

Meeting of the Professional Surveying Committee of the
Board of Licensure for Professional Engineers & Surveyors
held on November 10, 2004 at NMSU in Las Cruces, NM.

Members Present: Fred Sanchez, PS
Gilbert Chavez, PS
Charles Atwell, Public Member
Salvador I. Vigil, PS

Members Absent: No one. [Elena Garcia, Executive Director was attending the meeting of the Professional Engineering Committee.]

Others Present: Edward Ytuarte, Complaint Manager
Glen Thurow, PS, NMPS
Mr. and Mrs. James Baldwin
Tom Rollag
Glen Thurow, NMPS

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

Chair Chavez convened the meeting at approximately 8:00 a.m.

2. **APPROVAL OF THE AGENDA**

It was moved by Mr. Sanchez, seconded by Mr. Vigil 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 August 5, 2004 meeting.

4. **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. Mr. Vigil. Motion passed unanimously.

OPEN SESSION

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

VOTED: to reconvene in open session. Mr. Chavez indicated that only those cases under the complaint section of the agenda, items 4.1 through 4.5 were discussed in closed session.

4.1 Case 03-03-11 It was moved by Mr. Sanchez, seconded by Atwell and unanimously,

VOTED: To dismiss as unfounded.

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

VOTED: To close with a warning to the Respondent that he must do a better job on his search methods.

4.3 03-02-30 Richard Hall case – It was moved by Mr. Sanchez, seconded by Mr. Atwell and unanimously,

VOTED: to reopen the case –hearing under the NCA.

4.4 04-04-15 It was moved by Mr. Vigil, seconded by Mr. Sanchez and unanimously,

VOTED: To issue an NCA.

4.5 02-02-27 it was moved by Mr. Sanchez, seconded by Mr. Atwell, and unanimously,

VOTED: To close - plat has been approved –

4.6 04-04-13 It was moved by Mr. Sanchez, seconded by Mr. Atwell, and unanimously,

VOTED: To dismiss as unfounded – no violation of the Act . Mr. Sanchez indicated it was a work in progress. It has not been completed therefore no violations exist at this time.

Mr. Baldwin asked to be heard on this case. Chair Chavez indicated that there is nothing to hear since the Committee found no violation so far. Also, this was not a hearing on this case.

4B. APPOINTMENT OF HEARING OFFICERS(S)

For cases 03-03-09; 04-03-11; and 04-03-12 [same respondent]. Mr. Chavez indicated that there may be instances when current board members may know the respondents in the northern part of New Mexico, and indicated that perhaps the Committee could try to avoid any potential or appearances of conflict of interest with board members. Mr. Sanchez indicated that it may be better if board members practicing in the southern part of the state hear the cases that are against respondents who practice in the northern part of the state and vice versa. He believes all committee members are professional enough to hear any case, but this would deter any public perception that it may not be fair since board member and respondent may practice in the same area.

For 04-04-15 Respondent is in the Albuquerque area. Salvador Vigil will be the hearing officer on this case.

For 03-03-09; 04—03-11; and 04-03-12 Mr. Sanchez will be the hearing officer. Mr. Atwell will also be sitting in on this case.

5. NEW BUSINESS

5.1 Review of NM Surveying Exam Results – The Committee reviewed the scores and all appeared to be correct.

Mr. Sanchez indicated that he will be providing a report on his GIS, Photogrammetry, and LIDAR Task Force findings during the full Board in the afternoon.

Mr. Atwell indicated that errors and omissions insurance was not on this agenda, however, twice now that the Board has been before the LFC, Senator Griego has brought up the subject of requiring errors and omissions insurance for surveyors. He has point blank told the Board that if the Board does not do something about this, he will take it up before the Legislature himself. Mr. Atwell would like to ask Mrs. Garcia to go talk to Wayne Ciddio from the Real Estate Commission because it has been mandatory for realtors in this state for the last two years. Mr. Sanchez indicated that he has been trying to contact Eric Serna, head of insurance to see what support there would be. He has had long discussions with DPIC representative in Albuquerque who sells insurance for surveyors and engineers. New licensees, however, have no record, so most insurance companies would not issue a policy for someone who has no past experience factored to evaluate. If it becomes mandatory, then the state must create a pool that will insure people who are not insurable by the general market. This places the state in a bad position. Mr. Atwell stated that the Board should talk to a real underwriter. Wayne Ciddio set up some great fees. Mr. Ytuarte

indicated that when a bill is introduced agencies will be notified to analyze the bill and can indicate if the legislation is good or bad. Mr. Sanchez indicated he does not have a problem with getting information.

Mr. Vigil indicated that the Board should follow up with Mr. Atwell's recommendation and obtain the information to be able to respond to the LFC. Mr. Vigil indicated he would like to head up an errors and omissions sub-committee with the help of Mr. Atwell and Mr. Thurow. Mr. Thurow stated that this item is a full board item for this afternoon. Chair Chavez indicated he will report on this at the full board meeting.

6. COMMUNICATIONS

6.1 Robert B. Stannard, PS – RE: Exemptions Under 61-23-27.10 – Mr. Stannard asked three questions: (1) are companies that perform, or contract to perform, Easement Surveys for the construction of their own utilities, on the lands of others, exempt from the provisions of the New Mexico Engineering and Surveying Practices Act, under Section 61-23-27.10? (2) Are companies or individuals that are contracted to perform Easement Surveys for the construction of utilities exempt from the provisions of the New Mexico Engineering and Surveying Practices Act, under section 61-23-27.10? and (3) Are companies or individuals that are contracted to perform only the field work (data collection) for Easement Surveys for the construction of utilities exempt from the provisions of the New Mexico Engineering and Surveying Practices Act, under section 61-23-27.10? Mr. Vigil read the Section 61-23-10 of the Act. Mr. Sanchez stated that he believes the answers to all three questions are “No.” Only professional surveyors can prepare legal descriptions for acquiring easements; you are dealing with the public.

Mr. Thurow reported he had spoken to the Four Corners Chapter and he can give some specifics about this. This came about due to pipe line companies, oil and gas, that procure easements across different types of lands. If they are doing it on tribal or state lands they have to go out and get a surveyor to prepare the plat or an easement description that is certified and signed. If it is on BLM or fee lands the pipeline companies' position is that they are not required to prepare any legal document as a survey document. Normally they prepare a description or an easement and file it as a real estate document. Because they are on fee lands, the public is not affected because they are private lands. In the case of the BLM, they do not require any surveying document be prepared to grant an easement. Typically, what happens is the pipeline companies contract for surveying personnel, perhaps as temporary employees. They will run the survey easement across whether it is on federal or private land. The pipeline company then prepares a legal description and this is filed as an encumbrance as a real estate document on the land in question. The pipeline companies' position is that the lands are private and they are doing it for their own purposes. However, if you are placing an encumbrance upon a tract of land and that becomes a part of the record of that tract of land. If that land is conveyed that easement then affects the buyer who is entitled to know where it is. On federal land they often do swaps. By way of an anecdote, they had a situation where a tract of land was swapped and there was an encumbrance upon that, an easement that had been improperly located, and consequently the developer of the land found out about the easement that was not on the called for location .

Mr. Chavez indicated that perhaps Mrs. Garcia could locate some precedent on this issue. He does not believe they are exempt. Staff is to review the records and respond if there is an opinion issued. If not, staff is to work with Counsel on this.

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

6.1 Definition of Board-approved Surveying Related Science Degrees – Copies of a September 29, 2004 letter from Earl F. Burkholder was provided by Mr. Sanchez for information. The letter included information on ABET's definition of “Engineering-Related” and the subsequent term, “Applied Science.” The information was thought to be helpful when reviewing surveying related science degrees. No further action was taken.

8. **REVIEW OF APPLICATIONS**

8.1 Retired Status Applications - An application from German Gomez, PS 7008 was reviewed and approved.

8.2 Inactive Status Applications – N/A

8.3 Applications for Principles & Practice of Surveying (Professional Exams): Three applications were reviewed, one [Jashe Alcon] was approved to sit for the Principles & Practices of Surveying exam and two [Joel S. Hall & Ronald G. Nereson] were approved by endorsement and to take the NM 2-hr. exam.

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:

Executive Director

Gilbert Chavez, PS, PSC Chair

Approval Date