

DRAFT

Meeting of the Professional Surveying Committee of the Board of Licensure for Professional Engineers & Surveyors held April 21, 2005 at Bar Center, Rodey Room, 5121 Masthead, NE, Albuquerque, NM.

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

Members Absent: No one.

Others Present: Elena Garcia, Executive Director [attended portions of meeting due to PEC meeting concurrently]
Candis Bourassa, Licensing Manager
Jeremy Del Valle, Investigator
Edward Ytuarte, Complaint Manager
Glenn Thurow, PS
Tom Rollag

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

Chair Chavez convened the meeting at 10:08 a.m. Roll call was taken; it was noted that all members were present.

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**

3.1 **Minutes of the February 3, 2005 Meeting** - It was moved by Mr. Sanchez, seconded by Mr. Atwell and unanimously

VOTED: To approve the minutes of the February 3, 2005 meeting with a correction on page 3, second paragraph, second line: replace “geodesists” with “GIS.”

4. **NEW BUSINESS**

4.1 Request from Attorney not to File or record Plat, or Certify to the Survey –Mr. Vigil indicated that he had been instructed by an attorney to not file a plat or certify to his survey. He was wondering if an attorney could make such a request. It was concurred that yes, since the survey is considered preliminary since Mr. Vigil, as the surveyor, has not signed or sealed the plat. Therefore, the survey is not completed and in accordance with the Act, the surveyor has 60 calendar days after completion of the survey or approval by the governing authority to file the plat.

4.2 Intentional Destruction of Property Corners by Non-licensed Individuals – Mr. Vigil inquired as to what can be done if non-licensed individuals pull stakes set by a surveyor. Staff had only found two statutes regarding this topic—Section 73-17-5 & 6 (applicable to conservancy districts) and 30-5-1 which pertains to criminal damage to private property which makes it a petty misdemeanor or a fourth degree felony when the damage to the property amounts to more than \$1,000. Mr. Del Valle stated that he had done some research at the request of Mrs. Garcia and found very little case law on this subject. However,

there was information that if corners are pulled prior to a survey plat being filed, the surveyor can take action. When the plat is filed, the property corners become part of the private property of the individual and the property owner can take action. The two cases found were back in the 70's; in a case discussed someone other than the surveyor had moved a corner that did not coincide with a fence line and placed it at the fence line. Mr. Sanchez indicated that perhaps such actions could constitute unlicensed practice of surveying. The property owner may wish to file a complaint with the Board.

4.3 Compilation of Existing Records versus Boundary Surveying/Exhibit Easements – Mr. Sanchez stated his firm has been asked to do certain work that entails the compilation of different boundary surveys previously prepared by other surveyors without doing any surveying out in the field. Many entities such as the University of NM, Sandia Labs, City of Albuquerque and others are requiring this type of work. It involves many parcels of land which are parts of subdivisions. They were surveyed before but eventually were bought or donated to different owners. The new owners are now asking surveyors to prepare documents that would compile all existing surveys into one “Perimeter of Record” document to be used by the owner to better manage their properties or to borrow money against the real estate. The financing companies, however, require the signature and seal of the surveyor on the documents. He indicated that when preparing such a document, they would disclose the nature of the document, the reason for the compilation and indicate that no field work was done. The clients are not interested in monuments since boundary surveys already exist by different surveyors. He inquired of the Committee whether it would be appropriate to do this under “unclassified surveying” of the Minimum Standards for Surveying and whether surveyors could sign and seal such documents.

Mr. Vigil indicated he had a concern over the liability assumed by the surveyor compiling the information including assuming possible liability for the work of other surveyors.

Mr. Sanchez distributed copies of a letter from Vladimir Jirik, PS regarding the same issues and read the letter. The letter among other things indicated that an agency has a “need for creation of a document that would assemble all existing surveys, plats, documents, legal descriptions etc., into one “Perimeter of Record” document, that would be recorded with the county and would be incorporated into the agency’s own GIS database to allow more efficient management of the real estate.” “The agency goal is to have a GIS perimeter of record data (and recorded document) that will provide a coordinate accuracy of approximately 1 foot.” Mr. Chavez indicated these issues need further evaluation and that this letter should be placed on the next agenda of the meeting for official action.

There was further discussion on the recording of a compilation of surveys document and whether such document should be signed stamped and recorded by a professional surveyor. Mr. Sanchez stated he personally feels that a surveyor could do this, but the compilation would be titled a “document” with the appropriate disclosures. It would not be a document recorded as a “survey” or under plats of surveys at the county clerks.

Mr. Chavez indicated that once a surveyor signs and seals he/she will be assuming responsibilities. The committee needs to evaluate what this means. Mr. Ytuarte indicated that many agencies are compiling GIS records of properties, and they are being done by non-licensees. Mr. Sanchez indicated that they would not be certifying to the actual work done by other surveyors in the surveys being used, they would be certifying to using data from recorded records and compiling a document that would disclose exactly what the surveyor is doing. Mr. Atwell indicated that a lay person could find the document at the clerk’s office and the public could mistake it for a survey. The document which may not show encroachments, etc. could be misused by the public and could create a lot of harm. Mr. Chavez indicated he has a problem with professional surveyors sealing and signing such documents and including what could be considered as disclaimers, which the committee is on record as not allowing. It was moved by Mr. Vigil that a compilation document not be certified with a signature or seal. Motion died for a lack of a second. Mrs. Garcia indicated that professionals already write reports, etc. which they sign and seal. Is the board going to address each instance when a professional seals and signs a document? It was noted that perhaps it should be left up to the professional to decide which document he/she signs and seals in accordance with

state statutes and rules. The responsibility is for the professional to determine that the document is not misleading or misinforming the public. This item will be carried to the next meeting.

4.4 Approval of the NMPS exam (2-hr) Exam. – Mrs. Garcia reported there were five candidates taking the two hour exam with only one taking both the national PPLS and the NM exam for initial licensing. Four applications were for licensure by comity. Only one person (by comity) failed the exam; however, it appeared that most candidates were well prepared since the majority of the scores were between 80 to 85%. It was moved by Mr. Sanchez, seconded by Mr. Atwell and unanimously,

VOTED: To approve the scores for the two-hour N.M. exam as presented.

5. **COMMUNICATIONS - none**

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

6.1 Statutes, Rules & Policies on Engineering Students Taking the FLS for Licensure

– Mrs. Garcia presented a chart depicting the statutory requirements for certification of a surveyor intern and licensing as a professional surveyor. She indicated she compiled the information on the chart to assist staff, Board members and applicants to determine at a glance the requirements for licensure in New Mexico. The chart included qualifications required to sit for the fundamentals of surveying, qualifications required for certification as a surveyor intern, licensure by exam, and licensure by comity, including the requirements in place from prior to 7/79 to the present. The chart also included the board’s policies regarding applications and eligibility to sit for the exam from: 1) candidates with double majors (engineering & surveying) who are able to sit for the FS during their senior year; 2) candidates with engineering degrees with a minor in surveying who are eligible to sit for the exam only after graduation, and 3) candidates with part-time experience obtained while completing a degree who will get partial experience credit.

It was noted that Mrs. Garcia had consulted with Board Counsel who had determined that the law prohibited engineering students with surveying minors to sit for the fundamentals of surveying exam during the senior year.

Mr. Sanchez indicated that he thought the chart was very well put together and would assist him in answering questions from the public. It was noted that it would be a good idea to include the chart on the Board’s web site.

6.1.1 Correspondence from Max L. Lopez, Engineering Student with Surveying Minor Questioning Additional Years of Surveying Experience – Mr. Lopez wrote indicated that he felt the experience requirement for candidates with a minor in surveying to have to obtain a total of eight years of experience to become licensed as a professional surveyor was excessive. Mrs. Garcia indicated that Mr. Lopez was the candidate who requested to be allowed to sit the FS exam during his senior year. He concurred, but wished to express his opinion on the number of years of experience. The Committee indicated that the experience is set by statutes and no further action was taken.

6.2 Surveying Experience Policy Regarding Cadastral Surveying – A previous board policy regarding cadastral surveying experience was reviewed. The Board policy states that working for a public agency under the direction of a professional surveyor licensed in any state may be acceptable if it is surveying experience as described in the Act. If an individual works for BLM, for example, and there were no licensed surveyors supervising the applicant’s work, the experience could not be counted. The Board also does not accept experience that consists solely of cadastral surveys, boundary retracements, mining claim retracements, and resetting of lost section corners. Boundary surveying experience of a broader nature is essential in the internship

for licensure as a professional surveyor. The committee agreed that they concurred with this previous board position.

6.3 **Complaint Procedure** – Mrs. Garcia indicated that this item was included on the agenda since at the last meeting, the full board noted that the PEC and PSC committees should decide how they wished for staff to present the cases to the committee for initial review. It was noted then that whether names should be included should be determined on a case by case basis. Staff was instructed to include this item on each committee agenda. Mr. Sanchez indicated that some of the cases can become so confusing with so many players, e.g. surveyor A, Surveyor B, etc. that it becomes very difficult to determine who is who. He understands that the Attorney General’s office has directed that the board not have names when they first review cases but he feels that in fairness to the protection of the public, if the committee does not understand what they are doing, they should be able to do it on a case by case basis. Mrs. Garcia indicated that the Board is not going to be able to decide on a case by case basis because they do not see cases prior to the initial review. How would staff know which cases they are to take out names and which they need to be included? As noted last meeting by the complaint manager, the board would not be able to decide on a case by case basis--it is a logistics problem. The first review is when the board would want the names included, at least that is what has happened during the last committee meetings, specifically the PEC. Mr. Sanchez indicated that on the initial review, the staff or the complaint manager could decide which cases would be better to leave the names in for presentation. It was noted that this topic would come up again at tomorrow’s meeting. [A copy of Mary H. Smith memo of January 27, 2005 indicating that the licensee’s name should remain confidential during the board’s consideration of a complaint was included in the board members meeting books.]

Mr. Chavez indicated that due to the long agenda and the hearing scheduled for 2:30 p.m. it would be a good idea to take a short break and continue with the meeting. Lunch was ordered and the Committee proceeded with the agenda.

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

It was moved by Mr. Sanchez, seconded by Mr. Vigil and unanimously,
VOTED: to go into closed session pursuant to NMSA 1978, Section 10-15-1(H)(1) to discuss cases listed in section 7 of the agenda, specifically cases 7.1 through 7.11. A roll call vote was taken. Voting Yes: Fred Sanchez, Charles Atwell, Salvador Vigil, and Gilbert Chavez.

7A. **OPEN SESSION** – Chair Chavez convened the meeting in open session. He indicated only those cases listed as items 7.1 through 7.11 as listed on the agenda were discussed. It was moved by Mr. Sanchez, seconded by Mr. Vigil and unanimously,

VOTED: To reconvene in open session.

Chair Chavez then recessed the meeting to conduct the hearing in Case 03-02-30 in the matter of Richard Hall, PS. Chair Chavez indicated the Committee will reconvene to complete the agenda at around 4:30 p.m. A copy of the hearing transcript is available from the case file of the Board’s records.

After the hearing, the Board reconvened the regular PSC meeting.

7.1 **04-04-17** – It was moved by Mr. Vigil, seconded by Mr. Atwell and unanimously
VOTED: to dismiss as unfounded, no violations of the Act or the Board’s rules. The conflict is of a civil nature.

7.2 **04-04-42** – It was moved by Mr. Sanchez, seconded by Mr. Atwell and unanimously,
VOTED: To issue an NCA with the possibility of a stipulated agreement since the plat needs minor revisions. Revisions should be completed by a set date. If not, a fine should be assessed.

7.3 **05-04-01** – It was moved by Mr. Sanchez, seconded by Mr. Atwell and unanimously,
VOTED: To issue an NCA for violation of professional ethics. Staff is to request expediency on this case.

7.4 **05-04-02** – It was moved by Mr. Sanchez, seconded by Mr. Atwell and unanimously,

VOTED: To issue an NCA for violations of the Act and standards as outlined in the complaint manager' report.

7.5 **05-04-03** – It was moved by Mr. Sanchez, seconded by Mr. Atwell and unanimously, VOTED: to issue an NCA noting alleged infractions of the standards as noted in the complaint manager's report.

7.6 **05-04-04** – It was moved by Mr. Vigil, seconded by Mr. Atwell and unanimously, VOTED: To dismiss the charges as unfounded.

7.7. 05-04-05 – It was moved by Mr. Vigil, seconded by Mr. Sanchez and unanimously, VOTED: that a special meeting be scheduled to reconsider this case on June 3rd. Staff is to present all documentation as submitted to the Board office from the respondent with all the names concealed as noted by the Board's counsel.

7.8 05-04-09 – It was moved by Mr. Sanchez, seconded by Mr. Atwell and unanimously VOTED: To include this case with case 05-04-01 in the NCA to be issued to the respondent (both cases being against the same respondent)

7.9 05-04-06 – Due to insufficient time, this case is to be referred to the next meeting.

7.10 05-04-12 – It was moved by Mr. Sanchez, seconded by Mr. Atwell and unanimously, VOTED to dismiss as unfounded. The evidence shows that the respondent has been rehabilitated in accordance with the Criminal Offenders Act.

7.11 05-04-14 – Due to insufficient time, this case is to be referred to the next meeting.

7B. APPOINTMENT OF HEARING OFFICERS(S)

For case **04-04-15** [Matter of J. Robert Martinez, PS, June 3rd hearing], the new hearing officer will be Gilbert Chavez. For Cases **04-03-11 & 04-03-12** [Matter of Richard Tresise, PS, May 31st hearing] Mr. Vigil will be the hearing officer with Mr. Atwell. For case **04-04-09** [matter of Klad Zimmerle, PS hearing to be set], Mr. Chavez will be the hearing officer. For case **05-04-02** in Gallup, Mr. Atwell will be the hearing officer. For cases **05-04-01 and 05-04-09** in Albuquerque Mr. Atwell will be the hearing officer. For case **04-04-42** Mr. Sanchez will be the hearing officer. For case **05-04-03** Mr. Sanchez will be the hearing officer.

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) – Applications for licensure for endorsement from Robert E. Harrison and Charles C. Kelly were reviewed but were not approved since they did not meet the educational requirement at the time they were initially licensed. An application for reinstatement of a license from Paul A. Boucher was approved.

9. ADJOURNMENT -

VOTED: To adjourn the meeting.

Submitted by:

Approved by:

Executive Director

Gilbert Chavez, PS, PSC Chair

Approval Date

