

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

SEPTEMBER 12, 2012

1. **CALL TO ORDER AND ROLL CALL:** The meeting was called to order at 6:01 pm. by Chair Scott Bohne.

Board Present	Board Absent	Staff Present	Public Participation
Scott Bohne	Paul Michelsohn	Ross Noffsinger	Don McClintock
Rob Merchant	Skipp Bringmann	Sharen Walsh	Becky Windt
Craig Fredeen		Jerry Weaver	Cody Lee
Serena O'Donnell			Andre Spinelli
Jonathan Steele			Colin Maynard
Bari Gray			Bill Taylor
Troy Feller			
Sterling Strait			
Tom Looney			
Jon Hawkinson			

Board members absent have been excused.

2. **APPROVAL OF AGENDA:** Chair Bohne moved to reorder the agenda. **Mr. Fredeen moved to approve. Ms. O'Donnell SECONDED. Agenda was APPROVED with changes.**
3. **APPROVAL OF MINUTES:** None
4. **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 design professional designed by the permit applicant certifies the plans were reviewed and comply with applicable building codes.

5. **STAFF PRESENTATION**

Ms. Walsh briefed the board on how the ordinance came to be before them again. At prior meetings on the original ordinance concerns were raised about language and compatibility with State of Alaska licensing statutes. A three member committee was selected and tasked with working on recommended revised language. Prior to the first work session, the Anchorage Home Builders Association (AHBA) hired the law firm of Ashburn & Mason, who independently prepared a new version of the ordinance. Representatives of the AHBA and Ashburn & Mason attended the committee work sessions, presenting the new version as a basis for the committee to begin work, at the first work session staff asked if the AHBA was working on behalf of Mr. Trombley, the author of the original ordinance. Mr. Taylor confirmed Mr. Trombley was aware of and supported the AHBA efforts. With that assurance, the committee took up and further revised the document. The product of the work sessions is the basis of the S (1) version of the ordinance presented tonight for the full board's discussion.

Mr. Steele noted he was not at the meeting on August 8, 2012 and had not listened to the tapes on this issue and wondered if he should be excluded from further discussion. He asked, "What is the goal of tonight's efforts?" Ms. Walsh assured him and the rest of the board the revised version was quite different from the original version and

the entire board would be starting anew, so there was no reason for Mr. Steele not to be involved in the discussion. She noted there would be an Assembly work session on this version on Friday, September 14, with further discussion and public hearing scheduled for the September 25, Assembly meeting.

Chair Bohne – who was part of the 3-member committee - summarized what the three members discussed: insurance requirements, review of qualifications, self certification, professional liability versus general liability, designer/professional engineers, stamping of documents and how to clarify the process. Mr. Strait and Mr. Fredeen – the other two members of the committee - agreed with Chair Bohne’s assessment.

Mr. Bill Taylor spoke up from the audience. He said this version would be sent to Mr. Trombley who would give it to Julia Tucker, the Assembly counsel. Mr. Taylor also noted that it would have to go back through Risk Management and it could change again. Staff noted that there were several recent personnel changes within Risk Management because of two retirements. For the moment there is an acting Director. Mr. Wheeler will fill her in on events to date.

6. PUBLIC HEARINGS

Chair Bohne opened the floor for public hearing.

Mr. Bill Taylor of Colony Builders and Mr. Don McClintock of Ashburn and Mason spoke about the new wording in the ordinance and how this S(1) version would go through Mr. Trombley and the Assembly’s counsel and how it would benefit both the Home Builders and the Municipality.

Colin Maynard of BBFM Engineers and also a member of the State of Alaska Board of the Architects, Engineers, and Land Surveyors (AELS) commented he has looked over the revised ordinance and it appears to satisfy the requirements for state law. He also noted that the Alaska Professional Design Council (APDC) has not taken a position on this one but he and the APDC Chair have discussed it and they have one concern related to the insurance. They felt that part 23.10.104.7.1 C.3.b, about the liability insurance; should be a sub-paragraph under part 4 - indemnification. This is because part 3.a. provides an option for a waiver of claims against the municipality and the insurance will only be needed if that waiver is not provided and the indemnification clause kicks in. He also questioned why the reviewing professionals were the only ones required to indemnify the MOA when the original designers and the builders were the ones who would be doing the majority of the work and receiving the majority of the profit.

Don McClintock stated the indemnification clause was not really required because the city has sovereign immunity, although it would likely still get sued. He went on to say that the ordinance was being presented to provide the market – the consumer - with an alternative to the current process.

Mr. Steele asked if ordinance met the AHBA’s objectives. Mr. Taylor said yes.

Mr. Steele asked if this ordinance had a grass roots origin, if it came from the AHBA’s customers. Mr. Taylor said no, it came from the AHBA, who felt it would help produce a better product for the consumer.

Mr. Looney asked staff if inspection would still be done by municipal inspectors. Ms. Walsh said yes.

Mr. Looney asked how this process would affect the construction phase. Ms. Walsh noted that the current plan review staff strives to maintain consistency in their interpretation of the code but individual reviewing professionals may have different interpretations. Staff anticipates that this will cause some issues in the field for the inspectors and disputes that are currently settled during municipal plan review will now not come to light until construction is underway. Ms. Walsh noted the inspectors would be the first municipal personnel to see the plans and they would essentially be put in the position of having to do plan review in the field, which will foster

conflict. She noted that even under the present system, builders frequently complain inspectors take on too much of a plan review role on the job.

Chair Bohne closed the public hearing and opened the floor for the Board's discussion. The Board talked about who would be sued, what reviews would still be looked at, would inspections still be done.

Mr. Steele noted the document needs a clean sweep of grammar and verbiage, clarity of roles, insurance and requirements for maintaining insurance. He asked staff if they had done any research about the availability of insurance, staff replied yes, insurance is available and relatively affordable, ironically insurance is especially affordable for those engineers who have not done a great deal of prior work that would have to be insured, because the insurance is provided on a claims made basis and those with less work history have less work upon which a claim can be made.

Mr. Steele asked how the amount of \$250,000 was determined to be the proper amount of insurance. Ms. Walsh noted that was unclear; prior versions called for a "requisite" amount of insurance, the \$250,000 figure appeared in later revisions and she did not know the source of that number. Ms. Walsh agreed the insurance provisions are still problematic.

Mr. Steele asked if the staff would be asking for certificates of insurance. Ms. Walsh said that if the ordinance passes, Development Services would need to change the permit application form and intake processes and would need some time to implement those changes.

Mr. Steele presented the following motion:

The Board recommends the Building Official inform the Anchorage Municipal Assembly in writing of the position of the Board regarding the proposed ordinance (AO 2012-62 (S) (1)).

The Board recognizes the Anchorage Municipal Assembly may choose to adopt this version or a further modified ordinance to provide the option to exempt single-family and two-family residential construction from plan review by the Municipal Building Official. If the Assembly chooses to enact an ordinance based on this exemption we suggest the following items be considered further and if appropriate incorporated in the final version:

- 1. The liability and responsibility for the design professional(s) and the independent reviewing professionals is not fully understood. Is the design professional in responsible charge overseeing and coordinating the efforts of the independent reviewing professional?
Is the design professional in responsible charge required to carry the same liability coverage and responsibility as the independent reviewing professional?**
- 2. Clarify the responsibilities of the 'Registered Design Professional in Responsible Charge' and the 'Independent Reviewing Professional(s)'. The ordinance states the "independent Reviewing Professional(s)" can't serve as the designer or builder of the project (23.10.104.7.1/B/4). Perhaps definitions of these titles and roles could be incorporated into 23.10.102.1-Definitions.**
- 3. The ordinance uses the following terms: 'Independent Reviewing Professionals', 'Independent Reviewing Professional(s)' and "Reviewing Professional". Suggest the same term be used throughout the ordinance. Note: The ordinance preamble contains the language...*When a "Registered Design Professional"*. Should this state 'Independent Reviewing Professional'?**
- 4. Has there been any research by the MOA to confirm professional liability coverage is available with insurance carriers serving Anchorage (23.10.104.7.1/C/3/b/i)?
A minimum coverage of \$250,000 is required (23.10.104.7.1/C/3/b/ii). The valuation of many residential projects could well exceed this threshold. How was this amount of coverage established?**

5. We suggest the ordinance include the requirement that ‘proof of insurance coverage’ be submitted with the application for the project being submitted.

Mr. Fredeen Seconded.

Mr. Looney wanted to propose a friendly amendment stating more strongly that the Building Board is opposed to the current ordinance. Mr. Steele replied that he felt it was better to take a more understated approach and recognize that if the Assembly was going to go ahead with this, they would be more likely to include the Board’s suggested clarifications if the recommendations are made in a positive manner.

Discussion continued regarding this version being very different, having been through two meetings already with the same concerns still being raised, grammar could be cleaned up and the liability section is still confusing.

Mr. Looney noted that he had made a call to Marsh McClellan insurance and his contact there felt this ordinance would have a significant adverse impact on the registered professional’s exposure to liability. The Marsh McClellan representative told him in other jurisdictions where this process has been implemented there has been a sharp increase in construction claims.

Staff said they met with the insurance brokerage firm of Parker Smith and Feek to determine the availability of insurance and during that discussion the PS&F representative had similar concerns regarding the liability, stating that they could sell insurance to their engineering clients, but would advise them against accepting such a large liability for what would be a relatively small fee.

Mr. Feller said the way the current ordinance is written, insurance won’t be much of an issue because most reviewing professionals will probably take advantage of part 3.a., giving the waiver of claims and avoiding the need to purchase insurance altogether.

Mr. Looney asked for confirmation from staff that under item C, the building official will only be able to confirm the application meets requirements and then must issue a permit provided the plans have been reviewed by a professional. He said it appears all the building official can do is verifying the project was reviewed by a third party professional and pretty much is then forced to provide a permit with no other recourse.

Ms. Walsh confirmed this was the case, noting staff anticipates there will be certain steps to perform to assure the reviewing professional had a valid engineering or architecture license in the State of Alaska, but that would be about it.

The Board asked to hear again the benefits this document brings to the home builders and the Municipality. Mr. Taylor spoke to six points of benefits on the back page of a letter they handed out.

Mr. McClintock reiterated that this ordinance will provide a market alternative for the builders, allowing an option that is not currently available, and that insurance and other industries will adjust once the process gets going.

Mr. Taylor summarized by saying the ordinance is a permanent fix to resolving problems that the industry has with municipal plan review, it will survive various building officials and administrations, and plan reviewers, giving industry a permanent way to opt out of the municipal plan review process.

Ms. Walsh spoke to the six items in the AHBA letter point by point:

1. The Municipality is getting over 70% of initial reviews completed in 4 to 6 days, and 96% in 9 to 10 days so the anticipated time savings will be minimal. Other municipal reviews will still have to be performed and this will not shorten the time for those reviews;
2. Protections for the consumers may in fact be reduced because this ordinance opens the door for unethical practitioners to bypass municipal review and circumvent code;
3. The process is anticipated to slow down inspections and put inspectors into a position of conflict with reviewing professionals;
4. It is difficult to anticipate how phase-in will take place, it will depend on the number of applicants opting for this process, which is hard to predict at this time, though many other jurisdictions have seen very little participation by the design community, to the point that they have cancelled their programs;
5. This is a restatement of 2;
6. If there is minimal participation by the design community, as experienced by other jurisdictions, there will be no measurable decrease in workload for plan reviewers.

Ms. Walsh went on to note implementation of this process will result in cancellation of the residential ISO rating putting Anchorage into a "99" classification, which means a jurisdiction, intends to opt not of the ISO program. If this occurs, the insurance industry will lose the reference benchmark score of building code enforcement that the ISO provides. This may have minimal effect on the average home insurance premium but it will directly affect flood insurance premiums, which would go up by 10% for about 477 property owners.

It was asked if the insurance rates are high outside of the building safety area; Ms. Walsh said that had been researched; the major carriers deem this to be proprietary information and will not release that data.

Mr. Looney asked staff to confirm under the new process; once the plans get approved you can't go back and catch something. Ms. Walsh replied Title 23 does allow the building official to revoke a permit that is issued in error, i.e., if something is discovered in the field or by audit to not be in code compliance.

It was asked if the municipality would make someone go back and fix such problems and what happens now if staff discovers a error or determines that the municipality itself has been misinterpreting code and items have been constructed that are out of compliance.

Ms. Walsh replied it would depend on the severity of the issue and if it was to be determined to be a severe life safety concern. Once such an issue is discovered, the municipality may require retrofit and correction, or may inform the community that existing installations may remain as constructed but future construction must comply with the new interpretation.

Ross Noffsinger, Engineering Services Manager, stated there is a policy and procedure in place to address mistakes or issues and give a 30-day notice of changes in policy. He added his concern that once this ordinance is on the books there will be no way for the municipality to sort out the conscientious reviewing professionals from the riff-raff. He emphasized Development Services routinely has to deal with some very deficient designs, and is very concerned because the unethical and incompetent practitioners are out there.

Mr. Looney noted the state does not require all this and we're going above and beyond. He asked what the difference in our rating would be if we eliminated the 1-2 family homes? Staff replied there would be no difference between the municipality and the smaller communities in Alaska that do not do review. The municipality would be rated in the 99 category as choosing not to participate in the ISO program. She noted at a point in the past, the governing body of the municipality decided it wanted to adopt the national building codes and enforce them, to participate in the ISO program, and to have a better standard of work in our community. If this ordinance passes, it will be a step backwards of sorts.

Mr. Taylor spoke up and said the suggestion that all the review will be out in the field is incorrect. That's not what the AHBA is doing with this ordinance. The AHBA want this protection from a liability and professional perspective, the ordinance provides for people with better credentials than staff has to review the plans.

Ms. Walsh stated it is true one plan reviewer in the group does not have a plans examiner certification. That plan reviewer is working toward that certification, by the job description they have two years after becoming a full plan reviewer to obtain their certification. It is a requirement. The two other structural plan reviewers do have plans examiner certification, have civil engineering degrees and have passed the Fundamentals of Engineering exam, which is the first stage of obtaining an engineering registration. They are being encouraged to get their licenses. Another structural plan reviewer is a registered civil engineer, the manager of engineering services is a registered mechanical engineer, and Ms. Walsh herself is a registered civil engineer. The municipality also has other licensed engineers in the division.

Mr. Steele noted the AHBA representatives said they were here for the consumer/customer and the municipality is also representing the customer/customer. He asked the AHBA: out of your customers, how many came to you wanting a change? What drove this ordinance change? Mr. Taylor noted it's not consumer driven, it is builder driven and the builders have issues in plan review that they can't seem to come to a conclusion on. They want an ultimate solution that will survive administration, building officials, and plan reviewers, that's the core of why they are here to get approval from the Building Board tonight.

Mr. Strait noted: with the motion before us maybe we could come up with something a little more significant that provides a clearer message to the Assembly of the Board's opinion on the ordinance.

Chair Bohne discussed the options if the motion passed or failed. Mr. Steele suggested amending the motion instead of voting it down.

Mr. Looney made a motion to add a second paragraph "we do not recommend adoption of this ordinance as currently written. Mr. Steele seconded.

Mr. Strait: we should have a position on this, yes, no or indifferent. The Assembly is looking for something from us.

Mr. Feller: we've gone through this process, the issues have been addressed. Now the responsibility of this board is to move this forward to the Assembly; it does work and he will not be supporting the recommended motion.

Chair Bohne called for a vote by hand. 6 in favor and 4 opposed. Motion passed.

Mr. Strait: we've discussed this over and over again and with the amendment he is going to vote against this as a whole. The ordinance will work and he will not be supporting the current motion.

Ms. O'Donnell: agrees with Mr. Strait on the work of the three member panel. It did largely address the concerns and issues; her only concern is the insurance language. She won't be supporting the motion on the table.

Mr. Steele: speaking to the motion, a lot of people have put a lot into this and each has an opinion of benefit and we made a lot of headway but he is a bit concerned, when the ordinance is done and said there are a lot of things we don't agree with but he firmly believes the Municipality and the Development Services agency is still the agency to handle both forms of permitting. What he is hearing is a disconnect in the relationship and another option besides the ordinance is to work on the relationship and he doesn't see anyone wanting to work on that process.

Mr. Looney: despite his discussion tonight he is in support of the concept of making it an easier and more streamlined process. He doesn't see it as an effective path and does not support the language as is because it's not good language. He noted he would like to add a friendly amendment to the five items to add some kind of auditing provision. Mr. Fredeen commented he had just prepared a written motion on the same recommendation.

Mr. Fredeen presented a motion to add an item #6 to the list of concerns in the original motion: There is currently no audit provision included to review the quality of the reviews and the effectiveness of the proposed program. Nor is there a sunset provision based on a re-review by the assembly at a later date. Mr. Looney Seconded.

Ms. O'Donnell thought it only fair to audit the municipality's plans as well.

Mr. Looney: won't the audit create a time crunch. It was noted the audit would occur afterwards. If the assembly is going to pursue this they have a discussion and include this or at least have knowledge that covers it.

Chair Bohne called to vote on Mr. Fredeen's motion: **Vote was 9 in favor and 1 opposed. Motion passed.**

The Board took a break at 8:21pm. The Board came back to order at 8:28 pm.

Motion by Mr. Strait: amend our first amendment and put the following before amendment #1: The Building Board supports the concept of an option for independent third party review for single and two-family building permits. Vote was 5 to 5, motioned failed.

Mr. Steele proposed an amendment change to item #4 to strike out the first sentence. Mr. Fredeen seconded. The Board took up the first motion and called for a vote: 5 in favor and 4 opposed and 1 abstained.

Mr. Steele motioned for immediate reconsideration. Mr. Strait seconded. Mr. Steele withdrew his motion after some discussion. Discussion continued for several more minutes regarding what message the Board was sending to the Assembly and came to the conclusion the Board was split on the philosophy of the ordinance.

Motion by Ms. O'Donnell: to recommend that staff inform the Assembly that The Building Board is split philosophically on accepting or rejecting the concept of the proposed Assembly Ordinance, and that the draft minutes be presented to the Assembly work session on Friday, September 14, 2012. Mr. Feller Seconded.

The Board continued discussion on Ms. O'Donnell's amendment. **Ms. O'Donnell called the question. The vote was 8 in favor and 2 against.** Mr. Feller left at 9:21pm.

7. **APPEARANCE REQUESTS -None**

8. **NEW BUSINESS - None**

9. **REPORTS**

10. **AUDIENCE PARTICIPATION - None**


11. **BOARD MEMBER COMMENTS - None**

11. ADJOURNMENT: Meeting adjourned at 9:25 p.m. Ms. O'Donnell motioned. Mr. Steele seconded. Approved.

 12-6-12

Scott Bohne, Chairman
Board of Building Regulation Examiners and Appeals

Date

 12-10-12

Sharen Walsh, P.E.
Building Official

Date