

**MUNICIPALITY OF ANCHORAGE  
BOARD OF BUILDING REGULATION EXAMINERS AND APPEALS  
MEETING CONTINUATION  
MEETING MINUTES SUMMARY**

August 8, 2012

1. **CALL TO ORDER AND ROLL CALL:** The meeting was called to order at 6:00 pm. by Chairman Scott Bohne.

<b>Board Present</b>	<b>Board Absent</b>	<b>Staff Present</b>	<b>Public Participation</b>
Scott Bohne	Tom Looney	Ross Noffsinger	Clai Porter
Skipp Bringmann	Jonathan Steele	Sharen Walsh	Bill Taylor
Rob Merchant		Jerry Weaver	Dave Owens
Craig Fredeen			Bill Westbrook
Paul Michelsohn			Adam Trombley
Serena O'Donnell			
Bari Gray			
Troy Feller			
Sterling Strait			

2. **APPROVAL OF AGENDA:** Mr. Michelsohn moved to approve. Mr. Bringmann SECONDED. Agenda was APPROVED.
3. **APPROVAL OF MINUTES:** None

1. **UNFINISHED BUSINESS**

- a. **AO 2012-62, Amending AMC Chapter 23.10, 2011 Anchorage Administrative Code, Section 104, Permit Requirements, to provide the option to exempt single-family and two-family residential construction from plan review by the Municipal Building Official for code compliance and building safety when a registered professional designed by the permit applicant certifies the plans were reviewed and comply with applicable building codes.**

*Chair Bohne opened the discussion for the board members. Ms. O'Donnell asked about information from the ISO. Ms. Walsh gave out a handout and explained the ISO and FEMA. There was no further discussion from the board members and the floor was opened to the public.*

Mr. Claiman Porter, a licensed architect in the State of Alaska since 1972 and also a licensed contractor. Mr. Porter read the ordinance and noted he's not sure he understands all of it in great detail but he is in support of the ordinance. It offers merit because having a third party plan review will allow some flexibility and in Building Safety there are times things are backed up and need to be done.

Mr. Michelsohn asked Mr. Porter: being a licensed architect, under this ordinance would that give you the ability to review plans, would you feel if this ordinance went through that you could enter into that program? Mr. Porter: I would not have any problem with the plans under the provisions. Mr. Michelsohn asked what kind of plan review you go through for other areas. Mr. Porter replied if it's residential he would follow the process that is used through the PUR 101/102 processes with the Alaska Housing Finance. If it's a commercial project he'd go through the process he has to go through with the State Fire Marshal.

Mr. Michelsohn: can you go through the process as some of the members might not know-please tell us the process. Mr. Porter: noted the process he is referring to is because there is no building code inspection by the municipality in Eagle River and other areas outside of the services area, that you have an independent or third party plan review that is required if you are going to have your long term financing through Alaska Housing

Finance Corporation. The requirement is you go through a plan review and the inspections so that is a full fee process. In order for that to be done, you have to have a recorded document P101/102 that meets the ventilation codes and ICC 2009-2012 because the State Fire Marshal does not approve the residential code, IRC, if it is not accepted in its approval process. AFHC actually sets the standard.

Mr. Michelsohn commented we've heard the housing is substandard in those areas because it doesn't go through plan review. In your opinion what do you think? Mr. Porter replied he feels strongly about the municipality inspections. He likes the idea but it always frustrates him that it doesn't exist in areas outside the services area. The private inspection system is good but the problem with anything is it's financed through AFHC doesn't go through any process. The majority of new residential structures appear to go through that but there is no way to keep track of it. The MOA requires a Land Use Permit and over the geographical area enforcement would be difficult to track down every one that is happening to him municipal inspections would be better.

Mr. Michelsohn broke in, that's not what I asked is housing is substandard because they haven't gone through municipal plan review. Mr. Porter commented since the inception of that system, standards have continued to go up and there are those before that inception where they were substandard, yes.

Ms. O'Donnell: part of the proposed ordinance discusses professional liability insurance, after reading this we are trying to figure out who is requiring the insurance. Is the professional liability insurance required for your architect's license? Mr. Porter noted as licensed with the State, you go through a review, examination all those things. If you have a business you are required to have those kinds of insurance like general liability, workers compensation, and those kinds of things. Depending on whom you work for and what kind of work you do some may require additional insurance like Omissions and Errors Insurance. The problem with Omissions and Errors insurance is most small firms do not carry it due to size of their business and nothing in State law requires you to have this to be an architect or engineer.

Ms. O'Donnell: I understand but the way this is written it leads one to believe there is a State requirement for liability insurance to hold a license as an engineer or... Mr. Porter: for general liability, yes. Ms. O'Donnell: so there is, so what is the minimum requirement to carry? Mr. Porter: I don't know; I carry a million dollars but I've heard \$100,000.

Ms. O'Donnell: many of us carry insurance well and above the minimum with the license we have. This is referring to somewhat of a judgment call appropriate for work. She's not clear on what insurance is required of what engineer or architect and who the requiring agency would be and who would enforce that.

Mr. Porter: as a licensed professional, I am bound by my licensing requirements in this State or whatever state I'm licensed in. When I sign those documents, I'm liable. If I have gross negligence that makes it even worse and that is the responsibility I take on any time I sign or stamp a set of drawings. If someone came to me and gave me drawings to sign, my answer is no because the state licensing law says those drawings and documents must be prepared either directly by me or under my direct supervision. I'm extremely deliberate and careful to meet that requirement. You have these different kinds of checks and balances in the system. Ms. O'Donnell: you said you are required when you certify something and when it's prepared under your direct supervision and has been reviewed by yourself. Mr. Porter: as the primary and I have sub-disciplines under my direct supervision that is one of the requirements.

Mr. Michelsohn: you mentioned E&O insurance and you don't carry it as most small companies don't but I think in this ordinance you should have to have it. Mr. Porter: thought that was professional liability. Mr. Michelsohn: if you're doing a plan review and not doing architectural work and not stamping the prints as an architect but under this provision you'd be doing a plan review, would your license allow you to do that? Mr. Porter: yes, you can do that as the license allows you to do that as code compliance but you have to state that as such. Isn't that a provision in the ordinance that you must be ICC certified? He would be willing to do that without getting the ICC

certification. He doesn't know of many ICC certified plan reviewers in the municipality or in the state, he believes there is one in the room.

Mr. Fredeen: do you ever have designs reviewed by a third party, another architect or design party and do you prefer having a third party look at your designs? Do they catch things when they look at your designs? Mr. Porter: as from an architectural review, it's very rare that he'd do that. As from the code or technical point he will collaborate with someone. Mr. Fredeen: so when you do go through the City of Anchorage, do they catch items in your design that you missed? Mr. Porter: of course... Mr. Fredeen: do you have a problem with it. Do you appreciate that or not? Mr. Porter: I don't have a problem with it for legitimacy, I have a problem with it when it comes to timeframe, and sometime times the documents I've presented have not been read.

*Board members continued asking questions of Mr. Porter for several more minutes regarding conflicts of interests when reviewing documents and plans, indemnification.*

Adam Trombley, Assemblymember and author of the ordinance: Regarding the flood insurance, Ms. Walsh did not provide you with the Office and Management Budget (OMB) conversation. What was determined was flood insurance would be raised \$63 for less than one half percent of the whole Municipality of Anchorage. ISO certification, what you might not know is the city of Wichita, Kansas when preparing a presentation for the mayor compared several municipalities the size of Anchorage and what they found was the city of Wichita, Kansas in the past 20 years did zero plan review for single family review. Their ISO is similar to Anchorage and their flood insurance is obviously higher because of the location. There were other locations that I communicated with like Wichita that has zero plan review. In fact what they do is similar to Eagle River, Girdwood, Stuckagain Heights, Bear Valley; you go in, submit plans – no plan review you just build. That is one thing about the flood insurance that I wanted to clarify.

- #7 is in existing municipal code and came directly from Risk Management. They reviewed this ordinance and suggested this be in there. The insurance requirements also came from Risk Management; they recommended these three sections and in fact this is their wording. Another concern is section d1 registered by the State board of Registration, that is a state agency and you can pull up on the website. There was some concern as to why that particular title of engineer was put in there, I can stamp the plans but I don't have experience with building residential or commercial buildings. If you look at the packet and back on the legal review, page 3 or 4 done by Municipal Attorney's office, Dean Gates, it actually legal to do.
- #4 State laws already prohibits any architect or engineer from certifying any work outside of their scope of expertise in their respected field so you have to be a specific type of engineer in order to legally stamp.
- Brings municipal code in line with state law.
- Nowhere in state law is there code review for single family duplexes, tri-plexes or 4-plexes. State law does not require that. The municipality goes above and beyond that.

Mr. Feller: insurance requirements professional insurance, that's E&O and it's one and the same and my company renews it every three years. According to the ordinance the coverage has to extend no less than 2 years from completion; so in effect the insurance would have to be extend another 2 ½ years after that. It seems a little unworkable. Mr. Trombley: they would go back to the builder not you. Mr. Feller: the way the ordinance is written will be hard to meet. His suggestion is to take it out as most residential designers don't care it anyway and why raise the bar in this ordinance.

Mr. Trombley: I wanted to take it out but Risk Management wants it in.

Ms. O'Donnell: part of the issue on page 4 of 4 regarding professional liability insurance, it says...*Risk has stated to sufficiently protect parties insurance coverage must include errors and omissions policy, and include sufficient time coverage beyond the completion of a project to allow for discovery of potential design defects and building code violations that may have eluded discovery during self-certification, construction, site inspections and completion.* It specifically states that and Risk Management requires it.

Ms. Walsh: they are one in the same. General Liability is separate.

Mr. Michelsohn: the insurance seems to be a crux...Risk put it in there...why is the Municipality Risk Management demanding more than their own department. Their own department has zero risk; the Municipal Attorney, Mr. Wheeler has said that. They have zero liability, zero risk so why are we placing risk on someone in private practice more than our own government. Mr. Trombley: You'll have to talk to your state legislature. The State allows municipalities to be indemnified.

Mr. Michelsohn: so the municipality working under state laws is making you put this in there. Mr. Trombley: yes.

Mr. Fredeen: we have to be careful that you don't use verbiage that exempts the designer from liability, so they can't go back. Remove the liability and don't say the designer is indemnified from being liable. Just be careful we don't get a loop on that from the beginning. Mr. Trombley: you're saying you disagree with the wording in section 7; you're saying it needs to be reworded. Mr. Fredeen: the reviewer of these plans should also be indemnified like the municipality of anchorage for reviewing these plans, if this goes forward as a self-certified thing. Just don't add verbiage in there that indemnifies them later on if something does fail.

Mr. Michelsohn: are you saying the reviewer should be somewhat liable. Mr. Fredeen: as the designer, the licensed professional... Mr. Michelsohn: you can't self-certify you can't be the designer and the reviewer at the same time. Mr. Noffsinger asked where do you get that because I read this as you can be the designer and can self-certify that my work is code compliant. It says it in the opening and don't see where it excludes it.

Ms. Walsh: page 2 of 7, line 18, *permit applications submitted with design documents prepared under seal of a registered design professional the permit applicant shall have the qualified option for the registered designed professional responsibility for the plan review and building code compliance*, "prepared under" is the key there. If you listened to Mr. Porter, he noted prepared under direct supervision. Mr. Noffsinger: but it doesn't exclude that person from self-certifying. Ms. Walsh: no it doesn't. Mr. Noffsinger: They could also use this ordinance as designer and certify for someone else's work. I think that was the intent that you could do it both ways. Was that your intent? Mr. Trombley: my intent was if you are a registered professional architect or engineer I can design it, I insure because I have the certification and can stamp it because it meets code. Discussion continued for several more minutes.

Ms. O'Donnell: could the designer, the reviewer and the builder be one and the same under this ordinance? Mr. Trombley: yes, if you were a registered architect or engineer. Ms. O'Donnell: so it might be a first party review and not a third-party review. Mr. Bringmann: true but he did mention a conflict of interest. Ms. O'Donnell: true but there is nothing preventing it.

Mr. Fredeen: in researching that is a key point in self certifying and the issues associated with that; in researching this ordinance would you have to look at other jurisdictions. Do any of them have third party reviewers that would not be new reviewers but another certified professional reviewer doing it for you in place of a municipality organization? Mr. Trombley: Las Vegas and Phoenix has a situation setup similar. He believes they have contracts by the Municipality itself. They operate underneath the building official and they are indemnified just like the municipality is indemnified.

Mr. Fredeen: are those individuals then selected by the municipality like your number is up, this one goes to you or does the design professional get to choose? Mr. Trombley: I don't know.

Mr. Michelsohn: under 23.10.104.7.1 can you add a registered design professional, architect, or engineer cannot certify their own projects. Mr. Trombley: it can be workable.

Ms. Walsh: that's the whole point, if you're the design professional and you prepared some drawings and you stamp them and say they are good then you've done the plan review. Mr. Trombley: its two separate things. Mr. Michelsohn is saying if you're a registered design professional than I can design my plans, I can stamp my plans and if I'm a general contractor I can turn around build what I just stamped. What this addresses is I'm a professional architect or engineer and Mr. Michelsohn is a builder; I have a home to build and I want to use your stamp and stamp them as code compliant then he builds. That's what this ordinance is supposed to address. He understands the Board is concerned about self certification, understandably fair, conflict of interest and that's a 100% workable.

Chair Bohne: d6 and d7 regarding insurance from Risk Management and it bothers me, they don't understand insurance. It starts with the registered design professional insurance, where you have found to be none, talks about 6c two year tail and there are a number of companies that write year to year and he thinks it's a bit of a burden. The indemnification not sure how that would be used but to be indemnified I can't sign outside my performance or performance of people underneath my charge so 6 and 7 might need some attention.

Mr. Trombley: your own personal insurance won't qualify under this. Chair Bohne: I believe no. Mr. Trombley: if someone came to you with this, you'd said no and they would have to go to someone else. Chair Bohne: he doesn't pretend to be an insurance authority but he questions if other people, professional liability carriers would make that an insurable event.

Mr. Michelsohn: noted he sees Mr. Owens in the audience and would like to ask him about what insurance is required. Mr. Owens: we are required to carry General Liability and Workers Comp for my employees. I do not carry Errors and Omissions. We've looked into it and would like to have it but a couple of issues with that, we couldn't find it to cover specifically what we do and the other was the cost. We received a cost that was just off the scale. We're not required by state law to have it.

Ms. O'Donnell: so what you are saying is about general liability and professional liability is you are actually required to have General liability and not professional liability. Mr. Owens: that is correct. Ms. O'Donnell: so what is written here the requisite for professional liability there is none. Mr. Owens: correct.

Mr. Michelsohn: do you indemnify yourself or are you responsible for a mistake. Mr. Owens: some of our work is under there in statue 18.56.300 and there is some language in there that says you are responsible if you act in gross negligence and intentional misconduct. Mr. Michelsohn: if the Municipal Risk Management Department demanded you put that in there per state regulation and I'm hearing the state doesn't ask for that... Mr. Trombley: we'll have to get back with them on that and get it changed to general liability if that's what the state requires. Mr. Michelsohn: I believe that would satisfy a lot of peoples concerns.

Ms. Walsh: we'll have Risk Management come to the work session. I was copied on several of the emails regarding the insurance and at one point Risk Management did suggest an amount \$2m and for some reason it did not end up in here. Mr. Trombley: forward me the email.

Ms, O'Donnell: maybe ask an insurance broker with experience to come and offer comment as far as what is generally offered in Alaska. Mr. Michelsohn: we're asked to send a letter of recommendation or denial to the Assembly. Now, it seems like I'm hearing we're asking to bring people to the work session. We can go to the

work session we just can't give voice there. Mr. Trombley: Correct unless you are asked. *Discussion continued regarding how assembly work sessions proceed.*

Mr. Weaver: as a general observation with Risk Management and what they were trying to accomplish, in municipality plan review there is exemption in plan review by state statute. Basically there is a \$2m umbrella policy for these types of situation across the board through the department. What I think Risk Management was trying to do or say there was there should be some reasonable insurance if the private sector is taking on this responsibility similar to what we do in the municipality. For us it's a \$2m policy.

Ms. Walsh: the municipality is giving up a level of participation. We have the plan reviewers and this is what they do and the insurance is to mitigate that loss of review. Mr. Michelsohn: Mr. Weaver you stated you just tried to understand what Risk was trying to do and you said that Risk Management was trying to say a \$2m policy to hold the individual liable but again I'm puzzled. Mr. Weaver: that's not what I said; they are trying to transfer similar risks to the private sector like we have in the municipality in case something happens. Things happen and when they do people litigate across the board and sometimes the municipalities are brought into it to determine negligence.

Mr. Michelsohn: do you know if the municipality has ever been brought into a lawsuit? Mr. Weaver: he can't answer that. Mr. Noffsinger: I know of cases where we've settled. We didn't go to court because the municipality just settled.

Mr. Weaver: I do think there was a mix up in terminology and we can get what type of insurance is required. Mr. Trombley: that's absolutely fair. Chair Bohne: personally, if we change 6 and 6a from professional to general liability.

Mr. Strait: what is the problem this ordinance is trying to address...what are we trying to do here? Mr. Trombley: trying to providing options, so if someone says hey I trust the municipality or I want to use a trusted architect to do the work I can...that option is there. It'll help the industry by providing options.

Mr. Feller: talked about some changes that need to happen to the ordinance and I feel those changes need to occur before the full support of the board. How is this going to work? Mr. Trombley: we're slated to vote on this on the 21<sup>st</sup>. I can make amendments to this on the floor. If you were inclined to write a letter and say these are some recommendations. Everyone does it all the time. He then gave multiple examples.

Mr. Michelsohn: at the last meeting we were asked either to send a letter of support or non support from this board. Can this board vote on suggestions to be sent to the maker of this ordinance? Ms. Walsh: at the last meeting we specifically presented this ordinance. It is brought before you because it's part of Title 23. The main thing was to make sure you were aware of it and to make whatever action you choose. Another option is to make note that the ordinance needs further working and we recommend that the author make the changes and bring it back or postpone.

Chair Bohne: it was Mr. Steele who would like to see the board to take action and endorsement or not and we would be within our power to make an endorsement with recommended changes if that is what the board so desires. Ms. O'Donnell: we are pre-reviewing this to flesh out what some of the troubles would be before it becomes something where we can't make changes to. If this goes through and Risk Management looks at this and this is what the insurance requirements are to be. If somebody doesn't check with an insurance broker with what's available in town, we could be making an ordinance that requires private industry to obtain insurance at a level that might not be affordable and may impact business and do the exact opposite of what you intend this ordinance to do. Mr. Trombley: noted that's fair and I'll make sure to get that language clear.

Mr. Merchant: I called six contractors and two architects and tried to get in depth with this and it came down to one thing and hopes the whole board can understand this...it is not coming across that way. Everybody says it's nothing else but time. They go down there, turn in their plans, it goes into plan review and during the plan review there are comments and the municipality gives those plans back to the builder within 10 business days. That usually happens and it comes back with lots of questions from two to 30 questions, so it's how fast that builder gets them back to them. We're at that 10<sup>th</sup> day and they get the questions back in three days, so now we're at 13 days and in those 13 days they can come back with other questions and it's another 10 extra days to get that back to them.

Mr. Noffsinger: the goal is to get the resubmittal back in half the time. Mr. Merchant: we're at 17 to 18 days now and if there are no other questions we're at a minimum three weeks to a month and a half. On a short building season that's a pretty major deal for a contractor that is trying to make money. I look at it as time is money. They are asking for structural and not architectural, that's only one piece, the way I understand. Mr. Trombley: sure, you're right. The industry wants other options and to use it in the best way, to cut down on the time, to save them a little bit of money, to get better turn around time for their customers, there are a plethora of options. I think it's fair.

Mr. Hawkinson: we are in an aggressive climate up here. Our summers are real short for getting in the ground and getting out. When we run into problems is later in the year. The municipality is usually pretty good if we get in and get the plan approval and get the F&F and in the last few years they have been real accommodating. Working in the fall they pretty much accommodate you on the path you need to go. We've worked in the Anchorage Bowl for many-many years and the processing is getting better but I can see your point too and maybe out sourcing is a good idea. As long as we get out of the ground in a reasonable time and push through in the fall; it is an aggressive schedule from here on out. He feels comfort with what the municipality is providing us. What happens when this designer or engineer goes out and does this and you don't have the zoning, you've built too close to your offset or...Mr. Noffsinger noted the zoning is still reviewed. *Discussion continued on zoning and clarification before continuing on.*

Mr. Noffsinger: this is not the first time this was proposed; it was proposed in the early 90's and major changes were proposed to the building department as a result and the ordinance didn't go through and the administration didn't support it then. What did go through were the plan review times, they are actually written into code in 23.10 and that's when you get your 10 day turn around and if don't get it done we issue a permit at your own risk to get started working. We actually do allow footing and foundation permits at your own risk. Mr. Taylor is the king of them. There is a zero timeline between when he submits and we review them pretty quickly. The plan reviewers do this sort of thing to get them moving.

Mr. Trombley: the ordinance that was proposed in 1993 attempted to do the same but it included all construction. My ordinance is considerably different and to compare the two is beyond unfair. I'm going with single family duplexes and is slightly different then the Dena'ina Center building. Mr. Michelsohn: I believe we found a letter from Bob Bell, Mr. Bell was the originator at the time, and what we saw in the letter actually went through the assembly and passed but never got placed in the records.

Ms. Walsh: I would like clarify to Mr. Trombley regarding Springfield and Wichita and a misconception and whether or not they have an ISO rating. Often times there is a misconception because there is a Fire and protection class, there is a building enforcement rating, and we checked with them and they gave the rating of this but it turns out it was the fire class rating. We've checked with them and I have that email both cities and both cities do not have a rating they are in the 99 class, meaning they are not rated because they don't do plan review and I'll get that information to Mr. Trombley, the Assembly and to the board.

Mr. Trombley left at 7:21pm

Mr. Michelsohn: Mr. Noffsinger stated you can get the permit out in 10 days. I handed in a permit in May and it was lost in the department for 19 days, I came back in, they found it and then they took another three weeks to review it so there was no way I got my permit that day. That is a false statement to the board. I waited a month or longer to get my permit. Mr. Noffsinger: stated I didn't make a false statement, we asked if you wanted an F&F at his own risk, if you'd said yes you would have gotten it.

Mr. Fredeen: this ordinance under Mr. Thompson had some kind of exemption about requiring a structural engineer to stamp drawings for some of these extreme residential homes. Is that incorrect or? There's nothing in here that makes a difference between a Spinelli home, that's been done 80 times or a 5 million dollar home that's bigger than this building. I'm wondering if there is any certain cap on what could be signed off. Mr. Noffsinger: that is a fundamental flaw with the ordinance. It's going to benefit the most problematic homes because those are the ones going to get bogged down in plan review.

Mr. Fredeen: did there used to be some criteria...Mr. Michelsohn: not since I've been here and I've been here 38 years. Mr. Michelsohn: Mr. Noffsinger you're saying the inspectors will not catch the deficiencies; who catches them when Ms. Hellman, Mark or Wayne makes a mistake? Who catches them now? Mr. Noffsinger: they don't make that many mistakes and I guarantee you if they make a mistake in certain lateral force resisting system, they're missed. The inspector is not catching it.

Ms. Walsh: in response to Mr. Merchant's question: well taken and well noted. We've talked with lots of people about this, the other overriding concern is mistakes are made, can be made and any one of us can make mistakes, we're all human but yet if you take away another layer of review, we take another chance when we don't have independent, third party municipality review. The reasons there are comments going back and forth because there are mistakes in submittal and those need to be caught. Many design professionals say "call me" because I don't want to be out in the field, where it's very expensive, and sort out one of my mistakes. The most cost effective time to find it is at plan review.

Mr. David Owens: owns Eagle River Inspection services. He's a third-party inspector and works through out the state of Alaska. We do residential, commercial projects and I'm an ICC certified inspector and plans examiner. He's here in support of this ordinance but I can see there are a quite a few issues that need to be clarified. I see Land Surveyor in here and I don't see a case where that would be necessary. Like Ross was saying two family dwelling and structural is complicated. In general I'm in support of this and I think private enterprise can do a good job with this with it being specific to engineers and architects; however, I wish they had included private firms such as mine.

Mr. Michelsohn: asked several questions about inspecting in Eagle River, North Slope. Palmer, Big Lake, etc...do you find the quality of the work in the standard home less than those in Anchorage. Mr. Owens: City plan review and inspectors do a good job but are they perfect? No. Mr. Michelsohn: are the houses going to fall down are the occupants in the homes in danger? Mr. Owens: in his opinion, on the projects he's worked on no. There are always issues, always some kind of issues that come up that have to be worked through with the builder. We don't want to be talking with the builder that's a warranty item. Mr. Michelsohn: talking about warranty, how long are you responsible? Mr. Owens: as stated in 18.56.300 statute in that case we are not liable unless we knowingly do something wrong.

Ms. O'Donnell asked what license do you hold. Mr. Owens answered in addition to my ICC certifications; I'm an Alaska licensed home inspector. Ms. O'Donnell: would an Alaska Home Inspector qualify as a design professional be responsible under the description in this ordinance? Mr. Owens: no, for one-two family homes and I'm not sure under state statute that is required.

Mr. Michelsohn: the land surveyors are a part of AELS Board, that's why they're there. Chair Bohne agreed. Mr. Owens: if you are going to allow this and approve this ordinance and the engineers and architects and if they



include a third-party reviewer then the same thing would apply that meets the standards of this city and not necessarily the state.

Mr. Strait: what does it take to get the ICC requirements for plan review? Mr. Owens: Ms. Walsh can tell you it's not an easy test; you have to work pretty hard. It works you over pretty good. There are different levels of plan reviews. Your basic plans examiner is one; there is one for electrical, mechanical and fire. So there are different levels in that as well and yes there is continued education every three years; a day and half day education. Mr. Strait: this ordinance doesn't state what level of certification. Would you be okay with yourself or someone else with the basic level of the ICC certification reviewing architectural, life safety, and structural issues? Does it go in-depth enough? Mr. Owens: I think it's our job if we see something outside of our expertise and say it's inadequate by 60%, take that back to the designer. We have tools that help us check things but we're not architects or engineers.

Mr. Fredeen: building on what Mr. Strait said...you mentioned you have a bunch of ICC certifications; you're saying there is a mechanical, electrical, fire but there is an overall plans reviewer. Mr. Owens: yes, a plan reviewer certification and there are different levels of plan certifications as well. Mr. Fredeen: and that encompasses architectural review as well. Mr. Owens: Non structural plan review.

Mr. Fredeen: one or two call for structural review. Mr. Noffsinger: yes, very few require fire, life safety issues. All your issues are structural and the vast majority is with your lateral resisting system, seismic and wind. Mr. Fredeen: is there an ICC certification for structural. Mr. Noffsinger: I don't think there is. Mr. Owens: I'm not sure; they teach you basic things to address those areas but no certification. Mr. Noffsinger: I've printed off a list of certifications and didn't see a structural one on there. Mr. Fredeen: the ordinance also describes, certification boards such as the ICC, meaning other certifications might be applicable to someone who could do this review. Are you familiar with entities that could meet that? Mr. Owens: if you're going to install a fire system you'd need a certain certification to take care of that and if you're going to put in a sprinkler system then you need to be certified in those specific areas.

Ms. O'Donnell: I want to understand this, you're a very qualified reviewer with your certifications but you wouldn't qualify under this to perform these functions. Mr. Owens: I'm not in here but would like to be. Mr. Feller: the ordinance states a registered design professional and Mr. Owens is not. Chair Bohne: a registered design profession under the AELS board registration.

Mr. Bill Westbrook: I'm a registered engineer. I've been doing structural engineering since 1974. Code review as what Mr. Noffsinger said revolves around structural issues and the lateral force resisting system for an earthquake. The main point of getting a plan review, you can have an ICC certificate and still not know a thing about it. Under state law if you have a stamp under professional practices you're already allowed to do code review. It's stated as part of professional practice in this state if you have a stamp and work for the city you are only allowed to do code review because that's the exception to state law. You can find it under 108.48.1331 #15 but if you're an employee of the state or similar agency you're allowed to do it.

Mr. Feller: you're a structural engineer; if you were reviewing plans and had to certify they were code compliant and someone else was reviewing the architectural per this ordinance, acting as the reviewer would you feel comfortable certifying the structural and architectural plans at this point or would you just do structural. Mr. Westbrook: No. First of all I don't think that's how the ordinance reads. The engineer is responsible charge in this case; you can do code if you're the responsible in charge. I don't see it as reviewing others work here. It seems to be outlined for your own work, to self certify your own work.

Mr. Feller: I don't think the ordinance is clear on that. Mr. Owen: I think it is and it speaks to...Mr. Feller: I think right now you can do it either way. The person sealing the plans could also review it. Mr. Owens: he wouldn't feel comfortable reviewing architectural plans but that's just him. Discussion continued for several more minutes.

Mr. Michelsohn: page 1 line 41, 23. 104.1 Design professional in responsible charge. When it is required documents be prepared by a registered design professional, the building official shall be authorized to require...Ms. Walsh: clarified this language already exists in code. This language is included for context, she went on to clarify how assembly ordinances prepared and how to read them.

Mr. Feller: page 2 of 7, .23.10.104.7.1, *Optional residential single-family and two-family plan review by registered design professional*. Discussion went on for several more minutes. Mr. Bringmann: are you in favor of these changes? Mr. Westbrook: yes I am, I wouldn't do it but it's a good idea.

Mr. Strait: this allows you to do one to two family houses if you have an architectural and structural stamp. You can have that same architect and same structural review or write a letter saying it meets code and bypass plan review, is that correct? Mr. Michelsohn pointed out Mr. Trombley said, "Mr. Michelsohn can have a house drawn and bring it to an architect or engineer and have him review it in lieu of the municipality. Mr. Strait noted that's what the ordinance says. Mr. Noffsinger: Mr. Trombley corrected me when I tried to say that exact same thing and he said no it has to be prepared under that engineer or architect and then that engineer or architect can self-certify it.

Ms. Walsh: to put it all in context, current code requires plans to be reviewed by the municipality. That is the current law; this is to insert another option and for the safe protection to be put place for the public that convention is the municipality reviews the plans. It's the independent party that is not being paid by the builder to review the plans. It's an extra set of eyes but with this option that relationship is gone. The architect or engineer is most likely being paid by the builder so that's why the extra protections or standards that it be a registered person that they have experience in code compliance because not all structural engineers are code savvy. That's why the extra protection and insurance is put in here. It's a risk thing.

Mr. Westbrook: the state qualifies architects and engineers to be code compliant. Its part of the professional practice so it's not up to the city, it's not up to the ICC, it's up to the state to decide. Ms. Walsh: I don't dispute that at all and I agree. Mr. Noffsinger: we spoke to the state AELS about this and one thing was very clear an architect or engineer can't seal work outside of their expertise.

Mr. Michelsohn: fire, life safety in a one to two family is egress windows and a front door and mounting smoke detectors so it's not real hard to be certified in that. Structural is another issue but when you start taking fire, life safety you're starting to tread on...it's very complex but in one to two family fire and life safety is not complex at all.

Mr. Fredeen: Mr. Owens do you have the AELS regulations with you? Mr. Owens: yes, the regulations and the guidance manual. Mr. Fredeen asked to see the exemption page; there is an exemption in the AELS regulations regarding this whole regulation doesn't apply to...it basically exempts anybody doing work on one or two family homes so I'm kind of wondering if the statement that says the State law requires the engineering to only stamp what they're doing on a single or two family home, it's exempted out of the entire...Mr. Owens: you don't have to have a stamp for one or two family homes but if you do stamp, whether you choose to or are required to, only if you are qualified.

Mr. Fredeen: I agree with the ethics section in regulations where we are only supposed to stamp what we do but I've been on the AELS board for eight years and I've seen the ways people picked apart those regulations and I could see someone pick apart this whole project as exempted because it's a one and two family home therefore the ethic requirements. I'm just seeing how this is going to play out at the AELS level and...Mr. Owens: It doesn't apply to this situation.

Mr. Michelsohn: Mr. Fredeen you're an engineer, right? You can do this, you can do plan review...If you're an engineer and want to start a business like Mr. Owens...but what you're saying because you are part of the AELS, you couldn't do it? Mr. Fredeen: do this review? I would say it would go back to your ethics...my ethics and most people who have those guidelines would say the exact same thing. Mr. Owens: so you can't do code review. Mr. Westbrook: only exemption to state law. *The ethics guidelines and concerns discussion continued for several more minutes.*

Mr. Noffsinger: because the ordinance is written wide open for any design professional, we asked the state and they said even though a seal is not required you can't seal outside of your area of expertise.

Chair Bohne: called for a break for 5 minutes at 8:08. Chair Bohne: called the meeting back to order at 8:13 p.m.

Mr. Bill Taylor, Colony Builders: the vision of this ordinance is simply to take what is happening currently in Anchorage, and permits that are given through the municipality, which is mostly done by designers and most of those designers do structural calculations and city reviewers review those calculations, so what we're trying to do with this ordinance is like Mr. Trombley said is to give the builder an option to hire a professional engineer to do structural calculations and have them stamped so it will bypass city structural review. It'll still go to zoning, and stormwater discharge review. We just want to try and give the builder an option. We'd like the board to say yes this is reasonable option for builders in the market place. The ordinance needs some clarifications on some loops that need to be closed.

Chair Bohne: do you have any other points other than what the board has brought forth that need clarification?

Mr. Taylor: I think this ordinance has been noted as the china syndrome by the municipality and it's really not. To me, as a builder most of my life is how to manage risk. Building and contracting is very risky business and I equate that to what we are trying to do here. I see this as very-very low risk option. The city has raised the engineering bar standards. No, I don't think there is anything else.

Mr. Feller: so you described the vision of this ordinance as being the designer does the calculations, design and creates the drawings and then an engineer reviews those drawings and certifies them, so in that scenario the designer is doing the original design and the engineer is the second set of eyes. The way it works now with the municipality, is the designer does the design and the municipality reviewers are the second set of eyes. Those are two comparable levels of review. Unfortunately, that is not how the ordinance is written. The way the ordinance is written is the engineer has to sign the drawings and in my opinion that is a violation of state law. You can't sign drawings unless they are prepared directly under your supervision and that is a real problem, do you have any ideas to solve that?

Mr. Taylor: well, my guess is how is this going to take place is in the market place. Typically or eventually how this will all gel is the designer and the engineer will form a relationship, so the designer if he wants to do the calculations he would do them under the supervision of an engineer. Not all designers do calculations so in that case the engineer will do the calculations for the designer but the key element to avoid any violations in state law is you have to have that relationship where it is apparent and under their direct supervision.

Mr. Michelsohn: Mr. Feller, do you think the wording could say something or the scenario could be like have the designer draw the plans and possibly do the calculations and take those calculations to a structural engineer for insurance of the calculations and then have someone like Mr. Owens, who is ICC certified, do the plan review? Mr. Feller: something like that could be workable because you are having a different set of eyes reviewing the plans and that is comparable to what exists now. Mr. Taylor: I think the intent is just exactly that. Some of the language is slightly awkward and I think that's how it's going to come together.

Mr. Fredeen: for clarification, residential permit review, if plans are submitted they don't have to be stamped by an engineer. Mr. Noffsinger: they don't have to be.

Mr. Strait: The situation you described of a designer and an engineer acting as third party reviewer that seems more along the lines of what is happening now. Mr. Owens: doesn't think so, can you restate that...Mr. Strait: restated his question. Mr. Owen: the intent was to take that group of people, the designers that do the bulk of residential work in this town and add an engineer who can certify that the structural calculations meet code.

Ms. O'Donnell: there is a big discrepancy in how it was written and the intent may have been. In this proposed ordinance it doesn't discuss designers at all. Mr. Owens: I see your point and I think the ordinance assumes maybe incorrectly that the designer is assumed. We're not trying to upset what's happening now we just want to bring another group into this to certify for the designer.

Mr. Bringmann: What you want or your intent contradicts what this says. There is no third-party, it just says prepared under seal as a third-party registered design professional. Lines 18 of 23.10.104.7.1 your guy's intent is not being met by this it's actually go above and beyond what your intent is. It's going to make it really difficult to do what you want to do.

Mr. Michelsohn: reading his opening page line 23 of 23.10.104.7 and turning the page and read the registered design professional, which starts on line 5, *shall be responsible for reviewing and coordinating submittal documents prepared by others including phase and deferred submittal items, for compatibility with the design of the building.* When I read that, that's the plans, that's the documents drawn by others and the other line, line 10, *where structural observation is required by the building code, the inspection program shall name the individual or firms who are to perform structural observation is to occur.* The next line is where I get hung up on 23.10-104.7.1, I think that's an option to above, is it not. Chair Bohne: remember the top section here is existing language, line 14, and the other is proposed here.

*The board continued discussion regarding: stamped by a registered professional, insurance concerns, proposed changes and clarifications to the ordinance, and how the board feels about this third party review and it bypassing city plan review. How the ordinance is moving too fast and everyone should step back and rework it before it goes before the assembly. There was minor discussion on how the work session would work and how staff would not be supporting the ordinance.*

Mr. Taylor: it breaks the monopoly the city has on plan review. It has merit adding that extra layer and your endorsement would carry a lot of weight; will be there some abuses, a very small amount. Mr. Cody Lee, AHBA does support this and we have talked with Adam Trombley, the city attorney and the assembly attorney; however, we're not qualified to wordsmith it.

*Staff wanted to clear up questions and concerns regarding email trails from Wichita, and explained the process. Staff also provided general information on the AHBA letter, previous concerns from staff from last meeting and noted that other jurisdictions discontinued the practice because of lack of interest and numerous errors were caught when audited. Staff confirmed the department does have two third party review contractors: Reid Middleton and Golder and Associates.*

Mr. Michelsohn motioned that this board support the concept of AO 2012-62 and stress there are several issues needing to be clarified before full support will be given. If we send a message the concept is doable and workable but needs modifications. Mr. Strait seconded.

Mr. Fredeen likes the spirit of the motion but he is against it and this letter is going to the work session, to all the assembly members and the only two assembly members who were here, though we didn't hear from Mr. Traini I'm assuming he is in favor of this. I'm assuming the two assembly members who were here are in favor of this. We need to spell out what the major issues are or they won't know if it was the definition, was it design or it was

prepared under, or was it the third party self-certifying. I think we need to write something out that highlights what our points of objection are.

Mr. Michelsohn asked for an amendment to his motion saying the chairman must attend the work session and can speak to what we want. Mr. Strait agreed.

Mr. Fredeen noted the last assembly work session he attended was by invitation only and the people who were in invited were only from one side of the issue. There is no guarantee you will be invited to speak and something written down would be a better approach. Mr. Strait: I'm not in favor of the amendment I seconded but I am in favor of the concept the AHBA wants. The first paragraph needs to be rewritten to what they want. Limit on size of layout and materials used for single and two family houses. Three stories would not be able to use this option.

Mr. Michelsohn: seconded amendment that this board supports the concept of a third-party review ordinance and stresses to the assembly saying several issues need to be clarified, 1) opening section 2) self certification 3) insurance requirements, 4) professional liability and general 5) PE & Designer something along those lines. Send the message third party independent review concept is doable with the correct wording. Mr. Strait: say we do not support the ordinance as it is written but we support the idea of the concept. Mr. Michelsohn: the message from the board supports the concept of independent third party review.

**Mr. Michelsohn withdraws first amendment. Mr. Strait withdrawn. The Building Board does not support AO 2012-62 in its current form; however, the board does support the concept of independent third party review being performed outside of building safety before full support is given these items shall be address or amended. Mr. Strait seconded. Discussion continued on for several more minutes regarding who draws up the prints, third party reviews, self-certifying concerns, insurance, the board having another meeting and announcing it within the prescribe timeframe. Mr. Bringmann calls to question. Chair Bohne called for vote on the call: 8 in favor, 2 opposed.**

The motion on the table was read aloud: **The Building Board does not support AO 2012-62 in its current form; however, the board does support the concept of independent third party review being performed outside of building safety, these items of concern which are 1) opening section 2) self certification 3) insurance requirements, 4) professional liability and general 5) Professional Engineer & Designer something along those lines.**

**Chair Bohne asked for a roll call vote of the motion by Mr. Michelsohn: 2 in favor, 8 opposed.** (Chair Bohne, Mr. Strait, Mr. Gray, Mr. Feller, Mr. Fredeen, Ms. O'Donnell, Mr. Hawkinson, Mr. Bringmann were opposed and Mr. Merchant, Mr. Michelsohn were in favor.) It was further discussed between members. It was decided three members of the board would discuss, craft and bring back to the rest of the board to accept.

Mr. Michelsohn noted he would call Mr. Baker to ask him about postponing the work session. Mr. Weaver replied, its staff's work session and we will ask for the postponement.

Chair Bohne: the problem hanging up the board is the ordinance as a whole, not a paragraph.

Ms. Walsh: we can ask the assembly to delay. Mr. Bringmann agrees with Mr. Fredeen, as it's a pretty large issue to rush through and he can't support ideas that the home builders are not sure of and there is so much confusion in the room right now.

**Ms. O'Donnell motioned the building board craft a message stating we cannot support this ordinance as is written and recommend the Assembly delay hearing this ordinance until it can be further refined by Assemblymember Trombley; then reevaluate it by the Building Board before review by the Assembly. Mr. Fredeen SECONDED.** Mr. Feller supports the motion and would suggest adding the fact Mr. Trombley has been

made aware of the Building Boards concerns. Mr. Michelsohn replied we should include, this board does however support the concept. Ms. O'Donnell stated she does not agree with that. We're saying it should go back to Mr. Trombley to be reworked, it's not necessarily negative. Mr. Feller agrees with Ms O'Donnell.

Mr. Bringmann gives his support exactly as it says. **Mr. Fredeen makes a friendly motion to add reviewed by the Building Board and stakeholders. Ms. O'Donnell agreed.** Discussion continued further on the language.

**Chair Bohne called for a vote: 9 in favor and 1 opposed. Motion passed. (Chair Bohne, Mr. Merchant, Mr. Bringmann, Mr. Strait, Mr. Gray, Mr. Feller, Mr. Fredeen, Ms. O'Donnell, Mr. Hawkinson in favor; Mr. Michelsohn opposed.)**

## 2. REPORTS


Staff reported the Licensing Ordinance failed at the Assembly; we'll try to readdress in code hearings. Secondly, AO2012-31(S) proposed changes; Mr. Wheeler forwarded those to Mr. Trombley. Chair would like a copy to the board. As you know this board sunset's on October 14; the auditors are recommending the board continue.


Mr. Michelsohn wanted it noted he might have an ethical issue for the record and would discuss it next time if it was not resolved to his satisfaction.

## 3. BOARD MEMBER COMMENTS - none

9. **NEXT MEETING:** None

7. **ADJOURNMENT:** Meeting adjourned at 10:00 p.m. **Ms. O'Donnell moved. Mr. Bringmann seconded. Adjourned.**

 12-6-12  
\_\_\_\_\_  
Scott Bohne, Chairman Date  
Board of Building Regulation Examiners and Appeals

 12-10-12  
\_\_\_\_\_  
Sharen Walsh, P.E. Date  
Building Official