

**MUNICIPALITY OF ANCHORAGE
BOARD OF BUILDING REGULATION EXAMINERS AND APPEALS**

MEETING MINUTES SUMMARY

March 29, 2012

1. **CALL TO ORDER AND ROLL CALL:** The meeting was called to order at 6:33 pm. by Chairman Paul Michelsohn.

Board Present	Board Absent	Staff Present	Public Participation
Scott Bohne		Ross Noffsinger	
Rob Merchant		Sharen Walsh	
Skipp Bringmann		Jerry Weaver	
Craig Fredeen		Tana Klunder	
Paul Michelsohn			
Jonathan Steele			
Bari Gray			
Troy Feller			
Sterling Strait			
Serena O'Donnell			
Tom Looney			

Chair Michelsohn welcomed Mr. Gray and Mr. Strait to the board and asked them to introduce themselves and their field.

Mr. Strait is honored to be a part of the board. He is a structural engineer working at WH Pacific for about six years now. He's done projects with the municipality as well as throughout the state and he is honored to be on the board and to help out the process. Chair Michelsohn welcomed him to the board and the knowledge he brings to the table.

Mr. Gray stated he is a superintendent with Superior Plumbing and Heating. He stated he's been in the trade for 19 years and sits on several other boards and panels in different organizations and noted his knowledge in plumbing is great and he really enjoys what he does. He is a member of IAPMO and keeps up with those issues and current code and he is honored to be sitting on the board.

Chair Michelsohn welcomed him to the board and asked if they had met everyone on the board. The Chair asked the board members to introduce themselves.

2. **APPROVAL OF AGENDA:** Chair Michelsohn asked to change the order of the meeting with item c. Refresher and New Member Orientation being first. Item a. Election of Chair and Vice Chair should be at the end; **Mr. Bringmann moved to approved. Mr. Steele Seconded.** Unanimously APPROVED.

3. **APPROVAL OF MINUTES:** Minutes of February 21, 2012. **Mr. Bohne motioned to postpone the minutes until the next meeting. Mr. Merchant seconded.** Mr. Gray called for question. Chair Michelsohn called and the postponement was unanimously approved. February 21, 2012 minutes are postponed.

4. **PUBLIC HEARINGS - None**

5. **APPEARANCE REQUESTS - None**

6. **UNFINISHED BUSINESS - None**

**MUNICIPALITY OF ANCHORAGE
BOARD OF BUILDING REGULATION EXAMINERS AND APPEALS**

7. NEW BUSINESS

c. Refresher and New Member Orientation

Chair Michelsohn asked Ms. Walsh to refresh and give orientation to the new members. Ms. Walsh explained the members should have received at the last meeting a copy of AMCR 23.10, which speaks to the order of business. It's the order governing the business of the board and all members should have a copy. She noted if their copies were misplaced staff would provide another copy or they could find it online. Ms. Walsh noted it would be good to maintain at every meeting. She noted members also have Roberts Rules of Orders and noted it could be gone over in detail now or could be reviewed at their leisure.

Ms. Walsh also noted a two page, double-sided, outline of Board and Commission Committee Responsibilities. She noted it was generic and not specific to this board and it was an overall good reminder of the context of responsibilities when serving on a board like this. Also noted was a booking slip showing we have reserved this conference room for the dates shown. Ms. Walsh noted it was important that board meetings could be canceled if there was not typical business to be handled and regulations do require a meeting in March and noted special meetings can be called at the request of the chair. Meetings can also be canceled if there is not business to be taken up. She noted this is very important because we do pay rent for the Assembly Chambers room. The Board prefers to have meetings in this room rather than at our offices as it is more formal and is suited to the gravity of body of issues you may have to face in public hearings. Staff is on board with this decision but she noted to beware that if we are not having meetings we need to cancel the meetings ahead of time so we are not charged for the room.

Chair Michelsohn asked Ms. Walsh what the lead time was for cancellation of a meeting. He also asked do we pay rent at the mayor's conference room. Ms. Walsh replied we pay for the Assembly Chambers but was unsure about the Mayor's Conference room; maybe Ms. Klunder can answer the question.

Ms. Klunder responded we do not pay for the Mayor Conference or any room in a Municipality building but we do pay for the Assembly Chambers.

Chair Michelsohn asked on April 5 can we cancel it two days before or is Development Services paying for it or do we need two weeks ahead of time. What's the lead time before we have to pay for the space? Ms. Klunder replied the sooner the better but two days lead time is okay.

Ms. Walsh noted the seating chart before you was modified tonight because of a mix-up with not enough computers on the left side of the room so Mr. Strait is sitting next to Mr. Steele's right but this is the seating order and it may change if there is a new chair and vice-chair voted in tonight and the Chair always sits to the left of the recording secretary and we'll swap out that person with whomever may end up as the chair. That is your seating chart and noted most of you got an orientation to the building and the break room and restrooms on this side of the floor. Ms. Walsh stated it was important to note in case of a conflict of interest, which is also described in your regulations that were given out at the last meeting. She noted her understanding was you are supposed to remove yourself from the room and most people go to the break room because the audio is piped into there and you can hear what is going on but you are not supposed to be in the room if you have a conflict of interest. That is a brief overview of the items before you. Would you like to go over any of these items in detail Mr. Chair?

Chair Michelsohn replied not at this time. On the conflict of interest in the past this board has; Mr. Bohne you've been here a long time, I don't think we've ever had a conflict of interest but no one has ever left the room they've just sustained from voting and testifying. Mr. Bohne noted the one he remembers, the individual wasn't permitted to testify but didn't leave the room and as Mr. Bohne reads the regulations he was not sure as to why they were not allowed to testify.

MUNICIPALITY OF ANCHORAGE
BOARD OF BUILDING REGULATION EXAMINERS AND APPEALS

Chair Michelsohn noted that was two questions to ask then asked if there were anymore questions for Ms Walsh from this panel.

Ms. Walsh encouraged the chair to look at AMCR 23.10 rules of procedures and that you note the jurisdiction issues, code is more stringent than regulations, code trumps regulations. There are some conflicts with the new ordinance and a couple of minor ones. She would like to point out the requirements establishing case files for appeals because this requirement is for your packet materials on appeals. It discusses ex-parte communications, which is very important because could cause problem to a case if there is ex-parte communication. Ms. Walsh encourage everyone to read in terms of what you are allowed to speak about with others and not. It does define conflict of interests, issues where there might be a conflict of interest and also addresses disclosure where there might be a minor relationship or something, which you should disclose where the board may ask you to disclose to participate. Also, it talks about orders of business which is you can look at your leisure but the ex-parte contact and the conflict of interest rules are pretty important and she would encourage you to familiarize yourself with them ore refresh if you've read them once before.

Chair Michelsohn noted most on the board have and he appreciates bringing that up again. The members of this board have always decided if someone has a conflict of interest based on what the individual tells us and are you under the agreement that it's going to be this way in the future?

Mr. Weaver noted the assembly has some protocols and how they determine a conflict of interest and we've used that with the other regulatory boards and commission. It's three or four questions and we'll get you those criteria.

Chair Michelsohn stated he believes most of the people on this board probably are familiar with or have met every anticipated appelland he can think of in town, so just because you've met or know someone doesn't necessary...Mr. Weaver noted it's a small community; all the boards and commissions have this issue and really what they are looking for is a direct financial conflict of interest then you get into how much do you know this person and can you make an impartial, unbiased decision but we'll get you those criteria that'll make it easier for you.

Ms. Walsh noted you have those criteria from your packet materials last month. Its 23.10.009 and staff can get you more copies if you've misplaced it from the last time. Chair Michelsohn thanked Ms. Walsh and asked if that completed the refresher orientation. Ms. Walsh responded yes unless you have further questions that completes it.

Chair Michelsohn asked if the board had any more questions; see none we're moving one. You kind-of introduced Roberts Rules do you want to talk anymore about that or do you want everybody to read it on their own.

a. Roberts Rules of Order

Ms. Walsh replied Mr. Chair this is merely provided as a reference for new members especially or those that are not really familiar with Roberts Rules might want to review it on your own. If you have any basic things you want to talk about tonight this would be the time.

Chair Michelsohn asked which Robert's Rules does this board work under because he's read version two and version three and they differ slightly. Ms. Walsh noted she's not familiar with them and asked the chair if he had a preference?

Chair Michelsohn noted the most current but it changes every couple of years, just like codes and they alter a few things but he was just curious and found it interesting because he was looking up a particular subject for another committee and looking it up in an old copy and someone handed him a version three copy and it was different.

**MUNICIPALITY OF ANCHORAGE
BOARD OF BUILDING REGULATION EXAMINERS AND APPEALS**

Ms. Walsh pointed out the version in front of you is internet dated 9/20/11 and she presumes it is fairly recent. Chair Michelsohn commented he found that the internet differs a lot from the book. The internet is the short version of the book. Ms. Walsh commented they would check with legal and see what they recommend. Chair Michelsohn noted he thought it had all the answers from the internet and than found out the answers were not correct.

Ms. Klunder stated these Roberts Rules where given to her by the Mayor's office to give to the new board members. Chair Michelsohn responded excellent and does that conclude that report Ms. Walsh. Yes replied Ms. Walsh.

Chair Michelsohn asked if there were any questions for the Roberts Rules. Seeing none and hearing none; moving on.

c. d. Implementation of AO 2012-31(S) Amending Anchorage Municipal Code Sections 4.40.030 and 23.10.103.4 to provide for three-member Building Board hearing panels, refundable filing Deposits, Discretionary De Novo review of hearing panel decisions by the Board of Building Regulations Examiners and Appeals

Ms. Walsh noted if you have your copy of the ordinance in front of you; we'll skim some of the highlights of that and then once we've been though the ordinance; she has a handout, it's staffs attempt to put this in a clear timeline form especially the appeals process and she would like us to go through it in more of a work session mode or receive feedback. She has already spoken with the Municipal Attorney about some procedural conflicts we need to clear up as we walk through this ordinance and any other conflicts the board may find tonight and we'll get with municipal attorney and see if we can sort them out. So with your permission, I'll walk through the ordinance. Chair Michelsohn agreed.

Ms. Walsh continued with section one, the ordinance actually amended two titles of code. Section one is Title 4 Boards and Commission and the change is in 4.40.030 B for those that are not familiar with the format of ordinances this is the version that shows the new language and what you see is underlined is new language from the previous version and what you see in parenthesis or brackets is typically deleted and because this is an S version some new language has been struck out, that is to be kept in mind as we go through. 4.40.030 B changed the board from previously defined as 11 members and Section 23.10.103.4 described the disciplines the members are supposed to represent. This new language adds a pool of no few than 11 but up to 15 members so it increases the size of the board although allows for 11 members to still constitute the board.

Section two: 23.10.103.4, which are the powers and duties of the Board of Examiners and Appeals. As you can see they added the word Regulation, so now your name is Building Board of Regulation Examiners and Appeals, we are not sure to what intent of that change. 23.10.103.4.1 in general defines jurisdiction and staff is pleased with this addition to the code because previously jurisdiction was defined in the regulations and this clears up the jurisdiction and brings it forward into code. The changes there you had already before in regulations so nothing new except that regulations were so old it expected your power to work with plumbing and mechanical regulations and in the past there were separate words for that. This clarifies your jurisdiction to include review of plumbing and mechanical issues.

Page 2, part A. Appeal panels. The key words are: in order to hear and decide appeals from decision of administrative officials and other enforcement orders, the Building Board shall establish three-member panels from its pool of three-member panels from its members qualified by experience and training to pass upon appeal matters...additional language. The specifics are: up to five hearing panels shall be established the first meeting of each calendar year to hear appeals from decisions of administrative officials and other enforcement orders. The secretary to the board, which is defined as myself and I designate the actual recording duties and so on to Ms. Klunder but when this refers to secretary to the board it refers to the Building Official. As you'll see, the secretary

**MUNICIPALITY OF ANCHORAGE
BOARD OF BUILDING REGULATION EXAMINERS AND APPEALS**

to the board and the board chair shall assign members to a specific panel, later in the ordinance at the end it establishes the first meeting of the calendar year in this case to be tonight.

The intent of the assembly was to make tonight the meeting in which to establish these panels. She noted we will have an order of business where you can jump right in to it; which, we would prefer to do at the end once we have been through the ordinance issues. Up to five panels, we don't have to do five; we only have 11 board members now. We think the intent was if we had 15 members we could have five three-member panels since we have 11 members we can have three panels with two left over and use those people as substitutes or we could have four panels and someone would have to serve on two of them. If the person appeals, it goes to these three-member panels first. We did have clarification from the legal department as there was question about it and Ms. Klunder has an email to pass out. Ms. Walsh read the email; the question was it appears to staff an applicant must first go to a three-member and the full board only reviews appeals on a *de novo* basis, which means a second hearing if the three-member decision is appealed by either party. The question was is that true? The ordinance is not written that way and you'll see Mr. Wheeler's response is: I do not see in the code an appeal direct to the full board. That avenue has been eliminated by the new AO. AMC 23.10.103.4 says the Board hears and decides appeals, but subsection A now says that in order to hear those appeals, the board "shall establish three-member hearing panels." That is the determination we've had.

Chair Michelsohn commented in the future it would be nice to have gotten it a head of time so we could have had time to read it. Ms. Walsh replied she could appreciate that but this answer came in at 2:13PM and staff was simple not able to process it quickly enough for you to get it tonight. That is a major change that it will go to a three-member panel first.

Chair Michelsohn commented he talked with Assemblymember Trombley today because he wanted to have some questions answered also and asked some specific questions about the Ordinance so he is really puzzled about why he would have than directed his questions to Mr. Wheeler. Ms. Walsh responded this came from me to Mr. Wheeler. Chair Michelsohn stated he asked a similar question to Mr. Trombley to ask Mr. Wheeler and Mr. Trombley called me back an hour later; recited my question back and gave me Mr. Wheeler's answer and it's different from what you got.

Mr. Weaver to clarify, Mr. Trombley talked to his assembly council Ms. Tucker and she also sent an email basically about 5:16PM after she talked with Mr. Trombley reconfirming what Mr. Wheeler indicated was correct. Mr. Weaver stated he could share that with you but he only brought one copy with him.

Chair Michelsohn stated it's not a problem; he was just trying to do his homework before the meeting so if questions came up he could intelligently answer them and he's getting all different sorts of answers. He commented guess it's how you ask the question. Mr. Weaver explained we were not actually sure ourselves looking at the ordinance, we read it as it had to go to the three-member board. We talked about it this morning with you and others so we went ahead and asked the question of legal and strict reading of the code, the way it's structured it has to go to the three member panel first.

Ms. Walsh pointed out of the three-member panels, at least two members of the panel, ones we'll establish tonight, hearing an appeal will be actively engaged in disciplines, trades, or professional relevant to the appeal. We will have to keep this in mind when we structure these panels. Back in item 1, the secretary to the board may request members to take the place of a regular assigned member if/when an assigned member are not available or if there is a technical reason. Perhaps an appeal is based on an electrical appeal with a structural requirement with that we may need to change up the panel to adequately address the question. In the discretion of the Building Board, the decision of a three-member panel on an appeal from the decisions of an appeal from the decision of an administrative official or other enforcement order may be accepted for *de novo* review by the Building Board as provided in 23.10.103.4. *De novo* means of new or second hearing, that's the legal term it means a rehearing of the same issue.

**MUNICIPALITY OF ANCHORAGE
BOARD OF BUILDING REGULATION EXAMINERS AND APPEALS**

Language about item 4 has not changed officially: the building official shall be an ex officio member and shall act as secretary to the board but shall not vote upon any matter. Previously four and now five the board shall follow rules of procedures approved by the assembly for conducting business. They did not give us specific rules so until they give us ones we will follow the ones in your procedures.

Mr. Looney wondered on item three does that mean the three-member panel or the board gets to ask for *de novo* review or is the appellant to ask for it? Ms. Walsh pointed out it's further in the ordinance but either party may ask for *de novo* review. Mr. Looney so it's at the discretion of the building board so if the building board if the appellant asks for it we get to determine whether we hear it. Ms. Walsh acknowledged you get to decide if you will accept it for review. Mr. Looney reasoned we could accept for review even if the appellant didn't ask for it. Ms. Walsh confirmed that any party could accept it for review.

Mr. Looney questioned on item 4, the ex officio as a member of the board on the three-member panel what the building official's representation there. Ms. Walsh affirmed the building official would serve as staff, similar as it is know. Mr. Looney asked so we can assume the building official is an ex officio member of the panel. Ms. Walsh replied she believes so and again non-voting. Ms. Walsh will ask for clarification.

Mr. Strait commented if the building official is an ex officio of the board are they not offering at the same time their one party representing the question against another party, the one who is appealing the decision. Ms. Walsh responded in your rules of procedures in AMCR 23.10 order of hearing appeals generally the appellant produces their case and staff would present their case their appealing, staff's position. The board would hear testimony from the appellant, testimony from staff and then would consider in their decision.

Mr. Bringmann asked does this mean she sits on the three-member panel.

Chair Michelsohn pointed out staff from what he understands, or he might be getting all the wrong answers. Staff is supposed to be a support of this board; this board operates independent of Building Safety or Public Works, or Building Planning Department and staff is supposed to be support for this board. The comments or concerns are if Ms. Walsh is there on/in the three panel procedure.

Mr. Weaver staff is ex officio member basically there to support the board. Staff is not a voting participate it's there to support you in your process. Obviously when you have an appeal from the Building Official it would go before both the three-member panel and the full board depending on which scenario it is and staff would make a presentation just like the rules of procedures call for along with the applicant. Staff would be ex officio by putting the packet together that the board receives but staff is an active participant in that process. Ms. Walsh pointed out this language has always been in the code in terms of the Building Official being an ex officio member. She is not sure it's been a problem as long as the board has been established to date.

Ms. O'Donnell noted this section the building official shall be an ex officio member and shall act as secretary to the board and not vote upon any matter before the board. We're not talking about a panel. This is not directing any commentary toward the three member hearing panel. Mr. Weaver agreed the ordinance is lacking in some areas that was maybe not fully thought out ahead of time because there some inconsistently between the full board and the three-member panels but it's our opinion they should function similar.

Ms. O'Donnell commented this is confusing this is a section describing the appeal panel, its composition, how it functions but number four doesn't discuss the appeal panel at all it discusses the board.

Ms. Walsh noted at the beginning of this presentation we have found inconsistencies in the ordinance and we anticipated there would be other items and we would discuss them and they will be taken forward to Mr. Wheeler.

MUNICIPALITY OF ANCHORAGE
BOARD OF BUILDING REGULATION EXAMINERS AND APPEALS

Ms. O'Donnell stated she's still trying to understand the process and if it goes to the board and a panel at the same time.

Chair Michelsohn commented he talked with Mr. Trombley and evidently Mr. Trombley talked with Ms Tucker and told an appellant could request a full board not a three member panel. It goes to the three-member panel and Building Office or bldg safety or applicant does not agree with the decision that it goes to the large board. They wouldn't be going to the three-member team if they were in agreement in the first place; he doesn't see how they are coming to come out with an agreement at the end.

Mr. Fredeen noted we've all read code before and number four is a subset of A. the building official would be a part of the three-person panel. He assumed staff would be taking minutes of the three member panel review, just as staff is taking minutes of the building board right now. That's how he is interpreting that portion of it. It would be appropriate that staff be taking minutes at these three-panel boards so that the building board can full review the process that occurred during those reviews in order to help us determine whether a de novo review would be appropriate or not.

Ms. Walsh continuing we'll check on item 4. Page 3, Modification Standards, as you can see from the underline it's all new procedures. It's the standards by which the board Grant modification is to review modifications and alternation issues; to grant a modification from strict application of the Building Code, the Building Board must find there is a special individual reason making the strict letter of this code impracticable in and the modification, if granted, will meet each the following standards.

This is similar as to what the Building Official has in terms of ability to granting modifications, which we talked about at the last meeting. The Building Official already has that power to grant modifications and approve alternative means and methods and staff's opinion the board always had that same power because to they have that power to oversee the building officials decision but this ordinance specifically spells that out for the building board.

With one exception item one is verbatim: the modification is in keeping with the intent and purpose of the Building Code. Item 2: the modification does not lessen health, life, and fire safety for the people of Anchorage, or structural requirements in code. What was added is for the people of Anchorage. Item 3: strict application of the building code would create an exceptional or undue hardship, including but not limited to financial hardship, and the modification will protect health, safety and welfare to the same or higher degree than the specific requirement in regulation so this is quite new and prior to this time, financial hardship has not been a standard for consideration a modification. The board will have quite a responsibility on administering this clause for health, safety is indeed being held to a higher degree than the regulations.

Items 4 and 5 are taken from the commentary in the code. It mentions a modification shall not extend to waiver of actions necessary to correct violations of code affecting health, life, and fire safety, or structural requirements. So if a person was written up for a code violation and then came to the board seeking relief because their had been a violation this gives the board power to say no you violated the code and we can't grant you modifications just because you violated.

Item 5 is also from the commentary in the code: the first sentence discusses equally safe, it's a variation of words from the commentary bit it again it is to impress upon the board to exercise due care.

Mr. Looney asked have we received any information on the modification on the standards section from the state Fire Marshal. His understanding is in general the municipality can't do less than the State adopted code and this would potentially allow this board to accept an alternative means and methods that may not comply with the adopted state code.

MUNICIPALITY OF ANCHORAGE
BOARD OF BUILDING REGULATION EXAMINERS AND APPEALS

Ms. Walsh replied we did speak directly to the State Fire Marshal and to the Department of Labor, Mr. Nagel, who administers the mechanical and electrical provisions of the state code. The State Fire Marshal read the language and felt in general that the burden of proof would have to be determined equally safe. Further down limitation of authority previously the ordinance actually gave the board authority to waive the code versus granting a modification. As you see that language was struck out in the final version. Because of the strike out the State Fire Marshal felt he could accept the ordinance as is. The burden will still be on the board. Regarding the Dept. of Labor their concerns with the ordinance is their deferment is based on the same idea the municipality is allowed to administer plumbing and electrical themselves as long as stringent as the State Code but not less than. They cautioned any appeal that comes to the board needs to be checked against state requirements and they specifically stated if the board grants a modification it must be as stringent and if the State has concerns and they will pull it.

Mr. Looney noted we are sticking our necks out if we made a deviation from the letter of the code. Is there an indemnification for the board? What is the extent of our liability if we do that and is the municipality of anchorage protecting us from that liability?

Mr. Weaver proclaimed we did speak to at the last board meeting but he believes you were not here. Typically if the board is acting in its official capacity and in good faith, you are indemnified from those types of situations.

Chair Michelsohn explained he believes Mr. Looney's concern is about his Errors & Omission (E&O) insurance as a professional engineer versus the release from the municipality. Mr. Looney commented he should be talking with his insurance regarding what they think. It probably won't cover the actions he's taking representing this board. He does agree we are on perilous ground if we do make any significant deviations or even lighter deviations from the adopted code.

Mr. Weaver noted our intent is to have state comments in any case that come before you is to have state comments in the record.

Mr. Noffsinger remarked the modifications are with in keeping with the intent and purpose of the code as long as the board stays they'll be fine. Number 1 and the new stuff added like 3, 4 and 5 could easily conflict with each other so if you stay focused on that part you probably be okay.

Chair Michelsohn asked and he's been asking for almost 14 years, if per Mr. Looney's comment that we have to stay strict, strict intent or guidelines to the code, obviously your staff is intelligent enough to tell us their interpretation of the guidelines are and if we can modify from that why are we hear. This board doesn't need to be here if-if it's right there in black and white codes, being involved with ICC so much, codes are subjective and their interpreted in different ways, sometimes for geographical for climatic purposes you can't meet the code.

Mr. Weaver replied we can try to do that and respond, you are on oversight board and in some respects some small part of your responsibilities to the decisions of the building official that is way the appeals are built in system they gave you authority to do that but have to use the same diligence and through diligence looking at the issue that staff looked at everyday making those decisions. Do they meet the intent and the letter of the code sometimes there are those grey areas that require some decisions and opinions to be made. Not one individual is infallible in making those decisions that's why you are here as oversight. When you do make those decisions, you need to put on the record your findings as to why you're making these decisions for whatever reasons, so they can withstand the test of time. They need those findings of fact for every decision you make.

Mr. Looney added many times he's been down to the Municipality of Anchorage arguing grey areas that are sometimes are beneficial to his clients, so there are grey areas in all the codes. They are areas that a designer who understands what he doing can have some latitude, so he thinks it's beneficial to have somebody to have the ability to look at the specific circumstances and make an evaluation. Also, on this board if we're given this

**MUNICIPALITY OF ANCHORAGE
BOARD OF BUILDING REGULATION EXAMINERS AND APPEALS**

opportunity, he'll be very cautious in anything he would do if it did not meet the direct intent of the code and thinks all of us will. He is concerned with the relationship with the state and the fact we need to enforce codes as stringent as they will otherwise it imperials the Municipality of Anchorage's ability to interpret codes at all and enforce them.

Chair Michelsohn declared if you're going to enforce as much as the State, you're not going to enforce them at all. They don't have any enforcement.

Mr. Steele explained for the years he's been on the board there has been a wide variety of information that has been submitted the night of the meeting and with the reduced cost he see the potential for more appeals. He does think the appellatant does need to come to the board with the same understanding of what their purpose is in terms of getting us to make consideration. He hopes at the night of the meeting we won' be given reams and stacks of paper explaining the issue and they would respect or maybe we need to step up and say by a certain date this type of information needs to be provided or the hearing won't occur. He suggests the board and staff have that discussion so that we're just not winging it that night on some very important issues.

Ms. Walsh suggested when you have the time to refer to your regulations, see 23.10.006 regarding case file being established. It's the secretary to the board's responsibility to do that. The following items would be the application, copy of the plans, other illustrative materials submitted by the applicant, copy of staff memorandum and recommendations, copy of all comments received from other agencies, any materials submitted at the hearing that the board designates be included in the case file, laid on the table reference, return notices from property owners and abatement appeal cases (separate item) and copies of minutes from the board for the applicable case.

When you go to order of business, 23.10.106 regarding appeals on actions of the administrative officials, the order of business is all testimony and is to be given under oath by the presiding officer. Staff outlines the case; the presiding officer requires the appellatant and witnesses to give their presentation first. After the consultation of the appellatants case, staff and their witnesses will give their case and both appellatant and administrative staff can ask questions of either party, the appellatant will have a chance of rebuttal; any party may be represented by legal counsel before the board if they wish...

Chair Michelsohn broke in with most of the board understands and you're going over how the case is presented. He thinks Mr. Steele is saying we got all this paperwork and we're being asked to read it right now and being asked to understand it right now. What Mr. Steele is asking when we have an appeal we need to be better equipped as a board instead of coming the night of it; if Mr. Lee was the appellatant and he knows what he's seeking and you know what he's seeking because you've been dealing with it but we have no idea.

Ms. Walsh replied she understands completely and if we can ask for your indulgence that is spoken to further into the ordinance about requirements for submitting to the board and should the board want more information requirements for delaying the hearing until that information is made available. Chair Michelsohn asked if that's what Mr. Steele was asking.

Mr. Steele noted in the past he has sat here and there was nothing more than the hand written application and that's all that was of substance until the presentation started. You feel very pressed to say no not tonight, sorry. Maybe we need to toughen up; maybe we need to through a work sessions maybe we can become a little more definitive in the submittal process with a handout or something that is lining out that there is a burden to bring to present otherwise it really becomes a challenge. It improves the process.

Ms. Walsh replied point well taken and we'll discuss this at the end as we go through the ordinance. We do apologize for not having the packet to you until tonight but the situation was that the assembly took the reconsideration action up just two days ago, and until that action was decided we were not sure of what would be in the packet.

**MUNICIPALITY OF ANCHORAGE
BOARD OF BUILDING REGULATION EXAMINERS AND APPEALS**

Chair Michelsohn pointed out he was trying to do his homework before the meeting. The way he thinks this was intended was the three-member panel would be more of almost like a mediator. He informed Mr. Steele it was more get the three heads together see if they can iron it out before it went to the full board. Since the Building Department is not going to take it that way, he doesn't know.

Mr. Weaver remarked it's not the Building Department the Legal Department said it's the way it's written, so that is the ordinance we have to follow.

Chair Michelsohn believes it would behoove the board to sit sat down with the Municipal Attorney. He would like to sit down with Mr. Trombley and have a roundtable discussion since this board is going to be affected so much that we hear it from the municipal attorney and let everyone on this board direct their questions to the attorney if he's available.

Mr. Weaver noted it's challenging but we already have an applicant, it's not a complete application; it was turned in today. We believe it will be finished tomorrow. We are on very tight time constraints; it's five days to schedule a hearing, get out the notices and that's a seven day notice. So that's about 12-14 days. It's already in play. We've already had two attorneys, Ms. Tucker and the Municipal Attorney reviewed it today and its how the ordinance was written. There is no question about it, so he's not sure what additional information you need from Mr. Wheeler. There may have been different intentions on how this was to be put together but this is the way it came out.

Ms. O'Donnell noted she thinks she understands what's being asked; is that the appeal applicant should be provided with enough information prior to the five day ticking clock before that meeting takes place. She noted she's never seen an appeal before and she's not sure what's required by the applicant to provide.

Ms. Walsh answered she was just finishing up the rules of procedure; item K. states the burden of proof rests with the appellant who must convince the board through preponderance of evidence the appeal should be granted. That would be the materials they submitted to make their case. The findings of the board shall be specific findings of facts and conclusions of law. The affirmative vote of the majority of the fully constituted board if necessary to grant an appeal whole or in part. Ms. Walsh encouraged them to refer back to their procedures.

Mr. Strait asked to be refreshed on what occurred with the reconsideration at the assembly.

Chair Michelsohn responded up for reconsideration by Assembly Member Drummond and Gray-Jackson and it was asked... Gray and Drummond noted they were attending the prior assembly meeting via telephone and could not hear as well as they wanted to and the vote came forward with three in favor and eight opposed for reconsideration. In favor were Drummond, Gray-Jackson and Honeman. Two weeks ago it was unanimously approved and basically the reconsideration failed.

Mr. Fredeen noted the assembly added a sunset date. Chair Michelsohn agreed and stated he believes it sunsets on December 31, 2012. Mr. Weaver agreed it was correct but noted the board sunsets in October, 2012 so we have to get this sorted out before October.

Ms. Walsh explained when the boards and commissions Title 4 was readopted almost all of the board's sunsetted. This board sunsets on October 14, 2012 unless brought forward to not sunset. The intent of those provisions is Internal Audit would be make sure the board was necessary and if a board was not doing a lot of business or not required it could go away. She doesn't believe it will happen with this board but the issue needs to be corrected.

Chair Michelsohn said last November or December he received a call from Mr. Baker of the Mayor's Office, said his recommendation to the Mayor would be this board does not sunset ever.

MUNICIPALITY OF ANCHORAGE
BOARD OF BUILDING REGULATION EXAMINERS AND APPEALS

Ms. Walsh noted we'll have to wait. Let's assume the board is reinstated before the October 14th date then this ordinance will stay in affect. This ordinance itself sunsets at the end of this year and if not sunsetted we would revert to the previous code prior to this ordinance being enacted.

Mr. Fredeen commented unless the assembly takes action on this again at a future date then it would cease to exist on December 31. My question to staff is would voting on the sunset; basically, reissuing this section of it that's basically how the sunset process works. At least the state level what they do is revoke this section and they readopt it. Would that be vote on this and would that therefore be taking an action on it.

Mr. Weaver explained sometime in August we'll put forth an ordinance with the Mayor's Office to keep the board and make any adjustments to the ordinance and board as necessary.

Mr. Looney noted he didn't see the procedure; would the appellant be required to submit an alternate means prior to the process and if denied would he go through this process or would they skirt around that or go directly to this process. Ms. Walsh responded our understanding is the board was established to hear appeals so they would have to come through the alternate methods. It would have to be a matter they could not resolve with the Building Official through the appeal panel then to the board.

Mr. Looney confirmed so we'd get the alternate means justification and documentation so we'd at least get that prior to hearing an appeal. Ms. Walsh replied correct.

Ms. Walsh continued with the changes to 23.10.103.4.2 Limitations of Authority. The added language says Modification must meet the standards within the Building Board's jurisdiction. The next section describes the composition of the board and here we found a conflict. It's states no fewer than 11 and up to 15 members; however, when you go to the next page it discusses the specific make up of the board and there seems to be a math issue:

1. Two (2) members shall be Architects
2. Two (2) members shall be Civil Engineers
3. One (1) member shall be Professional Mechanical Engineer
4. One (1) member shall be Professional Electrical Engineer
5. Four (4) members shall be licensed General Contractors actively engaged in building construction and at least two of the four shall be actively engaged in home building
6. One (1) member shall be licensed Electrical Contractor
7. One (1) member shall be licensed Plumbing Contractor
8. One (1) member shall be licensed Mechanical Contractor
9. Up to two (2) additional members

The problem is instead of saying up to four it says four, which takes the board up to 13 and we need to take that up to Legal.

Chair Michelsohn noted he gets 15. Ms. Walsh noted you get 15 total, but if you go to the low end of it. It's says up to them but...Chair Michelsohn said yes, Ms. Walsh it also says you can have up to 15 so they are saying you can have 13, you can have 15.

Ms. Walsh noted it mandates you have four contractors in addition to all these other people, you add that up and you get 13.

**MUNICIPALITY OF ANCHORAGE
BOARD OF BUILDING REGULATION EXAMINERS AND APPEALS**

Mr. Looney surmised the minimum board size has to be 13 to comply with this section. Ms. Walsh agreed or unless you happen to have member that is a professional engineer and contractor at the same time. We'll need to get clarification from Legal.

Ms. Walsh continued with a quorum of the board shall be fifty percent plus one of the appointed members; this was changed instead of saying the majority of the fully constituted board because the board now can fluctuate in members so that's why the fifty percent plus one. The full body that would be a majority vote – we'll take about that a little later because the body count changes depending on the three-member panel.

Ms. Walsh explained item c, three-member hearing panels. The Building board three member hearing panel shall hear and decide appeals from decisions of administrative officials and other enforcement related code regulations under Title 23. A person with the right to appeal has thirty (30) days from the date of the action of an administrative official to file an appeal with the secretary to the building board, unless a longer time period is time is stated in writing by the building official. If no appeal is filed within this time period, the action of the administrative official is deemed final and binding and not subjected to any further appeal. Up to this point we haven't had any appeals in the last five years. This is where we need to tighten up our procedures and when we get requests sometimes emails go back and forth but we need to make sure to issue a definitive this is our final decision and you have thirty days to appeal letter. We'll have to make sure it is definite so if a person who is denied they will understand and know their clock is running.

Chair Michelsohn asked what they are saying is if an individual comes to you and your staff and you cannot resolve the situation and you give them a final answer, is that what I'm hearing. So the building officials gives them their answer they have 30-days from that action. Ms. Walsh replied the time of the action so it would come to the Bldg Official, and she takes an action. It requires a request letter from the appellant; we use the alternative means paper itself and she writes on it her decision. We need to be careful and have them in writing and date definite so if the person wishes to appeal it's clear about the action taken.

Ms. Walsh explained the Hearing panel quorum and voting, for a three-member panel you must have all three, i.e. All three people must be present to make a quorum and on voting decision granting or denial of an appeal and two of the three must concur. The Discretionary de novo re-hearing: In its sole discretion as determined by majority vote of fifty percent plus one of members not disqualified from voting the board may accept an appeal decided by a three-member hearing panel, in whole or part, for *de-novo* re-hearing by the full building board.

1. Applicant for de novo re-hearing maybe made by any part or by any member of the building Board.

So either the Appellant, the department or a member of the full board itself upon hearing the decision of the three-member panel may file an appeal but that application for a de novo rehearing by the full board must be filed within five business days or seven calendars from publication of the hearing panel's decision. We'll get into the timing of this at the end and she made a chart to work from and make sure we're all clear on how these timings work.

Ms. Walsh questioned what constitutes publication of the hearing panel's decision and that's not clearly defined. We as secretary of the board are required to take the minutes. How many days do we have to write the minutes and publish the decision; that's not clear and we need to talk about that.

3. Regarding a board rehearing as a full board, members of that particular three member panel cannot vote. If 11 people on the board and a three-member panel meeting on a structural issue the panel decides in a certain way, the appellant or the department want to bring it to the full board, the eight members not on that panel will decide whether they will re-hear it.

MUNICIPALITY OF ANCHORAGE
BOARD OF BUILDING REGULATION EXAMINERS AND APPEALS

Ms. O'Donnell asked what constitutes a quorum in that instance. Ms. Walsh responded if you go to the begin of b where they say the majority vote, fifty percent of the member plus one not disqualified from voting; at least five would have to agree to take it to the full board.

Chair Michelsohn commented going back to Ms. O'Donnell's question under building board voting b and then b 2 underneath, is that new. Six (6) members of the building board shall constitute a quorum for the transaction of any business...Ms. Walsh stated because it's in brackets that means it was deleted from the ordinance.

4. If *de novo* hearing is accepted members of the hearing panel first hearing the appeal may participate in the full board.

So once the eight members not on the panels and five of them say take it to the full board then the entire 11 member board would look at it.

Chair Michelsohn noted then they can vote again. Ms. Walsh explained then they can participate again in the *de novo* hearing but they cannot make the decision whether or not to go to a *de novo* hearing.

Ms. O'Donnell noted they cannot vote on the decision to rehear but if it's decided to be reheard than they can participate. Ms. Walsh replied everyone is reinstated, yes. She also discussed the responsibilities of the Building Official, noting he or she shall be an ex-Officio member without vote and shall act as secretary to the Board, shall prepare all correspondence, send out all required notices within five business days, keep minutes of all meetings, and maintain a file on each case coming before the Board. This language is difficult, the required notices of what? We presume it to mean appeals but it could be a notice we're having a meeting. Is a notice we're re-adopting Title 23. We presume it to be a notice of anything. So we have five business days to do intake, notify the board that an appeal has been filed, research it and begin putting the case together.

Within the five business days what does that trigger...if it's an appeal, that's straight forward. In the case of some other item we presumed...that's tricky and we need clarification from legal on this. Moving on to the secretary of the board will provide timely electronic notice and copies of hearing panels decisions to the full board. That should be fairly easy to do; we can send an email the next day and say this was the decision to the full board.

Supplementing the hearing packet: when the Building board panel requires data and documents not in the current possession of the Building Official, the secretary to the building board shall act timely on the request to ensure the hearing packet is supplemented with the requested information prior to hearing. We believe this to mean: we get an appeal, we file the notice, find a meeting date, public notice the date, you'll review the packet prior to the meeting and presumably some members will say I need more information then we have five business days, meaning within five days of receipt of the Notice of Appeal. We take it to mean: take it in, get all the research done, get opinions from the state, get it to you, you look at it and you need to tell us if you need more information. It's going to be tricky for us because the sort of overlap with each other. It says failure to receive supplemental information from the appellant, the hearing the meeting will be rescheduled.

Appeal filing fee: has been reduced to \$100 and shall accompany the filing appeal. The appeal we received today didn't bring the fee so they need to do that before its official. If it goes to the full board there are not additional fees. There is quite a cost of time and with these appeals. It's our intent to process these as efficiently as possible because they are being taken away from our resources to do our other work. Section three there is another error in the ordinance that we need to note to Legal but the question is rather moot. The idea was for the purpose of tonight was to establish hearing panels under section two, the first meeting of 2012 shall be within 16 days. Ms. Walsh stated she believes they meant the effect date of the ordinance, which would make it tonight because we told them we had a meeting with you tonight and than they said appointing the 11th member of the building board, which we believe was Mr. Strait so that's clearly an error.

**MUNICIPALITY OF ANCHORAGE
BOARD OF BUILDING REGULATION EXAMINERS AND APPEALS**

A chart was handed out and again we'll be taking to Legal again on this. We attempted an outline because we have quite a responsibility to essentially put all resources into meeting these times we wanted to get an idea what they really were. We will be taking to Legal again on this because some of this timing is tricky. She referred to specific items from the ordinance where an action is discussed when it says a specific time, she put that under the when and some of the remarks are observations; it'll all come together as we work through this summary.

This chart is strictly dealing with procedure and getting the timeline figured out. The first line a-one and a-two is dealing with the five panels and the when of that is the first of the year, starting with tonight's meeting.

Mr. Looney asked the timeline, if one of the panels hears an appeal and someone wants to bump it up to the full board, it first needs to be submitted to the building board so they can determine if they want to hear the appeal. So that is going to require...an emergency board meeting or a non-scheduled board meeting just so they can agree to hear the appeal, in which case you have to schedule the appeal for a later date.

Ms. Walsh replied correct and she asked the same question. We'll go through that in some of notices and if the eight people decide to hear the appeal can they do that at the same meeting. It can happen at the same meeting, but only if the application is publically noticed in advance on the agenda and the parties to the appeal are notified, in writing, that the item is an agenda item and will be heard *de novo* at that meeting. The board would have to adopt a policy so that staff would do the noticing as a matter of routine. This is something the board will have to decide on that on how they want to go.

Chair Michelsohn asked for a 5-minute break at 8:15 p.m. The meeting was called back into order at 8:23 p.m.

Ms. Walsh clarified the handout before is an attempt to give a feel to the time process and the timeline associated with it. Any clarification the board can offer is greatly appreciated. She noted we have to get with Mr. Wheeler about what we've talked about tonight. Maybe we need to have a full work session with the board and Mr. Wheeler, as well.

Chair Michelsohn commented he made phone calls, again today and he's only trying to help the board. He gave a scenario where he had an appeal, and he's been talking with you for weeks and he talked with Ms. Walsh on Monday and she gave me her answer say I don't like the answer so I'm going to the building board and I had it to you Tuesday morning my application. He was told today that the case with the three-member panel would be heard the following Tuesday.

Ms. Walsh replied that's what will walk through now and you were told this by whom? Chair Michelsohn replied again it was by Mr. Trombley. He thought Mr. Trombley asked Mr. Wheeler but evidently he asked Julia Tucker. He noted he's going to have to ask the question again because as he explained if it's a month waiting period that's not going to benefit the industry or anybody's interest. Mr. Trombley thought it was immediate but I told him it has to be publicized. Mr. Trombley came back to me and agreed it does need to be publicized but the three-member hearing was not a public meeting, it was to notify the public that a meeting was being held. The public could attend but no public testimony would be required to be taken. It would be the three-members, the appellant, the building official and staff but it could be heard in exactly one week.

Chair Michelsohn noted in Ms. Walsh's brief that there is a five day period. He doesn't think the five days is mandatory but thinks it's up to five days, once you've made your notice of whatever, denied or granting the request so that could be done in one day.

Ms. Walsh asked the chair to bear with her as we go over the chart. Mr. Looney held his questions until hearing panels could be explained. Ms. Walsh noted on the first line, we need to establish up to five-panels and it appears it needs to be done tonight. Chair Michelsohn asked if he could address each one as they come up. Ms. Walsh agreed. Chair Michelsohn noted the five panels, let's use the first three individuals Mr. Steele, Mr. Gray, Mr.

MUNICIPALITY OF ANCHORAGE
BOARD OF BUILDING REGULATION EXAMINERS AND APPEALS

Strait so if you called them and Mr. Steele said yes, Mr. Gray said yes but Mr. Strait said no; you could pull an alternate but couldn't the chair call up the board and ask do you want to go that night? Ms. Walsh asked what do you mean that night. Chair Michelsohn noted we have three for the panel.

Ms. Walsh replied in terms of substituting members on the panel that's covered back on page two of seven. Where it says we shall, the chair and the building official assigns members to a panel and may request members to take the place of regular panel member once unavailable and provide technical familiarity so it's clear the authority is there to swap people in and out of panels. In terms of the timeline, we'll get to that as we proceed. Part 4.1.A.3, mentions the full board may review the three-member decisions of a *de novo* case.

4.3.A.5 four members of the board must be general contractors, two in home building; she made the note do we have a minimum of 13 or a minimum of 11, we'll have to sort that out with Legal. A quorum for full board is 50% plus one (1) of the appointed members and full board actions require majority vote of those qualified and not disqualified to vote.

4.3.c., three-member we are anticipating the three member panels would meet at our offices in a conference room. They still have to be noticed and open to the public but we figure we could do that in a conference room instead these chambers. The Secretary must prepare materials and send out notices within 5 business days. This is not specific enough to what notices are; we are assuming those are notice of appeals or any other item you need to take action on and in the five business days of what? What triggers it than we must provide timely notices; in all the discussion with legal, timely and reasonable. Reasonable in terms of public notices is considered seven days and timely we believe we can shorten that from seven days but that is question we'd like guidance on from Legal.

103.44.1, if the panel requests additional data from the packet from either the applicant or staff depending upon you want. This is a difficult part, within five calendar days of receipt of appeal; so a person files an appeal and that means the board has five days from the date of the notice of appeal to request more information. This is not possible and we are not sure how to handle this yet. If we do get the information before the meeting fine but if not we'll have to reschedule the hearing and that's not good, it depends on if rooms are available.

Going through regulations that may support or supplement the information in the ordinance: if you go to 23.10.003 Meetings, regular meetings shall be scheduled by the secretary and shall be held...actually it says at 7:30 p.m. on the first and third Thursday of each month; 6:30 pm is a more realistic time, so we waived that as informality. Special meeting may be called by the chairman or the secretary with the consent by the chairman for consideration for business of emergency nature similar to the meeting in February. The building board may schedule meetings where a specific action is required. All regular and special meetings shall be open to the public. We had further confirmation of that from the attorney today.

Under state law nearly all municipal boards and commission meetings are open to the public. No State exemption applies to the adjudicatory hearings the very nature of this type of adjudication means the public can attend. Under state law reasonable public notice is required. Anchorage has a seven days public notice rule. Mr. Wheeler brought this to the attention of the assembly at the assembly meeting when the ordinance was being deliberated. The ordinance language allows for a five day turn around for staff to perform intake of the appeal and then seven days to notice it.

AMC 23.10.006, case file must include the appeal materials plus materials from staff and other agencies. If it's something we are handling in house that is something we can expedite but if it's something that has to go before Department of Labor and in some cases before the State Fire Marshal, we can't speak to how fast they can turn it around. This could be an issue. When we get down into the timeline, there will be some overlap. We get five days to do the intake. That's presuming we schedule a hearing and seven days after that point; we are presuming we'd have seven to ten days to finalize the packet and get it to you for review then, as mentioned before, if you wanted additional information we would have to set the hearings back.

MUNICIPALITY OF ANCHORAGE
BOARD OF BUILDING REGULATION EXAMINERS AND APPEALS

AMC 23.10.003, Formal hearing where appellant and representatives can present testimony. It's a formal hearing and needs to be open to the public and supports the idea we need to give a minimum seven-day notice. This is something she would like to talk with Legal on. In the procedures reconsideration, any action the board takes they have 24 hrs to reconsider it. Does this also apply to the three-member panels and we felt it probably did.

Ms. Walsh went to through the timeline. Day one – appeal comes in; we have five business days to do the intake and seven days to notice the meeting, make packet, contact the three-panel, find the next mtg space and notice it. We could be hearing it the 14th or 15th day. That would give us the three-member panel hearing date. If a panel member wants to reconsider it they would have 24 hours than we would notice a new meeting. That's another seven days allowing for someone to appeal it to the full board and we'd need to find out when the board can meet. Depending on how the appeal is filed, if we have a regularly scheduled meeting coming up, we'd put it on that agenda. Maybe we'd have to schedule a special meeting in either case we'd have to give seven day notice. This puts up to day 29-30 and the hearing date. It's a little rough but is the bones of it.

Mr. Bohne noted it was his interpretation that Mr. Trombley was trying to speed up the whole process and assuming one party or another is going to have heartburn with the panel's judgment, did we just take a 15 day process and stretched it out to 30. Ms. Walsh responded that's how we see it. Mr. Bohne stated "and we saved money on this because staff's doing all this twice."

Mr. Fredeen noted he was following this pretty well except when it goes from red to green; once there's a three panel meeting that staff was taking minutes on; there doesn't appear to be a window for the results of the three panel meeting along with the minutes and appropriate information getting out to the board. He believes the board has five days to review the information to decide if we want to do a *de novo* review.

Ms. Walsh noted if you go to 23.10.103.44 the secretary to the board shall provide timely notice and copies of hearing panel decisions to the full building board. We believe this is something we can easily do, maybe even that day if they meet at lunch time or by the next day. She's thinking that's not too difficult for us to meet but to provide you minutes and the information for deciding to take it up that would be in the notice time of scheduling. We would give you notice of a decisions, it may be that someone immediately decides to appeal or it could be the next day or it might be five days. That is what the green time, the five business days-seven calendar days that's allowed for someone to decided to appeal it. If they appeal it the next day, we may be able to call you and say we have an appeal, the meeting might just fall right, then you'd get a packet within those seven days; in a *de novo* hearing, we don't think there'd be a lot of packet prepping unless the board after they got the packet from the three-member panel says they want more information than we'd go back into the five day loop.

Ms. O'Donnell asked after the five days for the *de novo*, the meeting of the board would have to have a meeting to decide if they want to hear it. Ms. Walsh explained right that's what she was explaining in the email from Mr. Wheeler.

Ms. O'Donnell noted in reality you could have a meeting that you decide you're going to hear it weeks from than. Ms. Walsh replied that's what Mr. Wheeler was getting at and the board may want to establish a policy on that.

Ms. O'Donnell responded so this timeline could double from this. Ms. Walsh stated a work session with Mr. Wheeler and the full board would be in order.

Mr. Looney questioned what can the three-member panel decide, is it confirming the appellant cases that yes we agree with your proposed or no and do we have the ability to carrying it over to an additional meeting if we can't resolve it in the single meeting. Ms. Walsh answered that is something for Mr. Wheeler but in terms of what you can decide...if the building official denied a request for alternative methods or modification of the code, you can

MUNICIPALITY OF ANCHORAGE
BOARD OF BUILDING REGULATION EXAMINERS AND APPEALS

review that decision and say yes the building official's right or no the building official's wrong. Your standard for those kinds of things is on page three of seven of the standards that are written in here.

Mr. Looney noted he did see the standards but we are there to help the appellant or are we there to give an up or down vote. Ms. Walsh you're there as an independent look at the situation, kind of like an arbitration board. Mr. Weaver noted the language in the ordinance says in whole or part so it doesn't have to be all or nothing.

Mr. Looney asked can a three member panel without resolution take it to the full building board. Chair Michelsohn responded yes. Ms. Walsh clarified she doesn't believe it's written that way. Chair Michelsohn said it's possible they could bring it to the full board. Ms. Walsh responded right but she thinks they have to find a decision first or maybe their decision is they can't come to a decision and forward it to the full board. We'd need to get clarification from Legal.

Chair Michelsohn replied to be up the reconsideration; when you have reconsideration it can only be the individual that voted in the prevailing vote, if it's a yes vote they can and if a no vote they can't. Ms. Walsh explained yes but if they bring it up as an appeal anyone can bring it to the full board. We have to bring it up to legal.

Mr. Looney asked a question as to scheduling; we have a booking slip for a bunch of meetings-one every two weeks. Could you set up a schedule where appeals were heard on those nights every two weeks with a minimal five day advanced provide information to the board for any specific appeal; otherwise, it would slip to the next meeting two weeks later? Ms. Walsh noted it's a possibility, we do have the first and third Thursday scheduled out for the rest of the year except for one or two conflicts in this chamber.

Mr. Looney commented it would only facilitate meetings a little faster. Ms. Walsh responded right but with the three-member panels we have the flexibility to hold them at our office. Mr. Looney replied even for the three-member panels have them scheduled in advance for every two weeks and they would not happen if there was no appeal. This way you can notice your meetings on regular two weeks bases. Ms. Walsh commented that's a possibility. When she was in your shoes, she couldn't say she could be in the some place every two weeks and at the same time.

Mr. Looney noted he believes the spirit of this is to try and shorten some of the appeal process and make this something that helps the appellants in navigating through the system that's why he brought it up. That's why a two week path is now perhaps extended well over a month. That's kind of going backwards, doing something like regularly scheduled meeting that they can add an appeal to. He doesn't know if they would bring functionality and getting it back to the spirit of the ordinance.

Chair Michelsohn added to Mr. Looney's...you have a schedule every two weeks on a Thursday; could we make it every other two weeks for the three panel meeting at your office at 10 O'clock that way we or the morning of the same day. Ms. Walsh replied we're open to suggestions.

Mr. Weaver commented we are not expecting a lot of these issues to come forward but we not think it's not necessary to take up a lot of the board's time; there will be some in the next couple of months.

Mr. Steele commented regarding scheduling. Specifically at the last meeting, addressing the expectations of what the timeline was and it seemed to be directly linked to an extreme value of cost before it would become an appeal and he thinks all of the contractors that spoke didn't seem to bat an eye at 30-days. He would be cautious to set up these regularly meetings anticipating it.

MUNICIPALITY OF ANCHORAGE
BOARD OF BUILDING REGULATION EXAMINERS AND APPEALS

Mr. Looney noted his intent was not to hold a regular meeting but they would be scheduled and could be canceled if no appeals. He was just looking at hopefully shortening this increasing timeline and he doesn't personally look forward to going to meeting every two weeks.

Mr. Steele agreed we are providing a service but at the same time, on an appeal people want answers much sooner. This board can't effectively give that kind of response because of its nature, and the process is set up for public noticing, etc... He's doesn't know the intent of Mr. Trombley expectations to set up those meeting but to set up those hearing panels we're talking about schedule those three people and you have anywhere from 8 to 12 backup members to fill out a meeting time. He would be cautious to prescribed meeting time periods.

Chair Michelsohn responded it's going to be a learning experience for everybody, staff, this board, he thinks we're going to make changes as the year goes on. He thinks some things work and some don't. When we have the first and second appeal some board members are going to see some things done more proficiently and we need to make suggestions and it's going to be a big learning curve. Whatever decisions the board makes tonight could be altered, could be changed.

Ms. Walsh agreed in concept with the chair but we do have the requirement that our job is to do the things the way the code tells us to do and we can be held to task if we don't follow our own codes. We have to follow the code as closely as we can but because our procedures are mixed up we are going to have to figure it out as we go.

Chair Michelsohn commented he would like to go back to your document handed out on your numbers. He sees where you're getting the 13 but item 9, he doesn't know if it says two or up to two additional members, page 4 of 7, so you have 13 with the one through eight and number nine gives you up to two so you can keep it at 13 or you can have one additional experienced individual for 14 or you can have two additional experienced for 15...Ms. Walsh agreed and it's a housekeeping issue like other areas in the ordinance it puts it at a lower threshold of 11 and we need to clean it up because with this composition the lower threshold has to be defined as 13. Chair Michelsohn agreed; so we have to push the Mayor and nothing is going to happen until after the elections but we have to push the Mayor to appoint at least two more.

Ms. Walsh noted two more general contractors. Chair Michelsohn agreed and said all the others are filled.

Ms. O'Donnell commented #5, four members shall be licensed General Contractors actively engaged in building construction and at least two of the four shall be actively engaged in home building all the others requires you to have a license, they are not requiring licensed residential endorsement for the general contractor. She thinks it's presumed but that not stated.

Chair Michelsohn replied he believes you can be a residential contractor but you can't be a home builder without a residential endorsement. Ms. O'Donnell responded true and she's assuming your defining a home builder as new construction. Chair Michelsohn agreed he assumes that and not a remodeler.

Ms. Walsh agreed with Ms. O'Donnell, its four general contractors and at least two of the four general contractors...it's not an endorsement it's your business to build homes; maybe you're Osborne Construction and you're building military housing but you are building homes. Ms. O'Donnell noted if you have a residential endorsement that means you're getting continuing education credits relevant to your business practices and she thinks it's relevant but she believes you don't get a license for home building.

Ms. Walsh believes that could be vetted with the selection of additional members. For example the chair and you are licensed general contractors and are actively building homes and we can say we already have those two and we just need two general contractors. Ms. O'Donnell clarified it would not be correct for her. We are a general contractor with a residential endorsement; however, primary focus is commercial construction, we do not do new construction so...Ms. Walsh replied so we would need an additional member that was a home builder. Ms

MUNICIPALITY OF ANCHORAGE
BOARD OF BUILDING REGULATION EXAMINERS AND APPEALS

O'Donnell noted if the intent was for someone performing new residential construction. We do participate in continuing education so she's trying to figure out the focus for someone performing new construction. Chair Michelsohn agreed. Ms. Walsh noted that is something that we can take up with the Mayor.

Ms. O'Donnell noted it's a huge issue when you are taking about things you are contesting, possibly because you have an existing structure that you are going to be addressing and you've got a code interpretation for something that's new with new code versus something that is existing and you're going to encounter that when have remodeling. So she thinks it's poorly worded and might get you the wrong board. Ms. Walsh suggested the board could put that in form of a recommendation to the mayor when he is appointing these people and keep it in mind.

Chair Michelsohn nothing will happen until next week. He agrees with Ms. O'Donnell and says 95% of the new home builders in the last three years due to our economy, is dabbling in residential remodeling construction. Ms. O'Donnell asked we are tasked to perform reviews of whether something are conform to best practices of life, safety; fire safety but there is not a requirement...is the composition of the board to include a fire system contractor?

Chair Michelsohn asked if the board's mechanical member does any fire suppression. The response was no. Ms. O'Donnell believes it's relevant to be able to make informed decisions, especially if it's going to a panel that we have somebody that is an engineer however there is no contractor.

Ms. Walsh suggested item 9, the two additional members she believes that a fire system contractor could be considered a mechanical contractor so you could again express or note that.

Chair Michelsohn noted under item 9 might be one specialized in dirt works because there could be some issues with foundations and ground and stuff like that. Ms. Walsh replied this is possibly something to take up at sunset time. You have to go back to the Assembly to get code changed.

Mr. Fredeen motioned to add to the agenda the appointments to the three-member panels under New business under item e. Chair Michelsohn asked do we want to make motion to close and discuss in a around table effect. Mr. Bohne noted he doesn't see where we are being asked to make a motion to adopt anything so...Chair Michelsohn replied no but...Mr. Looney noted that was his question; this has been very educational and it's important we've had this decision but he's not sure what we are hear to decide or vote on this.

Chair Michelsohn stated he believes Ms. Walsh wanted to walk out of here with the designation of the three person panels. Ms. Walsh noted the ordinance notices it for tonight. The chair and I are supposed to set up the panels but it seems more practical to have the input of the people for the various panels.

Mr. Fredeen motioned we add to the agenda, new business item e, the appointments to the three-member panels. Mr. Looney seconded. Approved.

Chair Michelsohn choice to close decision on item d. Ms. Walsh asked the board would you like to have work session with Mr. Wheeler.

Chair Michelsohn stated we'll get to it here shortly. Let's take a stab at the panels: Mr. Gray, Mr. Fredeen, and Mr. Merchant are Mechanical issues. Electrical issues would be Mr. Looney, Mr. Bringmann, and Ms. O'Donnell...

Mr. Fredeen spoke up and noted we are out of order on the agenda. Chair Michelsohn noted he stands corrected.

a. Election of Chair and Vice Chair

MUNICIPALITY OF ANCHORAGE
BOARD OF BUILDING REGULATION EXAMINERS AND APPEALS

Chair Michelsohn stated it's the election of new officers for the 2012-2013 year. The chair seeks motions; Mr. Steele nominated Mr. Bohne as chair. Mr. Fredeen seconded. No decisions. Mr. Merchant motion to keep chair the same. Ms. O'Donnell seconded. Mr. Fredeen moved to close the nominations for chair. Chair Michelsohn closed the nominations.

Chair Michelsohn noted Mr. Bohne and Mr. Michelsohn were nominated as Chair. We can do this by hand vote or sealed vote. Mr. Fredeen called for private ballot. The secretary noted the vote was four votes for Mr. Michelsohn and seven votes Mr. Bohne. Chair position changes were made.

Chair Bohne called for vice chair nominations: Ms. O'Donnell nominated Mr. Michelsohn. Mr. Steele nominations Mr. Feller. Mr. Feller respectfully declined.

Mr. Steele nominated Mr. Fredeen. Mr. Fredeen noted his term on the board ends in October. Mr. Michelsohn pulled his name from the list and gives it to Mr. Fredeen. Mr. Looney motioned to closed. Chair by saying aye...all agreed, none opposed.

e. Three Panel Members

Chair Bohne noted 7e, Three-member panels; we've offered names for mechanical and electric if we accept those we can continue on...how do you recommend we structure this adding structural, residential and architectural. Do you have any other suggestions? Ms. Walsh agreed we could do that and that would take us up to five panels but someone might have to serve on two panels.

Mr. Noffsinger asked would Mechanical also do plumbing. Chair Bohne assumed yes and that was his thought. Do we want to break out structural and architectural or leave them together? Ms. Walsh Structural and Architectural are pretty straight forward. The questions to ask is what would the residential one hear that any of the other ones wouldn't or perhaps there's one for general civil site work but those don't unusually come under Title 23. There is fill-and-grade and that might be a lovely panel.

Ms. O'Donnell suggested three random selected panels. Chair Bohne questioned instead of specialized panels? Ms. Walsh noted the intent was to be in a particular discipline and we don't need to have five panels; up to five panels. We can set up another panel later when you get more members to fill the need. Since it is supposed to be the chair and myself doing this set up a Structural, Architectural and then you set up another panel as you go.

Mr. Fredeen asked based on previous testimony from the residential contractors, number one it would be nice to know what some of the issues that are coming up in the field that are coming to the board. He remembers one of them having a deal with life, safety, fire items, which would fall under architectural, which would be best to adjudicate.

Ms. Walsh noted you could have an at large panel that could be use for administrative issue that might come up. Mr. Noffsinger commented you'd have a building-structural and building non-structural. The building structural would be your structural panel...most of your issues would probably be structural issues whether they're residential or commercial they're structural.

Chair Bohne voiced his concern with the way it's written with a lot of these individuals named upfront. A lot of these individuals are professionals and travel frequently and makes it very difficult to pull that particular board together. Ms. Walsh noted the ordinance does give us the option to swap out. Chair Bohne agreed it does give us the option; do we populate the most appropriate groups or do we just kind of pull together the most available when it becomes a meeting time.

**MUNICIPALITY OF ANCHORAGE
BOARD OF BUILDING REGULATION EXAMINERS AND APPEALS**

Mr. Looney noted reading item five, up to five hearing panels and it does say up to five hearing panels to be established at the first meeting. We can do it now and can't establish panel's later; from year to year to hear appeals from decisions of administrative officials and other enforcement orders. The secretary to the board and the board shall assign members to a specific panel, and may request members to take the place of regular assigned, so we could set up structural and non-structural panel and populate each with six to eight people that only three members will be choice for the specific panel of that evaluation but that would take care of the pool if people are traveling. You'd have a pool of people to pick from and the ability of the building official to pick replacements and you have the whole board that can serve on any two panels and gives the greatest flexibility, because you should pick the right people to hearing the appeal rather than set up a five panels with specific designation and he believes it will be hard to administer.

Mr. Weaver suggested setting up the three-member panels and include a structural, architectural, mechanical and electrical then swap them out on as you need to on a case by case basis but go ahead and set these four up now and you should have things pretty much addressed. Chair Bohne replied being mechanical, structural, architectural and electrical. Ms. Walsh added the ordinance doesn't preclude us from making alternates.

Mr. Gray noted the verbal in the ordinance includes your expertise must be included in the three-member panel. Ms. Walsh replied we're wrestling with...for example, you have a conduit and running a certain way is interfering with a structural piece; is it a structural or electrical issue. So there maybe times where there is a mix of disciplines. We don't need to get bogged down in that because it does give us all the options to swap people out.

Chair Bohne noted we have two under structural: Mr. Feller and Mr. Strait, two architects: Mr. Steel and Chair Bohne, and that leaves Mr. Michelsohn without and Ms. O'Donnell and we talked about her for electrical earlier so maybe with two per Mr. Michelsohn and Ms. O'Donnell as floaters, does that meet the intent and does the board agree.

Ms. Walsh noted we have Ms. O'Donnell already serving on a panel and Mr. Michelsohn has expertise on structural and non-structural so he could choose one or both that is an option. Someone is going to have to serve on both because you only have 11 members and this needs 12, 3-member panels.

Chair Bohne replied the recommendation was Ms O'Donnell would be in structural...Ms. Walsh so you're saying we designate the third member structural, non-structural as either one of these people to be determined at the time the panel convenes. Chair Bohne noted from the remaining nine people as needed. Ms. Walsh replied she doesn't believe it precludes us from that and that makes sense.

Mr. Looney remarked the ordinance encourages that because it tells you to swap people out as needed for expertise on the panel. Ms. Walsh surmised structural... the people we've specifically named we call home panels and Mr. Michelsohn and Ms. O'Donnell agreed to be floaters.

Ms. O'Donnell began you need to assign three-members to a panel and obviously you need people to serve as alternates on multiple panels because if these things happen like that and there are two people gone you're going to have multiple alternates available and willing. You have to set the three and designate the others as alternates.

Mr. Looney pointed out all you need to set up is two panels and rotate people in and out as appropriate for that hearing but we don't need to get more complex than that. Ms. Walsh responded that she wishes to exercise the license the ordinance gives her. It's the building official and the chair that establishes the panels and speaking from a practicality stand point it would be preferable if we had basic panel structures set up so she has a place to start when she has to start calling a panel. It would be better if we had specific panels established.

**MUNICIPALITY OF ANCHORAGE
BOARD OF BUILDING REGULATION EXAMINERS AND APPEALS**

Mr. Strait noted the ordinance doesn't state we have to designate people just the panels so it is possible to designate some panels and as issues come up...Chair Bohne commented that doesn't necessarily address Ms. Walsh's issue of calling the third.

Mr. Feller suggested if we just set up the four panels, electrical, mechanical, structural, architectural, assign three people to each and when an appeal comes in we're basically going to choose the three most qualified people that are available to serve on that panel. Ms. Walsh agrees with Mr. Feller. Chair Bohne Ms. O'Donnell and Mr. Michelson volunteer for positions or be volunteered for a position. Mr. Michelsohn noted at the chairs mercy.

Architectural	Mechanical / Plumbing	Electrical Panel	Structural / Civil
Mr. Steele	Mr. Fredeen	Ms. O'Donnell	Mr. Michelsohn
Mr. Bohne	Mr. Gray	Mr. Looney	Mr. Strait
Ms. O'Donnell	Mr. Merchant	Mr. Bringmann	Mr. Feller

Mr. Michelson commented he would volunteer for landfill, soil conditions, and non-structural elevation issues. Ms. Walsh noted fill and grade are some of our most contentious issues and its part of title 23. Ms. Walsh replied the civil engineers would be appropriate. Mr. Feller volunteered for the panel. Ms. Walsh noted we could designate Architectural as fill-and-grade that takes care of it, although, they are different. Mr. Noffsinger is correct actually the structural committee could take on the fill-and-grade issues but it's helpful to designate that as structural and fill-and-grade. Floaters would be Ms. O'Donnell and Mr. Michelsohn. Chair Bohne agreed.

Chair Bohne concluded the new business. Mr. Looney noted one other issue with this ordinance asked when is the state license going to be adopted. Mr. Fredeen replied structural license is effective as of today. It was 30 days after the Lieutenant Governor signed it; back in the February meeting technically. You won't have any full fledged structural engineers until April. Mr. Looney suggested this ordinance should include that this board have a structural engineer. Mr. Fredeen noted it was an excellent point. Actually, we have licensed civil engineers on the board so they're still okay to be on the board.

Chair Bohne noted the ordinance says two licensed civil engineers as structural or as soil type civils, it's open. Mr. Fredeen asked Mr. Looney was your request did you want the two new members to be licensed S.E. Mr. Looney responded only brought it up because this board probably should have a licensed structural engineer on it whether it be the two additional ones or we have one be a structural. Ms. Walsh note the sun setting time in October would be a good time to address all those issues.

Ms. Walsh asked to change the name of the structural pane to structural-civil panel so it will mesh nicely with the members now.

b. REPORTS

Chair Bohne asked for a report on the building safety counter from staff. Mr. Noffsinger replied we need more help at the counter. Mr. Weaver acknowledged during the first quarter revisions that we did ask for another counter person to be included in this year's budget. He believes tomorrow they are going to be making those decisions.

Chair Bohne asked about permit count evaluations. Mr. Noffsinger noted things are picking up and we had over \$100, 000 worth of permit fees come in on Tuesday alone. That was just fees, it was millions of dollars with of work came in and there are some big projects: UAA sports complex, new Sam's club with filling station, commercial-wise it's looking like a good solid year. Ms. Walsh noted another one is tenant improvements on 909 West 9th, the Shell Oil/Chevron building, all ten floors are being renovated and the tenant is going to be NANA.

**MUNICIPALITY OF ANCHORAGE
BOARD OF BUILDING REGULATION EXAMINERS AND APPEALS**

Chair Bohne wondered with that kind of activity what the permit time now is. Mr. Noffsinger replied not too bad right now, we're still riding the wave and we're looking at the three-week out range on a lot of the plumbing, electrical, structural, and architectural on commercial work. Right about now, in April when thing really pick up, is when we are hurting.

Chair Bohne noted since we talked last you were short an inspector. Ms. Walsh commented last year we brought on a temporary inspector; we had some long term leaves and some medical issues and we had talked about re-instituting it this year and after taking with the Chief of Inspections some of those issues have been resolved and they wanted to work with the present personnel. We always look at how much overtime we're going to pay versus bringing on another person and we found it to be more cost effective to keep with our current staff.

c. AUDIENCE PARTICIPATION - None

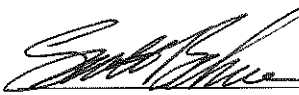
d. BOARD MEMBER COMMENTS - None

Ms. Walsh asked about having a work session with Mr. Wheeler on this ordinance and believes it would be helpful. She is taking all the issues to him that were identified tonight, the chart and other stuff that came up and tell him the board wants a sit down with him. We'll have to notice it; it probably will be at the Mayor's Conference Room or do you want him to email you the answers. Chair Bohne noted his preference would be to have a work session but it certainly is not mandatory to be there. He would like her more and be able to ask the questions and get the direct answers.

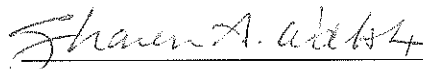
Mr. Fredeen agrees and would like to submit the questions in advance so we are giving him time to make the appropriate references he has to as to state and local requirements. Ms. Walsh purposed she would summarize all the issues and send them to the chair and upon his agreement forward them to Mr. Wheeler. She noted we could have a work session in our offices in one of our bigger conference rooms. Would the board prefer mid-day or an evening session? The board agreed mid-day would be fine.

Chair Bohne asked if it was a formal board meeting. Ms. Walsh explained it would be a work session and we do have to notice it; that's the seven day thing and normally we put it on the municipal board. Chair Bohne replied the reason he was asking is if we can review the meeting minutes from the last time and approve them at that time. Ms. Walsh replied we think we can do that but will check into it.

11. ADJOURNMENT: meeting adjourned at 9:30 p.m. **Ms. O'Donnell moved. Mr. Fredeen seconded. Unanimously Approved.**

 8-13-12

Scott Bohne, Chairman Date
Board of Building Regulation Examiners
and Appeals

 8-09-12

Sharen Walsh, P.E. Date
Building Official