of them combined to make greater than 50 percent, it meets intent.
Mr. Dworak stated that he did not think there is much ambiguity with this but the greater issue is that there are portions of this statute that still are ambiguous. The Board can choose to pass this on and hope the Legislature picks it up and makes those changes.
Mr. Bodelson asked if it is that the ambiguity is in the statute addressing businesses while the Board is regulating individuals?
Mr. Dworak stated, yes, correct.
Mr. Bodelson stated that the Board has a motion and has discussed this section. The motion is for 61-15-6 J-to add 'primarily architectural services' to the language.

**Motion:** Section 61-15-6 Item J to add 'primarily architectural services' to the language
**By:** Ray Vigil
**Second:** Jim Oschwald
**Opposed:** Robert Calvani and Mark Glenn
**Board Vote:** Motion carries

Mr. Bodelson stated that the Board had a motion and all those in favor are: Mr. Oschwald, Mr. Vigil, and Mr. Adams. Those opposed are: Mr. Calvani and Mr. Glenn.
Ms. Propp mentioned that Tara Rothwell-Clark has left the meeting (11:12am)

Mr. Vigil asked for an explanation as to why the two Board members opposed the motion.
Mr. Glenn said he is concerned that by adding the word “primarily” unnecessary ambiguity has been added into the statute and it should be left alone.
Mr. Calvani stated that he has an issue with the 2/3rds. Majority owners having 20 percent and 20 percent and 20 percent and the other person has 40 percent, it is an issue.
Mr. Vigil wanted to remind everyone that leaving J as is, says that one partner needs to be an architect. It doesn’t have anything to do with ownership interest so basically not covered if the Board does not make any change. The Board is at least addressing the issue at hand which is ownership influence from non-licensed individuals in decisions pertaining to architectural services that may affect life, safety and welfare.
Mr. Vigil explained that item K was written to recognize big engineering and little architecture firms and this allows for business ownership.
Mr. Oeschwald commented that on item K (1) on the second to last line, ‘business entity is held’ (typo), and he asked about the phrase “this chapter or engineering surveying practicing act,” is the Board referring to chapter 61 Article 23 and then say 1978, is that correct?
Mr. Dworak stated that the chapter is the entire act. “Pursuant to this Act” is the Architectural Act and the second is the Engineering Act.
Ms. Propp pointed out that in item K there was some language that implies that “business entities incorporated in New Mexico and owned by currently licensed architects and engineers are exempt from registration requirements.” There are no entity registration requirements other than that phrase. The Board needs to decide whether they want to register firms and if so, then the Board needs to address a registration requirement.
Mr. Vigil noted that Ms. Propp had researched whether jurisdictions in surrounding states register firms for the Governor’s Office.
Ms. Propp said the research showed that half of the surrounding states do register firms and half do not. There was no response from the Governor’s office on this issue.
Mr. Vigil said he felt that the Governor’s office was questioning the issue.
Mr. Bodelson commented that the process the Board had been pursuing is individuals only and the Board is not ready to pursue firms this close to the Legislature.
Mr. Vigil asked if the Board needed to change the language?
Ms. Propp recommended changing the verbiage and she would like to refer back to the Resolution. Under the seventh “whereas,” remove the word “regulation” under companies and insert “the makeup” for additional clarity is needed in Architectural Act regarding the makeup of companies providing architectural services versus the regulation of companies providing architectural services. Mr. Bodelson added that the Board is not regulating “businesses” per se.
Ms. Propp mentioned that it is up to the Board how they want to rewrite it as long as there is clear direction from the Board.
Mr. Bodelson mentioned that Mr. Dworak said it was a two-part issue, but the Board is not prepared to take on licensing business yet.
Mr. Vigil said that item H is basically stating that “no business will be registered”...correct?
Mr. Bodelson asked if the Board should delete K?
Mr. Vigil thought the Board should keep item K so that they can have a venue for change.
Mr. Bodelson asked if the Board needed the language in the first sentence?
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Mr. Oschwald said the Board had addressed it in J by adding “primarily.” This was early on, a resolution to the concern for the mega-engineering architectural firms that operate in the state. Mr. Calvani agreed with Mr. Oschwald. He is concerned Item K-1 and the 2/3rds could be interpreted for engineers but the Board only want the majority of the architects. Mr. Vigil asked if this was mentioned at the Governor’s office. Ms. Propp answered no. Mr. Vigil recommended that the Board keep item K to have Ms. Propp confirm with the Governor’s office on this issue because he believed that if the Governor’s office should have an issue with it, like the item above, then it may be listed as majority, would that be an issue? Mr. Dworak answered no it would not be a problem to call it majority. Mr. Vigil added that the Board would hate to pursue this with 2/3rds after they may confuse the two and think the Board is going against them. Mr. Bodelson asked if this was a motion? Mr. Vigil motioned to keep item K as is, that the Board revisit with the Governor’s office to clarify and adjust the 2/3rds issue. Mr. Dworak asked Mr. Vigil to restate the motion. Mr. Vigil motioned that if the Board proceeds with K, the Board will vet the 2/3rds piece with the Governor’s office because that specific language caught their attention. Mr. Oschwald recommended to tentatively approve K with the caveat to change it to the majority, with the possibility that the Board may still strike K.

Motion: Section 61-15-6 item K to amend and tentatively approve K with the caveat to change it to the majority
By: Raymond Vigil
Second: Jim Oschwald
Opposed: Robert Calvani
Board Vote: Motion carries

Mr. Vigil elaborated on the topic. He asked if the Board may feel that they do not need it now and that some go after big architectural contracts. The Board should leave it in there. Ms. Propp mentioned that the direction from the Board was that it be rewritten in some way that it is not a registration requirement exemption attached to it, since under item H, which the Board has not changed, there is no registration requirement. So item K needs to be rewritten in a way that removes the registration exemption requirement from K.

Mr. Vigil added that where it says, ‘business entities incorporated in New Mexico and owned by currently licensed New Mexico architects and engineers are exempt’ from registration requirements under this section, can it state, “business entities incorporated in New Mexico and owned by currently licensed New Mexico architects, providing architectural services shall be entities comprised of ….” Mr. Vigil said the Board is not talking about registration, the Board is talking about whether they are providing architectural services, this is how they have to look. Mr. Bodelson asked Mr. Vigil to restate the section.
Ms. Propp suggested to Mr. Vigil that “business entities incorporated in New Mexico and owned by currently licensed New Mexico architects and engineers, providing architectural services shall be entities comprised of registrants or licensees under Architectural Act or Engineering Surveying Act” etc., starting on (1.) is that language close? She continued by saying that the Board is removing the words “are exempt from registration requirements under this section.” Then the Board is giving a description of the way these firms.

Mr. Vigil said yes, strike through “are exempt,” put a colon after “engineers” so it says “business entities incorporated in New Mexico and owned by currently licensed New Mexico architects and engineers shall be entities comprised of ……” That remains the same. The Board may need to adjust something in front of 2. Does that read ok?

Ms. Propp stated yes.

Mr. Vigil stated that it applies to two things: that it is applied to the Board’s concern making sure there is ownership by architects.

Mr. Adams said it does not make sense.

Mr. Dworak said he agreed that it needs wordsmithing.

Mr. Adams said to get rid of “registration” or “exempt firm requirement.”

Mr. Bodelson asked Mr. Vigil to state the intent as part of the motion.

Mr. Vigil said the intent is to eliminate reference to “exempt from registration requirements” under this section and reword them so that there is no indication that the Board would require a registration for these types of firms.

Mr. Adams said but the Board is making requirements. The Board should consider to get rid of the word “registration.” Does that work?

Mr. Vigil asked that Ms. Propp and Mr. Dworak to look at the wordsmithing on this but the intent is there.

Mr. Bodelson asked to restate that as a motion.

Mr. Vigil stated that the motion is to modify (wordsmith) item K with the intent to eliminate reference to exempt from registration.

**Motion:** Section 61-15-6 item K to modify with the intent to eliminate reference to exempt from registration.

By: Ray Vigil

Second: Jim Oschwald

Board Vote: passed unanimously

Mr. Vigil mentioned that 61-15-6 section L was controversial in the way it was written as a reference to design build. The Board wanted to clarify and make certain in the Act that architects in that environment have to uphold the requirements of their license and registration. It was amended after discussions with designers/contractors who are not architects. Because of the issues raised at the Construction Industries Division’s General Construction Bureau Technical Advisory Committee (TAC)
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and they were concerned with regulation of design build firms. Jack Milarch of the New Mexico Home Builders Association, raised concerns regarding regulation of companies that offer design build under project exemptions in the Architectural Act. Mr. Vigil noted that the language was changed to show that where design build firm offer architectural services, then the architect they hire is a licensed New Mexico architect. The Board also added a provision in the last sentence to show that it does not apply to design build firms that operate under the exemptions.

Mr. Merrill said the builders have no problem with this section, it is the exemption going from a fourplex to a duplex.

Mr. Satzinger stated that even though the word “primarily” is not perfect, it helps item L because these design build firms are not primarily architectural firms, they are construction firms.

Mr. Vigil said that they took the design build firm language from CID follow up and it was in the procurement code. The Board did add “or other similar parts of delivery team method” because there is a big push at AIA with PP3 and it is a similar scenario where they are going to a teaming arrangement with an architect involved. The Board just wanted to make sure that an architect is licensed in New Mexico.

61-15-8 Exemptions from Registration

Mr. Vigil commented that the Board’s attempt to clean-up and simplify this section was basically that there are exemptions from registration for those working on federal land. The only issue was that the initial line item that states “architects acting solely as officers or employees of the U.S. or any interstate railroad system,” it is talking about those two groups.

Mr. Bodelson said it should also say “officers or employees of any federally owned site” because those employees are sometimes management.

Mr. Vigil stated that when the Board got rid of the word “or,” it makes sense. He asked if the language “officers or employees” is still applying to federally owned sites?

Mr. Bodelson answered yes. He added that to clarify, it is only for those entities. It clarifies that they are only doing work for themselves and on their sites.

Mr. Vigil added that federally should not be capitalized.

Ms. Propp asked if someone who is a contractor and they work for a private company and they are hired by one of these entities to perform architectural services, should they be licensed in New Mexico?

Mr. Bodelson answered yes and this language would not exempt them.

Ms. Propp stated that the Board is stating that if a person is employed by the federal government or an interstate railroad system to be an architect on a site, then that person could be exempt from registration if the federal entity decides that they do not need to be licensed.

Mr. Bodelson says there could be a scenario where they are looking for an individual to fill a position, and then they might have a requirement for licensure. But where it says “officers or employees” it connotes direct federal employees. If someone, such as himself, works for a management firm for the federal government, the architect is not a direct federal employee. Are they exempt or not, is the question.

Ms. Propp is concerned because it is ambiguous.
Mr. Bodelson said it would be “architects acting solely as officers or employees” or, under management firm of the United States’ that would manage the firm. Because that is what the Department of Energy has elected to do, is to hire a management firm to run these sites as opposed to the University of California.

Mr. Vigil asked Ms. Propp if the Governor’s office questioned this?

Ms. Propp stated that this is already happening, they are already exempt.

Mr. Bodelson stated that yes they are exempt only by the fact that the Board does not enforce it. These management firms that are contracted to the federal government are in violation of the statute, technically this Board does not enforce it and the Board should correct that situation.

Mr. Oschwald added that the Board would like to encourage them to license, as we would like to encourage the federal government to require their employees to be licensed so the Board could regulate.

Mr. Bodelson did not agree because he said the Board would not encourage the Department of Energy to license architects.

Ms. Propp stated that Mr. Oschwald is talking about the opposite.

Mr. Oschwald then stated that this language does not work then. It is saying that the federal government is not required to have licensed designers and therefore they are not encouraged to do continuing education and keep their skills up.

Mr. Bodelson stated that all the architects in this environment are licensed except for one or two in New Mexico and they will do the continuing education, etc.

Mr. Oschwald continued and said the language should reinforce that.

Mr. Bodelson said that his reason for introducing this item was not to reinforce anyone to license because the Board will not have influence over the federal government.

Ms. Propp said yes, if they are licensed.

Mr. Oschwald commented that the Board will have influence over individuals.

Mr. Bodelson disagreed and said that the Board does have influence but we are not exerting any at this time. The statute has jurisdiction over those individuals working in Los Alamos, but the Board is not exerting any effort.

Mr. Oschwald stated that they still have to answer an affidavit when they get relicensed.

Mr. Bodelson asked what about individuals in Los Alamos practicing without a license right now?

Mr. Oschwald commented that the Board should encourage licensure. By making them exempt from registration, the Board is saying to the federal government that it doesn’t matter if you are licensed with the requirement for increased learning with continuing education.

Mr. Bodelson stated that the federal government-appointed Los Alamos management is not even aware that the Board exists.

Mr. Oschwald said he understood and knew that Sandia is requesting that individuals show licensure.

Mr. Bodelson added that when Los Alamos contracts, the first thing they want is licensed individuals and sealed drawings. The last thing they will do with their staff is require a license and to seal drawings.
Mr. Vigil mentioned that the way it is written now, the Board is only adding language of those people who are working on federal owned sites, which covers Mr. Bodelson’s concern. Mr. Bodelson stated that he is an employee of the management firm on a federal site.

Mr. Vigil stated that it applies to the individually then. The Board should promote that but at the same time, it gives us only an interpretation for justification why the Board has not gone after these entities. Mr. Bodelson said that was the intention.

Mr. Vigil added that it applies to federal entities in general practice.

Mr. Bodelson said the licensing is highly valued for engineers and architects, they just do not apply our statute to their activities.

Mr. Oschwald agreed and said there is no respect for the authorities having jurisdiction because they are the authority having jurisdiction.

Mr. Bodelson stated that they do not follow under the jurisdiction of CID, they have their own building official who is the singular entity to approve drawings, code evaluations, etc.

Mr. Vigil added to that point by recommending that if the Board goes back to more edits, he may not support the change but he will support the change as is.

Mr. Adams asked if that is the case, then isn’t this moot? If the Board does not have jurisdiction over federal entities, why does the Board need to say that we are?

Mr. Bodelson stated that the statute says the Board has jurisdiction, the Board does not exert any jurisdiction.

Ms. Propp added that this was refining the language.

Mr. Bodelson understood that it is a little confusing but if you worked for these entities, it would make more sense.

Mr. Oschwald felt that the Board does not need to add any more language for the Legislature. He felt that the Board could leave it out.

Mr. Bodelson disagreed because without this, the Board would have an anomaly in our statute and it needs to be corrected.

Mr. Oschwald then stated that the Board is just adding federal sites.

Mr. Vigil stated yes it is just clean up. Any other concerns?

Mr. Glenn said he had no concerns and the way the Board is approaching it is correct.

Mr. Oschwald continued and said examples of federal sites are Sandia, LANL, Air Force, White Sands, Holloman, what about National Guard installations?

Ms. Propp said yes unless they are on federal land leased to the state.

Mr. Oschwald said that the state controls the land.

Ms. Propp said the Board has gone after cases where a person has not been licensed and the permitting official for the state comes in and says you must be licensed. The “federally owned” informs that because the Board has had cases where leasing, whoever the permitting official is, should have the right to say where is the architect?

Mr. Vigil said it also affects reservations which have their own requirements.

Mr. Bodelson asked if there was a motion or to accept it as it is presented?

Mr. Dworak suggested passing each of these separately.

Mr. Vigil stated that we did not vote on each one previously.
Mr. Bodelson said the Board will vote on any that are edits.
Mr. Vigil stated that on the previous ones, there was a couple that had changes.
Ms. Propp stated that 61-15-6 item L, you did not take a vote on.
Mr. Dworak recommended that the Board could adopt the whole section.
Mr. Vigil gave a motion to adopt the recommended changes to 61-15-6.

**Motion:** Section 61-15-6 to adopt the recommended changes
**By:** Ray Vigil
**Second:** Jim Oschwald
**Board Vote:** passed unanimously

Mr. Vigil made a motion to adopt the recommended changes to section 61-15-8 with minor edits.

**Motion:** Section 61-15-8 to adopt the recommended changes with minor edits.
**By:** Ray Vigil
**Second:** Jim Oschwald
**Board Vote:** passed unanimously

61-15-9 Project Exemptions
Mr. Vigil made a motion to not change 61-15-9 and leave it as is.
Ms. Propp recommended making a motion to remove 61-15-9 from the amendments being proposed to the legislature.

**Motion:** 61-15-9 to remove from the amendments being proposed to the Legislature.
**By:** Ray Vigil
**Second:**
**Board Vote:**
There was no second so further discussion is needed.
Mr. Vigil explained that in the meetings with CID's Technical Advisory Committee, there were no issues found by upper management (Pat McMurray), so there is no justification to go to the Legislature as to why the Board would want to make this change.
Mr. Bodelson said that the intent would be more consistent with other states and this might be that the Board continues this dialogue but to not pursue it at this time.
Mr. Calvani wanted clarification: Is it that the majority of states near New Mexico do not have language like the one the Board is proposing?
Mr. Bodelson said no, he was saying that the only justification the Board has is that other states around New Mexico use this exemption as proposed but the Board does not have any documentation to justify that it is problematic in New Mexico -- to allow for quadplexes to be built without a license.
Mr. Calvani commented that the idea with quadplexes, with up to 12-16 sleeping areas, there were issues with occupancy, fire separation requirements, egress requirements and other requirements. As
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regulators it is tough to put on that particular hat but the Board must protect the health, safety and welfare of the public.  
Mr. Bodelson agreed but the Board has not developed the alliances it needs with organizations or developed enough documentation in terms of technical justification for the change.  
Mr. Vigil motioned to leave it alone.

**Motion:** Section 61-15-9 to remove from the amendments being proposed to the legislature.  
**By:** Ray Vigil  
**Second:** Mark Glenn  
**Board Vote:**

Mr. Glenn asked if the attempt to address this issue is in the rule making procedures?  
Mr. Bodelson answered that no and he recommended to continue a dialogue with CID through their Technical Advisory Committee, AIA and the New Mexico Home Builders Association on a change like this and develop an alliance between these entities. If the Board and the other groups all come to some consensus that can be supported, then the Board would consider that at the sunset session in 2017.  
Mr. Glenn stated that he is hearing that there really is no problem with public safety, it is more about everyone around (outside New Mexico) is doing it, so New Mexico should be doing it, too.  
Mr. Bodelson said that the Board could perceive an issue with it but there is no documentation of issues that have occurred in the field to support that concern.  
Mr. Vigil added that he needed to revise his motion. There was a clean-up that was asked to be on the statute and it is not there. It is currently a reference to a Uniform Building Code and the Board no longer is under that uniform code. It is the current New Mexico code.  
Mr. Vigil said that there is change to the motion but is only updating the code.

**Motion:** Section 61-15-9 to add the current New Mexico building code but leave the statute without the changes as proposed  
**By:** Ray Vigil  
**Second:** Jim Oschwald  
**Board Vote:** passed unanimously

Mr. Bodelson asked Ms. Propp to make it a priority to discuss with TAC, New Mexico Home Builders and AIA in some sort of collaborative sub-committee format, to continue the dialogue.  
Mr. Vigil added that the dialogue initially started at that first point with other representatives.  
Subsequent to that, he had meetings with people in the trenches, Martin Romero and several department heads and none of them could come up with any issue related to the four-plex. It will be tough to try to sell it. The Board needs to monitor and address the concern Mr. Calvani has on the sleeping quarters, egress, and fire separation.  
Mr. Vigil noted that the Handbook for New Mexico Building Officials addresses alignment in regards to when a seal is required.
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Mr. Satzinger commented that anyone would have a hard time getting a permit in the City of Santa Fe or Albuquerque to that extent without a seal. The permitting jurisdiction is tougher than this Act requirement.
Mr. Merrill agreed. Whether there is a seal or not, the inspections are still there. Just because a neighboring state is doing it, doesn’t mean New Mexico should.

61-15-10 Violations
Mr. Vigil stated that this puts some teeth on civil penalties and criminal charges. The Board voted on this one last time. He recommended proceeding with the proposed changes.

Motion: Section 61-15-10 to proceed with the proposed changes
By: Ray Vigil
Second: Geoff Adams
Board Vote:

Mr. Oschwald commented that under A, the maximum penalty is a fourth degree felony and is punishable by $5000.00 or eighteen months in jail. The Board is going above and beyond, can the Board do this? Can the Board increase it to $25,000.00?
Mr. Dworak answered that this is separate charges so they would be brought separately. They are administrative civil charges and the whole separation is that this whole section previously only covered criminal charges forwarded to District Attorney’s office. Now, it includes the criminal charges that are separate and that the Board has no authority over it. It is just stating it in the Act that these individuals are subject to criminal liability. The introduction of the new section was just to clarify that the Board’s administrative penalties have increased.
Mr. Vigil recommended to the Board to proceed with those changes.

Motion: Section 61-15-10 to proceed with the proposed changes
By: Ray Vigil
Second: Geoff Adams
Board vote: passed unanimously

61-15-12 Disciplinary Actions
Mr. Vigil stated that this is clean up recommended by legal counsel. He made a motion to recommend these changes.

Motion: Section 61-15-12 to proceed with the proposed changes
By: Ray Vigil
Second: Jim Oschwald
Board votes: passed unanimously
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Resolution
Ms. Propp recommended that the Board members take another look at the Resolution that was passed on November 21, 2014. She offered a new resolution to pass with some changes that would reflect what was just done. She spoke to Representative Larry Larrañaga and he is interested in supporting and sponsoring a bill. He recommended asking Senator Joseph Cervantez to be sponsor in the Senate. She asked the Board to take a look and add a phrase in regard to 61-15-8, the exemption from registration and that would need to be included in this amendment. She read the changes to the Resolution as written.
Mr. Vigil made a motion to approve the proposed resolution, in coordination with legal counsel.
Mr. Bodelson stated that there is a motion to re-draft the resolution consistent with the today’s approvals.

Motion: to re-draft the Resolution of the New Mexico Board of Examiners for Architects changes to the Architectural Act consistent with the days approvals.

By: Ray Vigil
Second: Geoff Adams
Board votes: passed unanimously

Mr. Oschwald noted that it seemed like the Board did not have unanimous votes on all of the resolutions but there were majority votes on all of them.
Mr. Dworak pointed out that general practice is once a resolution is adopted then it is not changed for future reference. There is some language in it that it was reconsidered and that is the proper way to approach this. There is no method to retract a resolution, it would be like a subsequent resolution but because it was not published, it is fine.
Ms. Propp announced that the next board meeting is February 6, 2015 -- three weeks after the Legislature is in session.
Mr. Johnson asked if it was worked out whether a registrant against whom a complaint had been filed, now has a copy of the complaint?
Ms. Propp answered yes.
Mr. Vigil asked for a motion again.

Motion: re-draft the Resolution of the New Mexico Board of Examiners for Architects changes to the Architectural Act consistent with the day’s approvals.

By: Ray Vigil
Second: Geoff Adams
Board votes: passed unanimously

D. NEW BUSINESS

1. FY 15 Budget Adjustment Request
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Mr. Adams stated that there is an issue with trying to get money for website development. Ms. Gonzales commented that the staff is asking the Board for permission to seek a Budget Adjustment Request (BAR) because the cost of redesigning the website is $17,982. Funds would be moved from personal services and contractual services for an amount of $11,550.00. Mr. Bodelson asked if the monies were available at this time? Ms. Gonzales said yes. Mr. Vigil asked if it with the same company that the Board had worked with before or will the Board go out for bids? Mr. Bodelson stated that the staff is working with the Department of Information Technology (DoIT). He motioned to approve the FY 15 Budget Adjustment Request.

Motion: to approve the FY 15 Budget Adjustment Request.
By: Ray Vigil
Second: Jim Oschwald
Board votes: passed unanimously

Mr. Adams asked if that is enough money? Ms. Gonzales said that she estimated that the financial forecast was based off the cost proposal from Department of Information Technology (DoIT) as far as redesigning the website. That is the exact number given to the Board by DoIT so that they can continue the work. Mr. Bodelson asked how it has been on other proposals in terms of consistency? Ms. Gonzales said that the first proposal was for the database and that went fairly smooth. Ms Propp added that DoIT was the first entity that addressed concerns about the database.

2. Disciplinary Matters

Mr. Bodelson mentioned that they need to go into Executive Session. Ms. Propp mentioned that Board Counsel needs to leave at 11:15 so could the Board take his appeal issue first. Mr. Dworak said that the Board could choose to go into Executive Session or not. If not, then it saves the trouble of going through the formal process. Mr. Bodelson stated that the Board will refrain from going into Executive Session. No objections. Mr. Bodelson continued by stating that they are not discussing NMBEA 2013_21, 2014_10 and 2014_12.

A. NMBEA 2012_08
Mr. Dworak stated that on NMBEA 2012_08 was an appeal of a decision by the Board after finding that an individual who was not licensed identified himself as an architect and was offering architectural services on a website. The individual claimed the website was out of his control.
December 22, 2014 is when the Statement of Appellate Issue is due and from there, the Board will have thirty days to respond. The Board will evaluate their position at that time.

Mr. Dworak left the meeting (12:12pm)

**NMBEA 2013_21**

Ms. Holmes explained that an unlicensed person was identifying herself as an architectural designer. A complaint was filed against her because she put an architectural lien on her client’s property, claiming the client had not paid the entire bill. The Enforcement Subcommittee recommended that a Notice of Alleged Violation be issued against her and that was done in May 2013. She responded to the NAV and then the ESC recommended a settlement agreement. Offers of settlement were refused. It was turned over to the Board’s prosecutor, Assistant Attorney Sally Galanter. A Notice of Contemplated Action was issued in May 2014. A stipulated agreement was hammered out, along with a $1,000.00 fine. The Board now is asked to approve this agreement. Her attorney delivered the check yesterday and the staff returned it because there was no approval yet. She signed a Notice of Waiver Requirement because this item was not on the Board’s agenda and this waiver states that they will not question the action under the Open Meetings Act.

Mr. Bodelson asked if the updated settlement had gone to the Enforcement sub-committee yet?

Ms. Holmes stated no, it was not reported to the ESC. It all happened yesterday.

Mr. Vigil asked is the main issue was the counter for $1000.00?

Ms. Propp asked if the person admitted guilt?

Ms. Holmes said yes.

Mr. Bodelson recommended forwarding it to the Board for consideration.

Mr. Calvani agreed.

Mr. Vigil recommended a motion to accept the $1000.00 fine and close the case.

**Motion:** NMBEA 2013_21 to accept the $1000.00 fine reduction and close the case.

**By:** Ray Vigil

**Second:** Geoff Adams

**Board votes:** passed unanimously

**B. Appeal Issues**

Ms. Propp stated that this was already discussed by Mr. Dworak.

Mr. Bodelson stated that in the 2012_08 case was that the closing of the hearing was a fine of $1000.00. He is appealing the fine and the Determination of Guilt.

Ms. Propp stated that it is the Determination of Guilt is primarily what he is appealing. They want to challenge whether the Board has the authority over a person who is not licensed.

Mr. Bodelson commented that he knows the Board does have authority; it is explicit in the statute, even with the move to make changes via the Legislature. If someone wants to test it, this is a good opportunity.
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Mr. Vigil stated that people cannot go around claiming they are a police officer and the same thing for architecture. Mr. Vigil asked if the Board needed action on the appeal or was it just an update?
Ms. Propp stated that it was an update and no action is needed.

E. Board Comments/Announcements

Ms. Propp passed a copy of the Financial Audit and stated that there is no findings and the Board can publish them.
Mr. Bodelson commended Ms. Propp and staff for the good job managing the budget, compliance, rules and regulations and for having no findings. This is something the Board should be proud of as an organization.
Ms. Gonzales announced that the website screenshot (handout) is in the initial process. Now that the Board has the final cost proposal, she will proceed working with DoIT.
Mr. Bodelson stated that it looks great and reads well.
Ms. Propp stated that she hoped the new website would be up by the next couple of months.
Ms. Gonzales also mentioned that she is working with the state's bank for online renewals.
Ms. Holmes thanked the Board for buying the staff lunch for the holidays.

Mr. Bodelson motioned to adjourn.

Motion: to adjourn the meeting at 12:22 p.m.
By: Ray Vigil
Second: Jim Oschwald
Board Vote: Passed unanimously

Whereupon the regular open meeting of the New Mexico Board of Examiners for Architects adjourned by Chair Bodelson at the approximate hour of 12:22 p.m.

Respectively submitted,

Michael Bodelson, Chair

Ray Vigil, Vice-Chair

[Signature]

Date

2/6/15