



**WHPA Chartering Committee
Teleconference Summary Notes
Tuesday, December 12, 2017
Scheduled for 3:30pm – 5:00pm PST**

Call to Order

The WHPA Chartering Committee Chair (Chair), David Dias (JCEEP), called the meeting to order at 3:32 p.m. PST. The meeting was recorded for note purposes.

Roll Call

Wendy Worrell (WHPA Staff – InfoPlast) conducted roll call based on the current roster. As no voting panel has been assigned in favor of consensus voting, members are organized by voting eligibility status. 7 participants (or proxies) attended the meeting with a quorum (4+) of eligible members as indicated below:

P = Present at meeting A = Absent from meeting; if proxy has been assigned it will be noted below.				
Organization	First Name	Last Name	WHPA Category	Attendance
Voting Eligible				
ASHRAE	Ron	Jarnagin	Engineering Society	A
CALBO (California Building Officials)	Bob	Barks	Codes & Standards Official (Association or Jurisdiction)	P
IHACI (Institute of Heating and Air Conditioning Industries)	Bob	Wiseman	Contractor Association	P
JCEEP (Joint Committee on Energy and Environmental Policy)	David	Dias	Organized Labor	P (Chair)
NCI (National Comfort Institute)	Mel	Johnson	Educator, Trainer	A
SynergyNexGen	Barbara	Hernesman	Energy Efficiency Program Consultant	P
WHPA Staff				
Better Buildings, Inc.	Mark	Lowry	Other Stakeholder	P (WHPA Transition Lead)
InfoPlast	Wendy	Worrell	Other Stakeholder	P (Host/Scribe)
Key SEO	Judy	Johnson	Other Stakeholder	P (Work Product)

AGENDA

The following agenda was distributed to the WHPA Chartering Committee roster by WHPA Staff prior to the meeting, along with meeting reference slides:

GENERAL REMINDERS

- Adherence to the WHPA **Code of Conduct** is required.
- Disclose any potential conflicts of interest as it relates to meeting content, particularly prior to any votes that may occur.
- Identify yourself prior to speaking, clarifying the organization on whose behalf you are speaking, or if you are making a personal comment.
- Mute yourself when not speaking. (*6 will take you on and off mute.)

AGENDA ITEMS

- 1) **Roll Call of Voting Members** – Wendy Worrell (WHPA Staff, InfoPlast) – 5 min
- 2) **Chair’s Opening Comments** - Chair (David Dias, JCEEP) – 15 min
 - a. Agenda Overview
 - b. Actions and Decisions from Dec 8th HSES Committee Meeting Overview
- 3) **Continued Bylaws & Articles of Incorporation Development Discussion** – Mark Lowry, WHPA Staff, BBI) – 65 min
Live Edits – Judy Johnson (WHPA Staff, Key SEO)
- 4) **Next Steps** – Chair (David Dias, JCEEP) - 5 min
 - a. Email Approval of Meeting Minutes
 - b. Other TBD
- 5) **Adjournment** by 5:00pm PST – Chair (David Dias, JCEEP)

Chair’s Opening Comments

The Chair welcomed the meeting participants, overviewed the above agenda, and overviewed the Actions and Decisions from the December 8, 2017 HVAC Stakeholder Engagement Strategy (HSES) Committee meeting per meeting slides 3 – 7.

The Chair reminded that the final membership category consolidation discussed at the last Chartering Committee meeting and at the last HSES Committee meeting was for four (4) voting eligible membership categories and for one (1) non-voting eligible category.



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The Chair asked if there were any question on the reported December 8, 2017 HSES Actions and Decisions.

- Barbara Hernesman (SynergyNexGen) commented that thought should be given to if the current EC is representative of the revised membership categories for the Board if the EC needs to serve as the interim Board for a year.
- Mark Lowry (WHPA Staff – BBI) confirmed that the End User is not represented, but that it could be adjusted as needed in that first interim year.
- Barbara Hernesman (SynergyNexGen) expressed concern about not having the unrepresented categories involved in goal development in Q1 and Q2, 2018.

Mark Lowry (WHPA Staff – BBI) requested further discussion about the outstanding Action Item for the Chartering Committee to determine the appropriate length of term of the Officers of the Corporation (2-3 years) following the HSES Committee’s decision that the Board of Directors should be a 3-year term.

- Bob Barks (CALBO) confirmed that he read the HSES notes for reference. Based on his prior experience, the Chair roles are a stepping stone after serving as the Secretary, etcetera. The Chair rotations are typically one-year stents and progressive so by the time “you are done, you will have made a significant commitment”. He noted that it is a big commitment to take a 2 to 3-year term. It may cause some to have second thoughts about taking a Chair role if they believe it will lead to a further commitment.
- Judy Johnson (WHPA Staff – Key SEO) confirmed Bob Barks’ (CALBO) comments. Judy reported that based on her experience, having a Chair role that ends after a certain term forces a succession plan.
- Co-Chair Bob Wiseman (IHACI) reminded that the HSES discussion also clarified that it takes about a year for training in the role so having a second year in the term would make sense.
- Bob Barks (CALBO) added that there should be the chance for someone who went through the Chair roles to move back into the Board of Director role to provide their experience and offer additional value to the organization.
- Co-Chair Bob Wiseman (IHACI) cited the example of someone acting as Secretary for 2 years, and then being qualified for the next level Chair position. He reported that overall that would be a 4-year commitment, but that in many organizations, it takes that long to “really know what is going on”.
- Bob Barks (CALBO) reported that based on his experience, those who went into the Executive Board of the Directors were elected from the sitting Board of Directors. It was usually a 3 to 4-year stint from Sergeant of Arms to Secretary to Vice President to President then to Past President serving the Board with past reference to educate new Board members. “That has worked well in a lot of organizations.” CALBO, ASHRAE, and IHACI are examples of that structure. Bob noted that it allows people to come in at the Director level to gain some experience and knowledge before moving into the more robust positions. It creates transition from one position to another and builds continuity.
- Barbara Hernesman (SynergyNexGen) reported that the HSES meeting also included discussion about finding out if the current EC wants to go forward as the interim Board. She asked what happens if a number of them do not want to go forward.
- Co-Chair Bob Wiseman (IHACI) commented that there is not enough time to do a vote so if a few people did not want to continue on, it should not be a problem except that the full representation of the industry may not be there at first.
- Wendy Worrell (WHPA Staff – InfoPlast) asked if the COA or prior Chairs might be used to fill in Board positions as needed.
- Bob Barks (CALBO) voiced support for using the COA as the nominating committee to aid with the referenced type of emergency situation. He reported that he has been on Boards where the Bylaws had to be rewritten to enable flexibility to find appropriate people to serve. He commented that there needs to be some authority within the Board of Directors to act in that way, such as going to a COA to provide that input.
- Mark Lowry (WHPA Staff – BBI) suggested focusing on the live edits of the Bylaws for further discussion.

Continued Bylaws & Articles of Incorporation Development Discussion

Mark Lowry (WHPA Staff – BBI) reported that he made some updates to the Bylaws reflective of the last HSES meeting discussion.

BYLAWS DEVELOPMENT DISCUSSION

Mark Lowry (WHPA Staff – BBI) facilitated discussion about Bylaws **Article 7: Directors** while Judy Johnson (WHPA Staff – Key SEO) made live edits viewable on WebEx.

In reply to Mark Lowry’s (WHPA Staff – BBI) inquiry, Judy Johnson (WHPA Staff – Key SEO) confirmed that there was discussion in the Chartering Committee about where best to incorporate.



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- Mark Lowry (WHPA Staff – BBI) reported that aside from the optics of being in California, it has been recommended that the best option for incorporation is Illinois due to the flexibility of their laws. He noted that the issue was raised again since the HSES Co-Chairs, Mark Lowry (WHPA Staff – BBI), and Wendy Worrell (WHPA Staff – InfoPlast) had the opportunity to speak with legal counsel directly this morning about it. Mark reported that unless the WHPA Executive Committee (EC) seems to have “grave issue with it” during the December 13, 2017 EC meeting, “we will pursue incorporation in IL instead of CA”. He clarified that given that change, some content might need to be revised. Mark reported that the lawyers are reviewing current content to clarify the impact on needed changes and requirements.

For **Section 7.1**, Mark Lowry (WHPA Staff – BBI) reported that having a range rather than a fixed number of Board members, and leaving the final number up to the Board, addressed both the interim and vacancy issues that may result by making the EC the interim Board of Directors. He noted that the range he put of 11 to 17 is in terms of odd numbers.

- Barbara Hernesman (SynergyNexGen) commented that 11 “is a lot of people for a minimum”.
- Mark Lowry (WHPA Staff – BBI) clarified that there are currently 14 on the EC.
- Judy Johnson (WHPA Staff – Key SEO) reminded that there is some double counting of IOUs on the current EC.
- There was general agreement that the number needs to be odd for tie breaker purposes.
- Bob Barks (CALBO) clarified that it is up to the Board to bring in the number that fits the situation. He indicated that IHACI does this well. For WHPA going forward, he suggested the need for a minimum of two (2) representatives (from each of the four (4) eligible membership categories).
- Per the above suggestions, Judy Johnson (WHPA Staff – Key SEO) reported that she added, “There shall be a minimum of two directors from each of the voting member categories.” She also commented that with the consolidation of IOU seats, the existing EC would be down to 11 members.
- Bob Wiseman (IHACI) agreed that in general it is best to have a smaller group, but noted that not all people can attend all meetings.
- The Chair confirmed that he currently sits on a Board of 15 and finds it a manageable number.

DECISION: There was general agreement to keep a range of 11 to 17 and odd numbers on the Board of Directors, and that, “There shall be a minimum of two (2) from each of the four (4) eligible membership categories.”

Barbara Hernesman (SynergyNexGen) noted that the Boards she has been involved in have a backdoor for funding from out of state. She asked if that is a deciding factor for where to incorporate. She commented that she was unsure if all types of funding would be affected if incorporation was out of state.

- Mark Lowry (WHPA Staff – BBI) clarified that the primary business could be in CA if incorporation was elsewhere.
- Bob Wiseman (IHACI) reported that prior to this morning’s discussion, he thought that it would be better to incorporate in CA since WHPA is focused on CA, but that after hearing the attorney speak this morning, if there is desire to ever move out of CA it could be a problem if incorporation starts in the State. He reported it is much easier to incorporate elsewhere. Bob confirmed that he does not want to lose the opportunity to have a nimble organization nor lose the opportunity to raise funds.
- Barbara Hernesman (SynergyNexGen) noted that in every organization she has been worked for, she has never been limited in working in other states. She voiced her support for incorporating in California even though she knows “it can be a bit of a stumbling block”.

Mark Lowry (WHPA Staff – BBI) noted that **Section 7.2** Corporate Powers is boiler plate language.

Mark Lowry (WHPA Staff – BBI) reported that he added the prior decision – for cycling a third of the Board of Directors every year for the **Section 7.3.1** Terms.

Mark Lowry (WHPA Staff – BBI) reported that **Section 7.3.2** reflects prior conversation about election through nominating committee per the decision the Chair clarified in the opening comments.

- Bob Wiseman (IHACI) noted that the composition of the nominating committee is not specific and asked if it should be.
- The Chair noted that CSLB uses anyone from the Board to be on the nominating committee.
- Mark Lowry (WHPA Staff – BBI) commented that for flexibility, it did not need more detail other than to say the process.

Mark Lowry (WHPA Staff – BBI) overviewed the content for the Vacancies (**Section 7.4.1**) and Removal (**Section 7.4.2**) and noted that it is boiler plate language.



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- Bob Wiseman (IHACI) suggested that removal should be by a two-thirds vote rather than by a majority, so minority opinions are valued as well, as long as those minority members are showing up and representing their membership group in the organization.
- Judy Johnson (WHPA Staff – Key SEO) supported the idea that a majority could easily vote out the minority.
- Bob Barks (CALBO) voiced agreement for the two-thirds removal vote suggestion.
- In reply to Judy Johnson’s (WHPA Staff – Key SEO) inquiry about who the two-thirds is of, Mark Lowry (WHPA Staff – BBI) clarified that it is of those in office.

DECISION: There was general agreement that the reference to “majority” should be struck and replaced with “a minimum of two-thirds of the Directors then in office” as the last portion of the Bylaws Section 7.4.2 for Removal of the Board of Directors.

Mark Lowry (WHPA Staff – BBI) clarified that **Section 7.4.3** reflects that a decision for the two-thirds would have to reflect the current terms of the Directors.

Mark Lowry (WHPA Staff – BBI) clarified that **Section 7.4.4** allows resignation.

Mark Lowry (WHPA Staff – BBI) reported that **Section 7.4.5** clarifies how vacancies prior to normal term would be handled.

- Bob Wiseman (IHACI) commented that the language clarifies the Board is doing the election rather than the membership at large.
- Mark Lowry (WHPA Staff – BBI) suggested that it could be clarified as appointment or it could be noted as special election for the membership to vote.
- Bob Barks (CALBO) reported that this is an example of how to handle a temporary situation to enable flexibility for the Board to do business until the next proper election could be done. He clarified that the meeting of the members must be announced in advance. He reminded that the Bylaws need to indicate that it is an interim position.
- Judy Johnson (WHPA Staff – Key SEO) made live updates to Section 7.4.5 to clarify “...the Board may fill such vacancy by appointing a replacement director as soon as practical for the balance of the vacant term. This new director shall be selected by majority vote of the Board.”
- Bob Wiseman (IHACI) asked if the slot being filled needs to match the membership category left or if it is assumed.
- Mark Lowry (WHPA Staff – BBI) confirmed that it is assumed because of the prior requirement for a minimum of two (2) per category.
- Bob Barks (CALBO) suggested that it becomes a Board decision and that appointment is at their discretion based on a majority vote of the Board.
- Bob Wiseman (IHACI) asked why a unanimous vote is needed if it is less than a quorum.
- Bob Barks (CALBO) reported that if there is no quorum of the Bylaws’ stipulated Board, it would require a supermajority or a consensus of the full Board. He noted that while it can be parsed several different ways, there needs to be enough built-in flexibility for the Board to act. He cautioned that if it is too complex in the Bylaws, there is a danger of being too restrictive.
- Barbara Hernesman (SynergyNexGen) asked how to avoid getting to a point where business cannot be conducted because of a lack of quorum.
- Bob Barks (CALBO) commented that it would need to fall back to the Board in existence at the time.
- Bob Wiseman (IHACI) suggested that the rewritten language was okay, given clarifying content in the second paragraph of Section 7.4.5. He noted that he was unsure where the reference to Section 5211 came from in this context.
- Mark Lowry (WHPA Staff – BBI) confirmed it was boiler plate from CA law.
- Judy Johnson (WHPA Staff – Key SEO) asked if this creates a situation where the vote could not occur during a meeting if the full Board, including those not at the meeting, needs to cast a vote.
- Bob Barks (CALBO) commented that it does not need to be that complicated since it does not have to be at that instance. He clarified that the decision could typically be made by a verbal, texted, or emailed vote to get to the needed point.
- Mark Lowry (WHPA Staff – BBI) suggested having the content state, “...shall be selected by majority vote of the Board then in office.”
- Barbara Hernesman (SynergyNexGen) reported that she looked up CA Section 5211, which specifies a quorum at the meeting, so the needed content was covered.

DECISION: There was general agreement to accept the live revisions to Bylaws Section 7.4.5. content.



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Mark Lowry (WHPA Staff – BBI) reported that **Section 7.5** Regular Meetings clarifies that there needs to be at least one meeting of the Board per year, but noted that it does not have to be in person, and that it follows what WHPA has historically done.

- Barbara Hernesman (SynergyNexGen) asked for confirmation that there could be more than one meeting of the Board and that not all of those meetings would be on the same “annual meeting” topics.
- Mark Lowry (WHPA Staff – BBI) confirmed that the annual meeting would include the financials, etcetera, but that other quarterly meetings would be for regular business and do not need to be specified in the Bylaws.

Mark Lowry (WHPA Staff – BBI) reported that **Section 7.6** Special Meetings can be called by the Chair, Secretary or any other two (2) non-officer Directors.

Mark Lowry (WHPA Staff – BBI) reported that **Section 7.7.1** clarifies how notification should occur based on the content provided.

Mark Lowry (WHPA Staff – BBI) reported that **Section 7.7.2** provides clarification of how far in advance notification needs to be made based on the means of notification.

Mark Lowry (WHPA Staff – BBI) reported that **Section 7.7.3** specifies the notice content needs.

Mark Lowry (WHPA Staff – BBI) reported that **Section 7.8.1** clarifies how meetings can occur electronically. The laws may be more lenient in Illinois versus California, but California does allow for meetings either in person or electronic.

Mark Lowry (WHPA Staff – BBI) reported that **Section 7.9.1** clarifies boiler plate quorum language and indicates that a quorum is the majority of the Directors.

- Bob Wiseman (IHACI) noted that the language clarifies a majority of Directors then in office not a majority present for the vote. He clarified that if there are 11 on the Board and 9 show up to the meeting, then 6 would be the quorum.

Mark Lowry (WHPA Staff – BBI) reported that **Section 7.9.2** clarifies the minimum vote requirements, and noted that they are similar to how WHPA has functioned. In this case, if there are 9 on the Board and 6 are present, the needed quorum is 4 to call a decision of the Board valid.

- Bob Wiseman (IHACI) voiced agreement with that functioning noting that it has historically worked well within WHPA.

Mark Lowry (WHPA Staff – BBI) reported that **Section 7.9.3** is from the boiler plate and that he was unsure how much was driven by California law for the items that need more than a majority of the vote of the Board of Directors at the meeting. He clarified that it specifies the majority of all the Directors then in office.

- Judy Johnson (WHPA Staff – Key SEO) commented that the difference is the specification of the majority of those in the meeting.
- Bob Wiseman (IHACI) suggested that Section 7.9.3 could be removed since it was specified earlier that a two-thirds vote is required.
- Mark Lowry (WHPA Staff – BBI) clarified that the higher two-thirds threshold (as long as it was not illegal) could be reached for these special circumstances in which a Director is personally benefiting and is not “every day stuff”.
- Bob Wiseman (IHACI) agreed, but noted that the language should be matched to reflect the earlier decision to a minimum two-thirds vote.

DECISION: There was general agreement for Bylaws Section 7.9.3 to be updated to reflect a two-thirds vote minimum instead of a majority vote.

Mark Lowry (WHPA Staff – BBI) reported that there were 10 minutes left in the meeting and a lot of sections to cover so the target was to have a clean ending point at the end of Article 7 vetting.

Mark Lowry (WHPA Staff – BBI) reported that **Section 7.10** clarifies that if the Directors are not given notice, they can apply a waiver of that notice. The Section also specifies how to protest.

- Barbara Hernesman (SynergyNexGen) voiced confirmation that the language “looked okay”.
- All on the call voiced their agreement.



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Mark Lowry (WHPA Staff – BBI) reported that the **Section 7.11** Adjournment language was boiler plate.

Mark Lowry (WHPA Staff – BBI) reported that **Section 7.13** focused on the Conduct of Meetings. He noted that the template talks about having a min of three (3) officers: a Chair or President, Secretary, and Treasurer. He noted that having both a Chair and President can be confusing and suggested that it should be Chair and Vice Chair if someone needs to step up should a Chair be unavailable. He asked if there should be more than three (3) Officers listed.

- Barbara Hernesman (SynergyNexGen) voiced support for the idea of having a Chair and Vice Chair, Secretary and Treasurer.
- Bob Wiseman (IHACI) suggested that leaving it at three (3) Officers and giving the Board flexibility makes sense. He also voiced agreement to leaving the nomenclature as Chair rather than President.
- There was general agreement to use the term “Chairperson”.

ACTION: Mark Lowry (WHPA Staff – BBI) to clean up Bylaw language to reflect the Officers of the Corporation as Chairperson, Vice Chairperson (instead of President), Secretary, and Treasurer.

Mark Lowry (WHPA Staff – BBI) reported that **Section 7.14** Action Without Meeting reflects what is in California, which is different in operation than what WHPA currently “enjoys”. It specifies that for an electronic vote to be binding it has to be unanimous.

- Bob Barks (CALBO) noted that he read it as the ability of the Board to take an action in a fashion other than a meeting. In that case, the action could be taken by written ascension of all of the Board members such as a written description to pay a bill with all responding in writing by yay or nay of the written responses.
- Mark Lowry (WHPA Staff – BBI) clarified that the template notes specify that the Board may act without a meeting but that it needs unanimous agreement.
- Bob Barks (CALBO) noted that the higher requirement would make sense since there would not be the opportunity for discussion that would occur at a meeting.
- Mark Lowry (WHPA Staff – BBI) reported that one consideration is to have a body other than the Board review Committee work products, etcetera.
- Judy Johnson (WHPA Staff – Key SEO) asked if the template allows for proxies.
- Mark Lowry (WHPA Staff – BBI) replied that it does not include proxies at least at the Board level.

ACTION: Mark Lowry (WHPA Staff – BBI) to get legal clarification of how to handle Bylaws Section 7.14: Action Without Meeting and proxies.

DECISION: There was general agreement by those on the call to extend the meeting.

Mark Lowry (WHPA Staff – BBI) overviewed **Section 7.15** for Fees and Compensation of Directors. No comments were made.

Mark Lowry (WHPA Staff – BBI) overviewed **Section 7.16** for Non-Liability of Directors.

- Bob Barks (CALBO) noted that it is standard and will be reinforced by the Federal taxes that need to be filed.

Mark Lowry (WHPA Staff – BBI) reported that the remaining Bylaws’ sections discuss Officers in boiler plate language. He asked the Chartering Committee members to review Section 8 and submit any questions or comments while he reviews content with legal counsel.

- Bob Wiseman (IHACI) suggested that the Chartering Committee review the final sections at Friday’s (December 15, 2017) HSES Committee meeting.

ACTION: Wendy Worrell (WHPA Staff – InfoPlast) to forward the December 15, 2017 HSES meeting notice to the Chartering Committee members not on the HSES Committee so the final Bylaws’ sections (8+) can be properly vetted.

ARTICLES OF INCORPORATION DEVELOPMENT DISCUSSION

This was not discussed due to time limitations.

Next Steps



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Per Chair agreement, the full Chartering Committee was invited to the December 15th WHPA HSES Committee meeting to continue discussion of the Bylaws, particularly Sections 8 on.

No further Chartering Committee meetings were planned at this point pending approval of the draft Bylaws and Articles of Incorporation by the WHPA Executive Committee.

Adjournment

As the Chair had to drop off the call for another meeting, there was general agreement by those on the call to adjourn the meeting at 5:12 p.m. PST.

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Summary of Action Items and Key Decisions (from above)

ACTION ITEMS

- **ACTION:** Mark Lowry (WHPA Staff – BBI) to clean up Bylaw language to reflect the Officers of the Corporation as Chairperson, Vice Chairperson (instead of President), Secretary, and Treasurer. (IN PROCESS)
- **ACTION:** Mark Lowry (WHPA Staff – BBI) to get legal clarification of how to handle Bylaws Section 7.14: Action Without Meeting and proxies. (DONE)
- **ACTION:** Wendy Worrell (WHPA Staff – InfoPlast) to forward the December 15, 2017 HSES meeting notice to the Chartering Committee members not on the HSES Committee so the final Bylaws’ sections (8+) can be properly vetted. (DONE)

KEY DECISIONS

- **DECISION:** There was general agreement to keep a range of 11 to 17 and odd numbers on the Board of Directors, and that, “There shall be a minimum of 2 from each of the four eligible membership categories.”
- **DECISION:** There was general agreement that the reference to “majority” should be struck and replaced with “a minimum of two-thirds of the Directors then in office” as the last portion of the Bylaws Section 7.4.2 for Removal of the Board of Directors.
- **DECISION:** There was general agreement to accept the live revisions to Bylaws Section 7.4.5. content.
- **DECISION:** There was general agreement for Bylaws Section 7.9.3 to be updated to reflect a two-thirds vote minimum instead of a majority vote.
- **DECISION:** There was general agreement by those on the call to extend the meeting.