

Members Present: Severiano Sisneros, PE, Chair
Charles Atwell, Public Member
Gilbert Chavez, PS
Patricio Guerrerortiz, PE
Fred Sanchez, PS
Stevan J. Schoen, Public Member
Subhas Shah, PE
Salvador I. Vigil, PS

Members Absent: Dr. Clifford E. Anderson, PE/PS
Dr. Rola Idriss, PE, Vice Chair

Others Present: Elena Garcia, Executive Director
Candis Bourassa
Edward Ytuarte, PE/PS, Complaint Manager
Hank Rosoff, PE, NMSPE
Glen Thurow, PS, NMPS

1. CONVENE/ROLL CALL/INTRODUCTION OF GUESTS

Chair Sisneros convened the meeting at approximately 9:00 a.m. Roll call was taken, and it was noted that a quorum of the board was present.

2. APPROVAL OF THE AGENDA

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

VOTED: To approve the agenda as presented.

3. APPROVAL OF THE MINUTES

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

VOTED: To defer the approval of the November 10, 2004 board meeting minutes to the next meeting for approval after being sent in advance for review.

4. CORRESPONDENCE/COMMUNICATIONS

4.1 Tom Rollag 1/05/05 Correspondence RE: Practice Act & Practice of Photogrammetry & Other Non-boundary Surveying Activities – Mrs. Garcia indicated that Mr. Rollag’s letter requesting that the Board establish a committee to determine a fair and reasonable procedure for non-boundary surveyors to become licensed since the Act regulates photogrammetry. Mr. Rollag in the past voiced concern

that photogrammetrists provide a surveying function; however, they are unable to get licensed due to the statutory requirement that the majority of the surveying experience must be boundary surveying. The PSC reviewed his letter during yesterday's meeting. Mr. Chavez indicated that this item will be further discussed during the committee reports.

5. COMMITTEE REPORTS

5.1 Professional Engineering Committee- Mr. Shah reported the PEC had run out of time yesterday and will need to reconvene after the full board to complete its business. An applicant with foreign credentials came before the Committee; he was requested to sit for the PE examination. The Committee heard from the City of Albuquerque on their process of only accepting PEs whom they have determined qualified in landfills and landfill gas for work presented to the City. The PEC indicated that the City's process was not appropriate since it is this Board's responsibility to determine who is qualified to practice engineering and not the City's. The PEC recommended that a committee should be established to evaluate whether a new sub-discipline should be established by the Board. The Committee also reviewed information from NCEES regarding a publication from the national architects' group, and also reviewed information on Texas' comity law. The Board's position on the use of the term "engineer" was considered since the Committee continues to receive inquiries on this. This item was sent to the Rules committee for future review. The review of applications began, however the meeting had to be recessed until later today after the Board meeting.

5.2 Professional Surveying Committee – Mr. Chavez reported the Committee met with a British Columbia surveying licensee who would like to become licensed in New Mexico. The Committee reviewed six cases: one NCA was issued in one case and the other five cases were dismissed, mostly administrative. From now on staff will be bringing all these cases to the PSC for closure in order to take the responsibility off staff. Five applications for the exams were reviewed as well as applications for retired status. He indicated the committee reviewed inquiries from NMSU on whether an engineering senior with a minor in surveying could sit for the Fundamentals of surveying exam.

Mr. Thurow, NMPS indicated that NMSU is encouraging their engineering majors with surveying minors to take the Fundamentals of Surveying exam in their senior year. NMPS' position is that they should be allowed to do so and see nothing in the Act to prevent them from taking the fundamentals exam. However, they would not be registered as an Intern at that time because they would still need to comply with the four years of office and field surveying experience. The engineering degree with a surveying minor would be considered a related-science degree and candidates would need to complete eight years of surveying experience.

Mr. Chavez indicated that the PSC concurred with that recommendation; however, Mrs. Garcia will be consulting with our legal counsel to ensure we are not in violation of the Act by doing so.

The Committee reviewed a letter from NCEES which transmitted the Surveying Speaker's Kit to be utilized in the promotion of licensure as well as the promotion of the surveying profession. NMSU and NMPS will each receive a copy as well. The presentation targets middle schools and high school. Dr. Steven Frank from NMSU also informed the Board that the surveying ethics course is now available as continuing education and not for credit. The costs have also been decreased.

Mr. Chavez indicated that Mr. Rollag's letter was reviewed. Mr. Sanchez reiterated that Mr. Rollag promotes the licensing of individuals that are "non-boundary surveyors". Mr. Sanchez indicated that he knows of no surveyors that are "non-boundary." Mr. Rollag has attended board meetings; he was appointed to the Board's GIS, LIDAR, & Photogrammetry Task Force. During the task force's meetings, Mr. Rollag made an appeal to the task force to take up his request, but this was not a charge assigned to the task force. Mr. Rollag feels he should be able to offer his services directly to the public instead of providing them to licensed professional engineers and professional surveyors as is the current practice. Licensed surveyors and engineers currently use the information/data provided by Mr. Rollag and include it in an end product which they sign and seal, thereby taking full responsibility for it. Mr. Sanchez indicated he has no knowledge of any public demand to have these services provided directly to the public. The services are mostly connected to engineering design projects or surveying projects. Mr. Sanchez indicated he has found no support for this in the industry or anywhere else. If the full board concurs, it needs to send him a letter indicating the Board find no demand or justification to continue with this.

Mr. Shah indicated that Mr. Rollag might go to the Legislature to try and change the Act. Mrs. Garcia noted that Mr. Rollag had been apprised during a previous board meeting that due to the complexity of the matter, it was too late for the Board to address this during this legislative session. Mr. Chavez indicated that the issues are being addressed at the national level and the Surveying Committee yesterday did not want to completely close the door to reconsider this in the future. Mr. Sanchez recommended that perhaps an assignment be made to a committee headed by a board member be comprised of both sides in the event there is an appearance that the Board is trying to ostracize a group of people. There are only four people in the state that provide this work and only Mr. Rollag has been pushing this effort. Mr. Shah indicated he thought the Board had agreed to reevaluate this topic at a future date. Mr. Chavez recommends that the Board send out inquiries to professional engineers and professional surveyors and others to evaluate these issues. Mr. Schoen stated that the board needs to apprise Mr. Rollag that it has given his concerns a fair review, but he will need to wait a little longer. It was moved by Mr. Schoen, seconded by Mr. Vigil and unanimously,

VOTED: that the Chair respond to Mr. Rollag apprising him of the Board's discussions and that the Board will leave the matter for future consideration at the appropriate time.

5.3 Rules & Regulations Committee – Subhas Shah, PE stated the rules committee last meeting was prior to the session when it reviewed changes to the statute. Meetings will need to be called after the session to begin the review of the rules.

5.4 Arch./Eng./Landscape Arch JPC – Mrs. Garcia indicated Mr. Sanchez and Dr. Anderson serve on the committee. The Committee has not met, however, since the Board of Landscape Architect is in charge of this committee, and they have not scheduled any meetings. She indicated if the Board wishes, she can correspond with the Landscape Architects Board and request they schedule a meeting. The JPC normally would meet twice a year. The Chair of the Committee is from the Board of Landscape Architects. She indicated that at the request of Dr. Anderson she had had communications with both Boards to determine if they were proposing any legislation during the current session. The Architects Board responded they were not, and she did not hear from the Landscape Architects Board. No further action was taken.

5.5 Professional Development Committee

5.5.1 Applicants' Request to Sit for the PE a Fourth Consecutive time – Mr. Chavez indicated that there were eleven request from candidates to sit for the PE for a fourth time. These were reviewed by Dr. Anderson and Mr. Guerrerortiz and approved.

5.5.2 Reported Misdemeanors on Renewal Forms – Mr. Chavez indicated staff had reported that there were eight admissions of misdemeanors on renewal forms received from licensees. Mrs. Garcia indicated the misdemeanors included DWI, domestic battery, and loitering, etc. Other admissions included sanctions by other state boards. These individuals have been re-licensed based on previous policy. However, she would like to determine if this board would like staff to initiate complaints on these type of misdemeanors. If complaints are filed they would be handled just like any other cases and brought to the Board for consideration individually. Mr. Schoen indicated that disclosure is very important and cases should be brought to the Board's attention. How the Board will act will depend on the specifics of each case. The Board agreed with this policy. Mrs. Garcia indicated that another alternative is to establish an enforcement committee with a member from each committee to provide guidance to staff on cases that are questionable as to the Board's jurisdiction. After further discussion, the Board concurred that reported misdemeanors are serious matters. Staff will proceed to open cases in these matters and send to the PEC or PSC for review. It was noted that intentionally false responses to the questions asked on the renewal forms or the applications regarding conviction should be treated even more seriously.

5.6 Examination Committee- Dr. Rola Idriss, PE – Dr. Idriss was not present to give a report. Mrs. Garcia provided copies of the national pass rates for the October 2004 fundamentals of engineering examination and the principles and practice of engineering exams.

5.7 Fire Protection Committee – Organizational schedule of meetings – Mr. Schoen indicated that due to conflicts in meetings they have not met, but he is committed to scheduling a meeting in the next few months. He has contacted the State Fire Marshall to see if they are interested in participating.

- 5.8 Publications Committee** – Patricio Guerrerortiz indicated that the first issue of the newsletter is being worked on. He encouraged board members to write articles for publication and noted it was important for other licensees to also contribute articles.
- 5.9 Executive Committee – Severiano Sisneros, PE** – Chair Sisneros indicated he had attended the Audit Exit Conference with staff and the auditors. Chair Sisneros and Mrs. Garcia indicated that while there were four reportable conditions there were no material weaknesses noted in the preliminary report.
- 5.9.1 Office of State Auditor Letter for FY 04 Audit** – The January 28, 2005 letter from State Auditor Domingo P. Martinez was presented by staff which indicated the agency audit report had been received. However the audit report had not been provided in the pre-meeting packets since by law the audit report does not become public record until ten days after the date of the State Auditor’s Letter. Copies of the formal audit report will be sent prior to the next meeting. Mrs. Garcia indicated that the Legislative Finance Committee had asked for a copy of the audit and she had requested a waiver of the ten days in order to comply with the request. The State Auditor had granted the request and a copy had been provided to LFC.

6. NEW BUSINESS

6.1 Legislative Update [HB 99 Act & SB 163 Act; Sunset HB 306; Fund HB 310] –

6.1.1 Clarifying Procedural Language for New Joint Committee

Mrs. Garcia reported that HB 99 had received a “do pass” from the Government and Urban Affairs Committee on January 27, 2005 with the understanding that Board representatives would meet with Representative Larry Larranaga on an amendment he presented during the hearing regarding concerns on the make-up of the new joint committee, its powers, and what would happen if the Committee could not reach a decision with a $\frac{3}{4}$ vote in the affirmative. The GUAC after hearing the Board’s testimony that the Board had worked with both the engineering and surveying community to resolve its differences from a year ago granted a “do pass” without Rep. Larranaga’s amendment with the caveat that Rep. Larranaga’s concerns be addressed by the Board’s representatives and a possible amendment in the House Business and Industry Committee. Mr. Shah requested copies of Rep. Larranaga’s amendments be distributed. Mr. Hank Rosoff indicated he had spoken to Rep. Larranaga and believed his concerns are being addressed. Mrs. Garcia indicated she had received Mr. Rosoff’s comments on this and also noted Mr. Thurow had drafted language which Ms. Garcia had distributed to the board for review. Mr. Sanchez indicated that the hearing went very well since both Mr. Rosoff and Mr. Thurow representing the engineering industry and the surveying industry both testified in support of the legislation as submitted by the Board. Mr. Thurow indicated that there should be no concern of having public members on this joint committee since public members will be impartial when considering whether a question/item is a matter exclusively for the PSC or the PEC to consider. It will then be the committees’ responsibility to hear and decide on the issues. It was moved by Mr. Sanchez, seconded by Mr. Vigil and unanimously,

VOTED: To direct Mrs. Garcia to submit the drafted language to the appropriate individuals, legislators and the sponsor or the LCS for an amendment.

[Language to include “If an affirmative vote of three members cannot be achieved, the determination of exclusivity shall be made by the full board.”]

It was agreed that if there are still questions, the Board’s representatives at the hearings will need to deal with it since the Legislative committees will not wait for the Board to have another meeting.

Mrs. Garcia provided copies of SB 163 (identical bill to HB 99 in the Senate side sponsored by Senator Linda Lopez); HB 306 (Sunset Bill extending the life of the board along with other boards and commissions); and HB 310 (modifying the “Fund” language in the Act by inserting “as appropriated by the legislature” along with other boards and commissions). HB 306 and HB 310 are both being sponsored by Rep. Wallace from the LFC. Copies of HB 330 (government contracting) & HB 532 (CID codes) were also provided.

6.2 Review and/or Actions of Other Legislative Issues

6.2.1 Errors and Omissions (Liability) Insurance – Board’s Position. - Mrs. Garcia indicated she took the liberty and asked Dr. Anderson to provide draft language for mandatory disclosure of E&O which is included in the meeting packets since he first brought up the idea of mandatory disclosure of E&O. It was agreed that if the Board could concur on appropriate language it could be a compromise Board representatives could use in the event Senator Griego introduces an amendment to HB 99. Information on mandatory liability insurance as required by the Real Estate Commission as well as information obtained from the Florida board of professional surveyors on mandatory disclosure was reviewed. Mr. Shah agreed with Dr. Anderson’s drafted language. Mr. Sanchez indicated it is not logical to have a blanket requirement because the E&O insurance industry issues policies based on a licensee’ track record and the type of work they do. New licensees would not be able to obtain insurance. If the licensee can not get it, and there is a state law that says he must have it, then the State has to create a pool like they have for worker’s comp. Senator Griego who has been pushing for this has been told this, but he insists and he indicated in one of the hearings that if the Board does not propose it, they will. Copies of the drafted language were then provided to Mr. Rosoff and Mr. Thurow. It was moved by Mr. Shah, seconded by Guerrerortiz and unanimously,

VOTED: that in case an amendment is made to the bill to include mandatory errors & omissions insurance, the Board will provide the language discussed today for mandatory disclosure of professional liability insurance coverage. [The language would also state the minimum terms and conditions of coverage, including limits of coverage and permitted exceptions. If not proved a statement of no insurance coverage would be included in any contract or agreement.]

Mr. Thurow questioned whether the Board, or the Act, specify contract requirements between two different individuals. It was noted that the Act can.

7. **OLD BUSINESS** - none

8. **DIRECTOR'S REPORT**

8.1 Staff Activity Report – Mrs. Garcia indicated that staff has completed 2,586 renewals. There are still 1086 licensees due to renew that have not. The grace period is through March 1st. The scores (approximately 400) for the October 2004 were released. From November to the present about 137 applications were reviewed by staff in addition to the ones reviewed by the PEC yesterday. There definitely has been an increase in the number of applications from engineers seeking licensure in New Mexico.

8.1.1 Information from Mary Smith, Assistant Attorney General/Board Counsel- Information Regarding complaint Procedures – F.Y.I. – The

information was being presented as a response to the PEC requests from the last meeting that they would like for staff to not remove the names of the parties involved in the cases presented to the Board for review since it becomes very difficult to review information in a case and keep track of the different players identified only as Engineer A, Engineer B, respondent, complainant, etc. It was noted that Counsel's response stressed that staff keep a licensee's name confidential during the complaint review process. The rationale was to ensure board members provide an unbiased review when initially reviewing the facts of the case. Mr. Shah stated that he does not believe it is a statutory requirement to remove names. Mr. Sanchez indicated that he likes the process of removing names because although he has no problem with being impartial and fair even if names are provided, there may be an issue with the appearance of not being fair. Mr. Guerrerortiz indicated that some cases are so convoluted that sometimes the committees spend so much time trying to figure out who is who. He feels it limits the Committee's ability to make the right decision if they cannot understand what is going on. He feels he can serve the public better if he had a good understanding of the case. Mr. Schoen indicated that he would like to know the persons involved because he would want the ability to recuse himself from a case from the beginning if he needs to. Mrs. Garcia stated that the initial review when names are omitted from all documents is for the committees to review the facts and determine if there is probable cause to continue. If the Board finds that there is probable cause to issue a Notice of Contemplated Action that is the time that the licensee's name is of record. Prior to the hearing, board members know who the parties are and may at that time recuse themselves from participating in the hearing. The hearing process allows the licensee his/her due process. Once a hearing is provided, the Board/committee can render its decision whether it be to dismiss the charges or sanction a licensee. Mr. Guerrerortiz indicated that the Committees should be able to decide when they should have the names in order to make it a lot easier to understand the case being presented; this could be decided upon on a case by case basis. Mrs. Garcia stated that the Board also needs to keep in mind that if it goes against Counsel's advice, it will probably need to hire

its own attorney. Mr. Shah indicated that the Committees should decide. Mr. Ytuarte indicated that if it is on a case by case basis, it will be difficult because it will be the first time reports are being compiled and being provided in advance—there is no way for staff to know which cases should include names. It becomes a logistics problem. It was moved by Mr. Shah, seconded by Schoen and unanimously,

VOTED: to allow each committee to decide whether they want all names on all cases or no names on all, or if they want to do it case by case.

Mrs. Garcia indicated that it is her understanding that for the April meeting, staff would still send the information on the cases to be reviewed with the names obliterated from the complaint and other documentation. She will include this topic on each committee's agenda for discussion and action during the next meeting.

8.2 Exam Information

8.2.1 Exam Administrator (ELSES) October 2004 Survey – The October 2004 Survey conducted by ELSES (exam administrator) was discussed. No action was necessary.

8.2.2 Future Changes to Exams (11/8/04 NCEES Letter) – NCEES' memorandum on future changes effective with the 4/2005 and 10/2005 exam sessions were discussed which included the names of the surveying exam to delete "land", a change in the Structural Design Standards of the Civil Principles and Practice (PE) exam as well as the Transportation Design Standards of the Civil Principles & Practice (PE) exam. The FE specifications will be revised as well as the Supplied-Reference Handbook to support the new specification. New exam specifications are also underway for the Fundamentals of Surveying and the Principles and Practice of Surveying, the Industrial Engineering (PE) and the Electrical and Computer Engineering (PE), depth modules.

8.3 FY 05 Financial Status Report – September, October, November &

December - Mrs. Garcia presented the financial reports for the months of September, October, November and December including the revenue report, budget status report, expenditures, and the cash balance (unrestricted) ending December as \$532,706.88. It was moved by Mr. Shah, seconded by Mr. Guerrerortiz and unanimously,

VOTED: To approve the financial reports, including the expenditures & vouchers payable as submitted.

8.3.1 Budget Adjustment Request – Increase in Budget - Mrs. Garcia indicated that the purchase of a car for the agency had been discussed previously when considering the office move because of the distance between the Board offices and the State Treasurers Office and other agencies with whom staff has to deal with on a daily basis. A Budget Adjustment Request to increase the Board's budget for FY 05 for a total

of \$25,700 was submitted to DFA prior to the start of the session since these types of transactions are suspended during the session. Staff did check with Chair Sisneros for his approval. \$20,000 will be allocated for a car and \$5,000 for an additional PC work station, a laptop and LCD projector. DFA and LFC have approved the BAR, but the money has not yet been spent. It was moved by Mr. Sanchez, seconded by Mr. Guerrerortiz and unanimously,

VOTED: To approve the BAR and disbursement of funds.

- 9. **CLOSED SESSION** [A closed session was not held.]
- 10. **OTHER - none**
- 11. **ADJOURNMENT** – It was moved by Mr. Sanchez, seconded by Mr. Atwell and unanimously,

VOTED: To adjourn the meeting.

Submitted by:

Approved by:

Executive Director

Severiano Sisneros, III, PE, Board Chair

Approval Date