

D R A F T

Meeting of the Professional Surveying Committee of the Board of Licensure for Professional Engineers & Surveyors held on June 3, 2004 at the Marriot Pyramid, Albuquerque, NM.

Members Present: Fred Sanchez, PS  
Gilbert Chavez, PS  
Charles Atwell, Public Member

Members Absent: David W. Marble, PE/PS

Others Present: Elena Garcia, Executive Director  
Lenore Armijo, PS  
Glen w. Thurow, NMPS, Ed. Foundation  
Marshall Lindeen, Applicant  
Andrew J. DeSalvo

1. **CONVENE/ROLL CALL/INTRODUCTION OF GUESTS**

Chair Chavez convened the meeting at approximately 1:10 p.m.

2. **APPROVAL OF THE AGENDA**

It was moved by Mr. Atwell, seconded by Mr. Sanchez and unanimously,

**VOTED:** To approve the agenda as presented.

3. **APPROVAL OF THE MINUTES**

It was moved by Mr. Sanchez, seconded by Mr. Atwell and unanimously

**VOTED:** To approve the minutes of the April 22, 2004 as amended on page 1, item 4.3, last sentence “not” should be “no”; on page 4, at the top of the page “Marble” should be “Atwell”.

4. **NEW BUSINESS**

**4.1 Andrew DeSalvo – Re: Qualifications for PS License – 1:15 a.m.** – Mr. Sanchez indicated that he had read the submittal dated May 28, 2004 by Mr. DeSalvo and inquired as to what exactly the Committee was being asked to do. If it is something that is not within the Professional Surveying Committee’s capacity to grant, he would not like to spend too much time on it. Mrs. Garcia indicated that Mr. DeSalvo requested a hearing before the Committee. He is interested in becoming a licensed professional surveyor in New Mexico. She stated she went over the licensing requirements in the statutes and rules with Mr. DeSalvo, and he is aware of them. However, he believes he has information that the Committee may consider; and so he is here in that capacity. Mr. Atwell asked if a formal application has been made. Mrs. Garcia indicated that he did not make a formal application.

Chair Chavez yielded the floor to Mr. DeSalvo. Mr. DeSalvo stated that Mr. Sanchez had posed an astute question because he is not petitioning the board or attempting to move the Board to action at that time which was indicated by the absence of his formal application. He stated that the mechanism does not appear to exist under the law and the regulations whereby an interested party can be recognized to practice in the profession. The recent circumstances which precipitated his being before the Board pertain to an application for federal funding under the Workforce Investment Act to take the courses necessary leading to an internship and a degree in the profession. A mechanism also does not appear to exist whereby he can avail himself under the public policy initiative at the state and federal level of federal funding to take the courses leading

to an internship and to a degree to allow him to practice. He is asking the board if there is, in their view, a mechanism considering the statements of detail and any other information he could provide whereby he could progress in the practice of the profession.

Mr. Sanchez responded that New Mexico has a very clear direction under the existing Engineering and Surveying Practice Act as to what the Board can do. The board does not have a choice in some of these matters. The Board has very clear direction from the laws it operates under. Mr. DeSalvo indicated that his point was well taken. Mr. DeSalvo indicated he had come to the same conclusion as Mr. Sanchez did. However, he thought the board might find interesting a very brief synopsis of his activities relating to meeting the academic requirements. He sent his transcript to NMSU. He has 130 credits from an accredited institution including some civil engineering credits. NMSU will only accept 33 of 130 credits. The federal funding will only present \$7,000 leading to the enrollment in a program, an internship, and a degree. He understands the Board has the authority to accept on its face his degree with a stroke of the pen and require that he take 18 academic credits. It is unclear to him at that point if he would be qualified as an intern or a surveyor at that time. There appears that there is some opinion which indicates that the board can consider his case respectfully presented; and then provide him with an indication as to whether or not he can go forward with his application for funding. The application for funding sits in the absence of an assessment as to whether or not the \$7,000 will pay for enough credits to qualify him as an intern in leading to the professional certification. This, he indicated, was the summary for appearing before the board.

Mr. Atwell asked if without the \$7,000 he could not achieve what he is trying to achieve. Mr. DeSalvo responded in the affirmative.

Mr. DeSalvo further commented on his written submittal regarding the number of individuals obtaining licenses a year in New Mexico and added that he believes that individuals as himself should be able to go forward and obtain a license in order to meet the standards in a profession that is critical in certain aspects of economic development in the State.

Mr. Chavez indicated that from the information presented, it appears he has a degree, but without an application, it is difficult to determine in what field or what credits may be related to surveying or if it can be considered under the board-approved four-year related degree requirement (18 semester hours in surveying). He also stated that it appeared Mr. DeSalvo's may have some experience in construction staking.

Mr. DeSalvo provided an explanation of his experience under the supervision of a business man practicing in the profession. Mr. DeSalvo stated he presented information to the Office of the Attorney General regarding what appears to be practice in violation of the Act. He indicated the business man professed to be practicing surveying under the Act. Mr. DeSalvo now believes he may have received experience which the Board may not consider valid experience. He believes that that error should not cause him to be penalized.

It was moved by Mr. Atwell, seconded by Mr. Sanchez and unanimously,

**VOTED:** that a formal application be filed with the board so the committee can take normal procedures in addressing it.

Mrs. Garcia advised Mr. DeSalvo that his allegations against an individual practicing without a license should be filed with the Board through its formal complaint procedures. Mr. DeSalvo continued to report on problems in the profession.

Ms. Garcia exited the meeting room.

**4.2 Marshall W. Lindeen – RE: Qualifications for PS License – 1:30 a.m.** – Mr. Lindeen provided some handouts and indicated that he made an application by comity from the states of Kansas, Colorado and Wyoming. The Board had rejected his application because at the time that he was first licensed in 1991 in Colorado, his education did not appear to meet the requirements in New Mexico at that time. Chair Chavez asked if he had additional education that may not have been reviewed. Mr. Sanchez stated that one could not take 45 semester hours today and try to qualify back to 1991. He would have had to meet them in 1991. Mr. Lindeen stated that he believed he did, but he did not have much information from the school. Mr. Chavez indicated that he was welcome to submit additional education so that staff could review it to see if it met the 45 semester hours. The transcript from the school did not include the hours. The committee indicated it will reconsider the submittal and let him know if it can be approved.

**4.3 Review of the NCEES National Surveying Examination Results** – Mr. Chavez indicated that the results were disturbing since only one out of five candidates passed the exam (20%). He stated that he had spoken to Ms. Garcia and that she had indicated that the passing rates are usually from 80 to 100 %. She had called NCEES to see if there were any noted discrepancies in the process or any factors that may have contributed to the results. NCEES had responded that there were no noted discrepancies. Mr. Sanchez indicated that he is not disputing the scores as reported; however, he also is concerned because the four-year degree is geared to preparing candidates for the licensing examinations. The Board approved the scores for release and Ms. Garcia will follow-up with the school.

**4.4 Educational Initiative – Spearheaded by Glen Thurow, NMPS** – Mr. Thurow also indicated he would also be very interested in knowing why the rates were so low since he had been told by the head of surveying at NMSU that the passing rates were much higher. Mr. Thurow proceeded to describe an initiative underway by NMPS educational foundation to establish an educational program for students as a stepping stone to the four-year degree. This is to encourage high school graduates to continue their education and interest them in the surveying profession.

**4.5 Election of Officers for FY 05** – Fred Sanchez nominated Gilbert Chavez to remain the chairperson, second by Chuck Atwell and unanimously,

**VOTED:** that chairperson Gilbert Chavez continue as Chair.

Mr. Gilbert Chavez nominated Chuck Atwell, second by Fred Sanchez and unanimously

**VOTED:** that Chuck Atwell be elected vice-chair by acclamation.

**4.6 Discussions on Business Before the Full Board on June 4, 2004** – Ms. Garcia indicated that all the information received by the Board office on proposed revisions to the Act has been included in the members meeting books under the Committee reports to be discussed during tomorrow's meeting. Mr. Chavez reported that the Rules and Regulations committee will be meeting on June 10, 2004 at 1:30 in Mr. Shah's office.

Mr. Sanchez stated that this may not be the right time to bring this up, but he indicated that he has been hearing what may be an illegal appointment by the Governor to the Board. He wanted to ask Mary Smith (board counsel) if an unqualified person is appointed to the Board and said individual is not qualified, what happens to actions taken by the Board? Could the Board actions be considered not in compliance with the law, and overruled?

Ms. Smith indicated that her office's position is that the committees of the Board and the Board are presumed to be properly formed. If someone else wanted to challenge that, they could do so. Most likely, the appointment would not invalidate an action by the Board if the board was acting in good faith in the performance of its duties. It was noted that the Chair of the Committee or Board has no authority over appointments that lies with the Governor.

5. **COMMUNICATIONS** - None

6. **OLD BUSINESS [Pending Issues/Reports/Discussions and/or Actions]**

6.1 Status of Professional surveyors in New Mexico

6.1.1 Possibility of Alternative Licensing Tracks for Professional Surveyors - Mrs. Garcia indicated she had included some alternative tracks to licensing that had been discussed previously and wanted to make sure the committee thoroughly considered these options prior to dismissing any other alternatives to licensing. Mr. Chavez indicated that they have been considered and the committee is endorsing the current requirements in the current Act. NMPS has filed with the Board its statement that it endorses the four-year requirement for licensing.

6.1.2 Feedback Received from April 22, 2004 Meeting with NMPS – Mrs. Garcia indicated that NMPS had provided a verbal report during the April meeting of the results of the survey which they had conducted of their membership. She did not receive a written copy and would compile her notes and distribute among the Board members. Mr. Sanchez and Mr. Atwell indicated that he had received the information.

6.2 Definition of Board-approved Surveying Related Science Degrees – Postponed.

7. **CLOSED SESSION (Alleged Violations)**

It was moved by Mr. Sanchez, seconded by Mr. Atwell and unanimously,

**VOTED:** To go into closed session pursuant to NMSA 1978, Section 10-15-1 (H)(1) to discuss cases listed in this section of the agenda. Voting Yes: Mr. Atwell, Mr. Sanchez, and Mr. Chavez. Motion passed unanimously.

**OPEN SESSION**

It was moved by Mr. Sanchez, seconded by Mr. Atwell and unanimously,

**VOTED:** to reconvene in open session. Mr. Sanchez indicated that only those cases under Section 7 of the agenda, items 7.1 through 7.4 were discussed in closed session.

7.1 Case 03-02-30 Respondent Richard Hall, PS – Mr. Sanchez indicated he was the hearing officer in this case and it is continuing. Mr. Hall was asked to prepare the survey that was allegedly previously prepared and lost and submit to the complaint manager for review so that it may be recorded by no later than August 1, 2004.

7.2; 7.3 Case 04-03-10 & Case 04—04-01 - It was moved by Mr. Atwell, seconded by Mr. Sanchez and unanimously,

**VOTED:** To dismiss cases 04-03-10 & Case 04-04-01 as unfounded.

7.4 Case 04-04-02 – It was moved by Mr. Sanchez, seconded by Mr. Atwell and unanimously,

**VOTED:** To write to the surveyor that he needs to follow up and clear up certain discrepancies on the plat that were noted by the Committee and record plat by August 1, 2004.

7B. Appointment of Hearing Officer for Case - not needed.

8. **REVIEW OF APPLICATIONS**

8.1 **Retired Status Applications – None.**

8.2 **Inactive Status Applications – None**

8.3 **Applications for Principles & Practice of Surveying (Professional Exams):** No applications were reviewed.

8.4 Thomas F. Johnston, Licensed in CO & AZ: Mrs. Garcia indicated she had brought Mr. Johnston's application file from 1995 since Mr. Atwell had requested it be reconsidered. Mr. Johnston had

submitted a letter for the April 2004 meeting regarding the educational requirements in 1992 and current which he does not meet. In 1992 New Mexico required the 45 semester hours in a surveying program. Mr. Johnston was initially licensed in Colorado with no education and does not meet New Mexico's requirements. The committee concurred that Mr. Johnston still does not meet the requirements and it appears that the requirements will remain as in the current Act.

10. **ADJOURNMENT** - Having no further business, it was moved by Mr. Atwell, seconded by Mr. Sanchez and unanimously,

**VOTED:** To adjourn the meeting.

Submitted by:

Approved by:

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Executive Director

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Gilbert Chavez, PS, PSC Chair

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Approval Date