MINNESOTA ENVIRONMENTAL QUALITY BOARD
MEETING MINUTES
Thursday, June 15, 2006
State Office Building, Hearing Room 5

EQB Members Present: Dana Badgerow, Lt. Gov. Carol Molnau, Brenda Elmer, Gene Hugoson, Susan McCarville, Gene Merriam, Jonathon Bloomberg, Glenn Wilson, Paige Winebarger

EQB Members Absent: Dianne Mandernach, Jerome Deal, Sheryl Corrigan

I. Adoption of the proposed Agenda for the June 15, 2006 meeting and Minutes from the April 26, 2006 Environmental Quality Board Meeting

Member Elmer moved that the Minutes be adopted, Lt. Gov. Molnau seconded. The motion was approved on a voice vote.

II. Executive Director's Report:

The Chair, Dana Badgerow, acknowledged that Bob Schroeder has moved on to other areas and that she had been appointed by the governor to replace him.

Michael Sullivan reported that there were two handouts representing the sample resolution and order adopting rules. There were some erroneous dates in the items, but the versions presented at the meeting were correct.

Mr. Sullivan introduced and welcomed Princesa VanBuren, who took the place of Sarah Bertelsen. Ms. VanBuren will be working on water and other issues, as the Board may assign her. Ms. VanBuren comes to the EQB from the University of Minnesota, where they expressed that we were getting one of their very best people.

III. Legal Counsel Report:

Chair Badgerow introduced Rick Cool, who was substituting for Bob Roche. Mr. Cool is with the PCA as an environmental lawyer.

Legal Counsel: Mr. Cool stated that he's actually with the Attorney General's Office and his main client is the Pollution Control Agency. He reported on the case of Citizens Advocating Responsible Development (CARD) vs. Kandiyohi County. This was a case briefed in the spring of 2005 and argued in 2005. The Minnesota Supreme Court rendered a decision in the second week of May. EQB was involved in the case as an *amicus* party and filed a brief on a couple of legal issues that were involved.

As background, the case was the result of a local citizen group in Kandiyohi County challenging the permitting of two new gravel mining projects by the county for Dunnock

Brothers, Inc. The county made the determination not to do an EIS, CARD challenged that in district court, and the district court ordered an EIS. That decision was appealed to the Minnesota Court of Appeals, where it was overturned and determined that an EIS was not needed. CARD sought review by the Minnesota Supreme Court. The primary issue in the case was how do responsible government units evaluate the term "cumulative potential effects" in determining the need for an EIS. Cumulative potential effects is a term in EQB rule 4410.1700 on deciding the need for an EIS. EQB's *amicus* brief argued that the definition of cumulative impacts should be used to interpret the phrase "cumulative potential effects." That argument was supported by CARD and others, including the Attorney General's office. The second argument that EQB made as a friend of the court was that the court of appeals erred in ruling that if no single project has the potential for significant effects then there can be no cumulative significant impact. That was challenged also. The Supreme Court rejected the initial argument that cumulative impact should be used to define cumulative potential effects. They looked primarily at how those terms or phrases are used in the project-specific EIS determination criteria under 4410.1700 and compared that with the criteria that are used to decide whether to do a generic EIS, under 4410.3800. As the Court compared the context under which those terms were used, it determined that the EQB and the parties could not import the definition of cumulative impacts into the cumulative potential effect criteria of 4410.1700. The *amicus* parties, including EQB, were successful in that the Supreme Court agreed that the court of appeals and the county's decision that you had to find a significant impact of a single project before you could do a cumulative impact analysis was not proper. Subsequently the case was remanded back to the county for a re-review of their EIS determination. That is the status of the case at this point.

Mr. Cool pointed out three issues that the Supreme Court addressed that have some affect on EQB's decisions in Phase Two rule-making. After the Court decided that the cumulative impact definition could not be used in deciding on a project-specific EIS, it went beyond that and defined cumulative potential effects as the term, and how it's implied, is more limited in terms of its geography and timing, as compared to the term cumulative impact. In terms of geography, the Court indicated that it should be limited to projects in the surrounding areas that might reasonably be expected to affect the same natural resources as the proposed project. In this case, they talked about a nearby lake that should be evaluated. In terms of the timing, the Supreme Court determined that the inquiry for project-specific EIS's, and potential future projects, has to be more definitive than what is viewed under cumulative impacts and that there has to be an actual plan for the project or some type of basis of expectation laid out, some evidence that this future project is going to occur.

The second issue that the Court addressed is one that's been kicking around in both federal and state courts for some time, and that is how do RGUs factor in mitigation in deciding whether to do an EAW or an EIS. What has been discussed in state and federal cases is that mitigation cannot be a mere statement of good intention. It has to be something more definitive. The Supreme Court had not ruled on this particular issue; the Minnesota court of appeals had but the Supreme Court basically adopted the court of

appeals' criteria and stated that there had to be some certainty to the mitigation. Mr. Downing will address that issue as he talks about the Phase II ruling.

Generally, RGUs review environmental effects in terms of negative environmental effects. The Supreme Court, in the review of a history of the rules, found that at one point EQB had eliminated the term "adverse" from one of the rules. So it subsequently said in its decision that all effects have to be evaluated, negative or otherwise, in deciding whether to do an EIS. This curious determination seemed consistent in how they were applying the rule history. The court had subsequently remanded back to Kandiyohi County for a new EIS determination.

A copy of the case had been circulated at an earlier date and copies could be provided if needed.

Mr. Sullivan questioned the last point by stating that the fundamental standard still goes to the basic definition that focuses on negative impacts in terms of the need to talk about both. When you go other places in the process, it relates to the negative potential for significant impact.

Mr. Cool stated that he thought that was a reasonable view of what an RGU would look at, but the language of the decision is that all effects should be evaluated and considered in making the ultimate decision on whether to proceed with an EIS.

There were no further questions or discussion.

IV. Adoption of "Phase 1" Amendments to Rules Governing the Environmental Review Program:

The Chair wanted to bring Phase One Rulemaking to a conclusion. Mr. Downing briefed the board.

Mr. Downing, a member of the EQB Environmental Review Program staff, stated that materials handed out relative to this item included a report from the administrative law judge, the rules as proposed for adoption, sample resolution that adopted the rules, and an order adopting the rules. Substitute versions of the sample and order are available correcting two erroneous dates.

As a recap, in 2004, the Board directed staff to conduct a study of environmental review that focused primarily on the mandatory EAW thresholds. That process resulted in recommendations for changes in a number of thresholds. Staff also identified a number of procedural problems with existing rules. In December 2004, the Board directed staff to issue a request for public comments. At that time, there were about 50 possible changes to the rules. The request for comments was published in February 2005. After the comment period, the Board considered the comments and the list of 50 potential revisions, and the list was divided into two parts, titled Phase One and Phase Two. Phase One items were pieces the Board wanted to proceed to rule-making on and thought we

were in a position to go into rule-making. Rule language was developed for Phase One amendments. There were 39 pieces of rules that were proposed to be amended in that part. After reviewing that language during meetings in December 2005, the Board authorized the formal rule-making process. Staff issued dual notice of rule-making in an effort to avoid having a public hearing. EQB received 25 requests for the hearing and the hearing was called before ALJ Steve Mihalchek. The hearing was held on March 30, 2006. The hearing was not controversial and only a few people attended. In total there were seven sets of comments and only a few pieces of the rules turned out to be controversial. There were some wording suggestions made on other parts.

At the April Board meeting, staff discussed a proposal to withdraw three subparts, partly due to issues that had arisen in the comments, but more because of a Court of Appeals case involving an AUAR issue where the Appeals Court set out a rather unexpected finding about the meaning of the boundary of the AUAR; that issue related to two proposed changes that were intended for the AUAR process. Because of the short time that staff had to make our response to the ALJ, it was felt best to withdraw those changes to reconsider more fully in light of that Appeals Court case.

In addition to withdrawing those three amendments, the letter to the ALJ recommended wording changes in several other rule parts. Those changes are reflected in the rule draft included in the Board packet. The version of the rules presented was prepared by the Revisor's Office to show only the modifications by strike-out and underlining from the rules as were noticed for hearing.

The ALJ approved all of the modifications staff suggested and approved the rules in general, with those modifications. The ALJ recommended in his report that the rules be adopted. He found that the Board has statutory authority to make the rule amendments and has shown that the rule amendments are needed and reasonable.

The sample resolution would approve the rules, as shown on the draft with the modifications indicated, and would adopt them and authorize the Chair to sign the order adopting the rules. If the Board passes the sample resolution and adopts the rules, there are a few logistical steps that remain to be done. The Governor's Office has to make a final review, the Revisor's Office, and the Office of Administrative Hearings have to take some procedural steps. Finally, the rules have to be published in the State Register. If the Board adopts the rules today, we anticipate that they would go into effect sometime in August.

Mr. Downing asked for questions from the Board. There were no questions and the Chair asked for a motion to adopt the resolution as presented in the packet. Lt. Governor Molnau moved and Ms. Winebarger seconded the motion. A roll call vote was conducted. There were eight in favor, none opposed.

The resolution was adopted and the Chair indicated she would be signing the order. The Chair thanked participants for their effort in making the rule revisions.

V. Discussion of Proposed "Phase 2" amendments to Rules Governing the Environmental Review Program; Authorization to Publish a Request for Comment

The Chair asked Mr. Downing to address the issues presented in Phase Two.

Mr. Downing noted that the material included in member packets regarding Phase Two included a list of topics that staff is proposing to include in Phase Two rule-making, and a sample resolution, that, if the Board chose, they could use to authorize the EQB to publish the Request for Comments to begin the first official step in the rule-making process.

Phase Two consists of ideas for rule amendments that come from several sources. They include many, but not all, of the items that were set aside at the time Phase One and Two were agreed upon last summer. Most notable of the items carried over is the proposal for new mandatory categories for projects in shoreland areas. At an earlier meeting, Russ Schultz, of the DNR staff, presented the DNRs suggestion for what those categories would be. Staff is intending that we should include that.

Several other topics were included in Phase One but were withdrawn, including the definition of the term "sewered areas," and the two procedural additions to the AUAR process that were withdrawn, suggesting that we proceed with those amendments as we had originally proposed them. After reflecting on the decision of the appeals court case mentioned before the rule amendments can go forward with some additional language added to them.

Recent events have pointed out several other parts of the rules that could be clarified. Mr. Cool identified a number of them in his report on the CARD case. Mr. Downing directed the Board's attention to the proposed list of topics for Phase Two rule-making. The first item is new, mandatory categories for the shoreland categories, based upon the DNR proposal that Mr. Schultz explained. Secondly, several changes to the AUAR process; first a clarification of the meaning of the AUAR boundary, as set by the responsible governmental unit. Staff would state in the rules that setting the boundary of an AUAR is not intended to limit the scope of analysis with respect to sources of impacts outside that boundary or impacts that occur outside that boundary by projects within the boundary. Also, staff would re-propose what is referred to as the "dropout provision," the provision by which a small project that is not over the mandatory threshold could be removed from the AUAR process once it's begun, if certain additional procedures are followed. Staff also re-proposes the process for scoping the development scenario for an AUAR in those cases where the review is intended to cover a specific project that is either over an EIS threshold by itself or comprises of at least 50% of the AUAR area. These would be as proposed previously in Phase One. Additionally, in conjunction with the dropout provision, the rules would state that when an AUAR is ordered and the boundary is set, that the order by the responsible governmental unit does not imply that every project within the AUAR boundary, by itself, would require environment review. In Phase One comments about the so-called dropout provision, some parties argued that no project should be allowed to be dropped out of an AUAR because once an AUAR has

been ordered it implied that everything within that boundary required a high level of review. EQB staff and our attorney disagreed with that interpretation, and believe that to clarify that in Phase Two language to that effect should be added along with the dropout provision and the scenario scoping provision. Staff would be adding several new ideas to the AUAR process that were not included in Phase One.

Member. McCarville asked for an example of a project that might be dropped out of an AUAR review.

Mr. Downing stated there were a number of examples where this is happening with an AUAR being done for a relatively large area. The process takes a number of months and is sometimes more extended because of unexpected things that turn up in the analysis. There are cases of property owners, who own a relatively small parcel in the area and who were originally willing to go along because they didn't have any development plans or thought that the AUAR would be done before they scheduled their development, had found that they wanted to move faster than the AUAR. Their projects are small enough so that it wouldn't require a mandatory EAW. It could be any kind of project, but probably a residential or small commercial project that would be less than the mandatory EAW threshold that applied in the community.

Mr. Sullivan asked if "timing issues" are in reference to the timing of the approval of the AUAR.

Mr. Downing clarified that he's referring to the normal city or county approval process that involves a certain period of time and that the process can't give environmental approval until the environmental review is done. If they are covered by the AUAR they have to wait for the AUAR to be done. So if projects can be dropped out from the AUAR and not have to go through their own review, the city could proceed with the approval process at an earlier date and the project would be able to move on into construction much more quickly than waiting for the AUAR to be done.

Mr. Downing stated that item three is "cumulative impacts." The topic of cumulative impacts or cumulative potential effects was deferred to Phase Two because of pending court cases. Decisions have been rendered and staff believe it's time to make appropriate revisions to the rules with respect to the cumulative topic.. Staff proposes to add a definition based on the Supreme Court opinion about what cumulative potential effects means. Additionally, staff may want to revise the wording of the criteria, which now reads "cumulative potential effects of related or anticipated future projects." Staff would like to incorporate into the ideas expressed by the Supreme Court to make it as clear as possible what the obligation of the RGU is in respect to the project for which the EAW has been prepared and deciding if there is a need to go on and do an EIS.

Commissioner Merriam wondered if staff wanted to revise the rules in reaction to the Court's decisions because staff liked what was said and want to codify it or if staff didn't like what they said and staff want to change it.

Mr. Downing stated that it would be because staff liked what was said.

Commissioner Merriam asked why EQB wanted to do that.

Mr. Downing stated that, although the Supreme Court decision establishes guidance for applying the term, staff feels that modifications should be made in the rules themselves that reflect the meaning and interpretation that the Supreme Court provided because RGUs and other will be reading the rules and not necessarily the Supreme Court case. It would be a matter of convenience.

Commissioner Merriam wondered if that was to put in one comprehensive place all that it is said about it.

Mr. Downing agreed.

Commissioner Merriam felt that it would be good to do that, but the rules, as written, are virtually inscrutable. In order to accomplish the objective of putting into rule a document that people could pick up and understand that it would make sense, but he felt we are far short of that.

Mr. Sullivan explained that another way to look at it is recognizing the shortcoming and trying to make it more clear than it is now. In terms of the court case and debate and decisions, there was confusion as to what the EQB meant in the use of those two terms. The Court straightened that out and staff feels it makes sense to align the language in the rules to make that distinction clearer.

Member Winebarger asked if staff could address the inscrutability and write the rules in a way that they will be understandable rather than just fixing a couple of phrases here and there.

Mr. Sullivan replied that it was something staff could try to do. He explained that what goes on with rules is that you develop rules and think you're being clear. Courts decide things and change things. Use and other factors come into play. Construction of language, as recommended by counsels in various stages of the process, make changes, and, ultimately you end up with a product. The "inscrutability" of the rules is as much a function of the process and form that the legal system uses and requires as it is anything staff is likely to be able to fix. As to the question of whether it makes sense to try, certainly.

Member Bloomberg wondered why EQB would choose to adopt the interpretation that was given by the Supreme Court and is at odds with the position EQB took as an *amicus* rather than codifying the view that we advocated in the litigation.

Mr. Sullivan responded that EQB made the point, and the Court rejected that argument and said "you've got that wrong," because, even though guidance documents leaned the other way, the language is plain on its face. The alternative to accepting the Court's

ruling would be to go back and change the statute. When staff looked at it that way, it made as much sense as anything to say it's cleared up, go with it.

Member Bloomberg reiterated by asking if the Court was interpreting the statutes or the EQB rules?

Mr. Sullivan responded that it was statutes and rules.

Mr. Cool stated that his reading of the case is that the Court was interpreting the EQB's rules and the two phrases. Member Bloomberg is correct in stating that if this Board chose to follow its original position that it held in the *amicus* brief the definitions could be altered within the rule to accommodate that. In his experience working with the MPCA, the application of the cumulative impact concept is a line drawing exercise answering the question of how far to go in looking at cumulative impacts. The Supreme Court, in trying to look at two different parts of the rules, and reading them in context, said EQB must have meant something different about line drawing, and that when the project is specific the focus on geography and timing is more narrow than for the broader generic EISs. The Board is free to go back into the rules and give whatever interpretation it wants to give. It can adopt and embrace the Supreme Court's view, or it can choose a different view.

Commissioner Merriam followed up on Member Bloomberg's point that it should be clear that the Court wasn't describing what "ought to be" but was describing "what is." Inasmuch as when the Board came in with the *amicus* brief it described what we thought ought to be the interpretation of what is, not because of the Board's judicial interpretation, but because of what we thought ought to be. Commissioner Merriam felt it would be incongruous since, having gone on record with "what ought to be," and given the opportunity to change the rule, why describe what the Court interpreted our rules to say rather than what we think they ought to say?

Mr. Downing clarified Mr. Cool's point as being key. For years, the issue with cumulative impacts or cumulative potential effects has been the "line drawing guidance:" how far do you have to go, what is related to what, where does the analysis stop? EQB was never comfortable trying to add guidance to the rules for where you draw those lines. And it's not only a problem we had; if you look at the rules and guidance from other states with similar programs, or the federal government, nobody drew well defined lines. It was not expected that the Supreme Court would draw lines for us in this case, but that's what they've done. Staff believes that the lines they drew in terms of geography and timing (with respect to the future), which Mr. Cool explained in describing the case, seemed like reasonable places to draw those lines. Staff is proposing a policy choice for the Board in suggesting that it follow the lead of the Supreme Court and draw the lines in our rules for how other projects are looked at in relation to the project in question. Staff thinks there is good language suggested by the Supreme Court—better than anything anyone else has suggested.

Mr. Downing stated that it's the Board's choice to accept or reject the Supreme Court language. If it rejects the proposed language, then the Board will have to develop those lines. If the rules are changed to be broader than the Supreme Court's suggestion, it will take quite a lot of effort to figure out where to put those lines instead.

Commissioner Merriam stated that he didn't remember where he came down on the substantive issue, but he did feel that it didn't make sense for the Board to file the *amicus* brief, that he and Commissioner Hugoson had opposed that. Their feeling was that if it was a matter of clarifying the rules, just do that instead of filing the *amicus* brief. He stated he's not as concerned about where the Board ends up drawing the lines, but he felt it needs to go there deliberately and carefully and as good public policy and not because the Supreme Court artfully chose the words to establish the lines someplace that may or may not reflect where the Board wants to be. He explained that it's not a matter of constitutional law, it's a matter of interpreting the previously inscrutable words.

Mr. Sullivan felt that one way to do that is to note what the Court has said and ask for input on what other place you might draw that line. If the Board chooses to go forward and adopt the resolution proposed today, it doesn't prohibit the Board from crafting specific language and going back and making numerous modifications at points along the way.

The Chair asked if by including it in the resolution today, saying that the Board wants to proceed with rule making on this particular issue, would we be casting in concrete the position that this Board is taking on that issue or leaving that open? Might we still have this debate?

Mr. Sullivan said that the debate could still be held, the Board would be soliciting comments on the broad topics that the Board is giving notice that it intends to look at and include in Phase Two rule-making. As the Board receives that information, different views, and drafts then the public can participate and the Board can debate it.

The Chair stated that she's confused and wasn't on the Board when the *amicus* brief was authorized. She wants to leave options open in terms of the Board's position on that rule, but did believe, given the debate and level of energy around the issue, that it is something that the Board should proceed to clarify.

Mr. Downing proceeded with item four, "other miscellaneous revisions." The first sub-item is the definition of sewered area. As indicated earlier, it is left over from Phase One and is one of the three parts previously withdrawn. Originally it was thought this would be a clarification in the rule of the Board's intent stated in the SONAR in 1982, when the Board indicated that a group septic tank system serving an entire community, and owned by the homeowners collectively, should be considered as a sewered area. In the hearing process, the Builders Association of the Twin Cities asked why ownership should make a difference and why it would only be limited to those where the homeowners collectively owned the system. If you had the same physical system owned by a third party why should it make any difference> EQB also learned, late in the rule-making process, that

there were concerns because our definition of sewered area was not consistent with the definition of the same term used in the DNR shoreland rules. As a consequence of those things, it was decided to withdraw it and do more work on it in Phase Two. The issue has become larger than just the Board trying to clarify what was meant back in 1982. Now the question really is whether group septic type systems of any sort be considered sewered areas, and, if so, which ones, and does ownership make any difference.

Next is clarification of the definition of the term "project." This item and the following one on the petition process are items that arose recently since the rule-making hearing on Phase One. This is an example of how, although the rules have been in effect in their current form for 25 years, new things keep coming up. A citizens petition was filed regarding a re-zoning action in a certain county. In dealing with that, Mr. Roche indicated that although he agreed with EQB interpretation of the rules, he was concerned that the current wording was not what it should be if he was going to have to defend the interpretation in court. The EQB expected to be sued about its handling of that particular petition and these issues arose in planning to deal for that. EQB was not sued but has identified a couple of places where staff thinks the actual wording of the rule needs to be strengthened in order to support long-standing interpretation. The definition in question has to do with EQB believing that environmental review does not apply to quasi-legislative governmental actions, such as planning, zoning, and other types of planning activities. This includes planning by state agencies as well as local units of government. The Board and staff have always maintained that interpretation since the program was founded. But Mr. Roche indicated that the language in the rules themselves could be shored up somewhat.

In that same petition, the EQB's standard procedure for dealing with what it considers to be an incomplete petition was questioned. If a petition is incomplete in some respect, it is always sent back to the petitioner's representative with a cover letter explaining what is wrong with the petition and how to fix it and indicate that the petitioners have the right to resubmit if they can make the changes. That process was challenged in this case. It didn't become a legal matter, but Mr. Roche indicated that our rules should specify our procedure for acting when a petition in not complete. The rules tell you what to do if a petition is complete but not what to do if it's not complete. Associated with that, the issue arose about whether or not evidence can be filed by reference. In this petition, most evidence was a list of internet addresses where various documents were to be found. EQB staff believe, in consultation with Mr. Roche, that material evidence has to physically accompany the petition. Staff would like to add rules to strengthen that interpretation.

Two collateral revisions are needed as a result of the Supreme Court decision in the CARD case, the first being how certain mitigation needs to be in order to be taken into account by the RGU in determining the need for an EIS. The court decision uses two different terms in two different places. In one place, the Court indicated mitigation need only be "reasonably expected" to be applied, which is the understanding EQB staff have had. In another place, the term "certain" is used in applying to mitigation. Staff are concerned that people could latch on to their use of the term "certain" and argue that

mitigation always needs to be certain in order to be considered. To head that off, staff would like to make a clarification in the rules to shore up the "reasonably expected" interpretation.

Regarding the point Mr. Cool explained about whether impacts had to be adverse to be taken into account, staff believe that they should be adverse, and that is the standard interpretation that has been used. Since the court has indicated that it may not have to be adverse, staff would now like to make that clarification to continue dealing with adverse impacts in deciding whether to do an environmental review.

Member Winebarger asked in regard to the definition of "project," and that staff has always believed that the ER process does not apply to quasi-legislative governmental actions. Why not?

Mr. Downing replied that there are in the rules a list of exemptions for governmental actions, including certain things like enactments of the legislature, executive orders of the governor, and several other actions. It does not list everything. It does not list conditional use permits or other zoning actions. They appear to be of the same nature but are not on the list. What staff would like to do is add those items to the list of exemptions as a way of dealing with them.

Considering the statement of need and reasonableness language from 1982, when the current version of the rules were adopted, it's clear there that the Board's intent was to not cover quasi-legislative actions. What they said was that if you have a zoning action, although that has consequences for what might eventually be built, before the actual projects—the things that actually directly affect the environment—are built, there is another layer of governmental decisions that need to be made, such as conditional use permits or plat approvals or state permits, etc. The SONAR clearly states that it was the Board's belief that it is at that level of decision where environmental review should take place and not at the earlier stage of the quasi-legislative actions.

Mr. Sullivan added that Mr. Downing's comments went back to the common idea the Board had about what has been done in the past and what other Boards have done in the past. The Board has the authority to look at a question like that and say they want to include those things. EQB staff response to this point has been based on the statement of need and reasonableness as an historical document and our best interpretation of how that's evolved over time.

The Chair reiterated that the Board is not foreclosing the debate on the expansion of the definition by agreeing today to bring these topics up for further rule-making process.

The Chair asked if there was any member of the audience who wished to testify on this matter. Seeing no one who wished to speak, the Chair asked for a motion to adopt the resolution. Member Bloomberg moved the motion; Member McCarville seconded the motion.

Commissioner Merriam asked for clarification on the consequences of adopting this resolution and moving forward with the recommendations.

Mr. Bloomberg suggested that the Board is legally obligated to remain open to other suggestions as it goes through rule-making and must be open to public comment and the possibility that the rules will change, be modified, or withdrawn.

The Chair indicated that it was in the last whereas clause that it says that "EQB staff has prepared a list of potential rule amendments," and the Board is moving forward simply to Request Comments on the proposed topics. The resolution is clear that these are staff recommendations and the Board is not giving up any right to suggest the direction that the rules should take.

The roll was called. The vote was seven in favor with none opposed.

There being no further business, the meeting was adjourned.