

Meeting of the Professional Surveying Committee  
of the Board of Licensure for Professional  
Engineers & Professional Surveyors held at 1:00  
p.m., August 3, 2006 at the Board Office at 4001  
Office Court Drive, Ste. 903, Santa Fe, NM.

Members Present Charles Atwell, PSC Chair  
Gilbert Chavez, PS  
Salvador Vigil, PS, PSC Vice Chair  
Fred Sanchez, PS

Others Present Elena Garcia, Executive Director, BLPEPS  
Candis Bourassa, Licensing Manager, BLPEPS  
Mary Smith, Assistant Attorney General, Legal Counsel  
Ed Ytuarte, Complaint Manager, BLPEPS

Guest Glen Thurow, PS, NMPS Lobbyist  
David Cooper, President, NMPS  
Timothy Oden, PS  
Joseph L. Werntz, Attorney

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

Mr. Atwell convened the meeting at approximately 1:10 p.m. A roll call was taken, and it was noted that a quorum of the Committee was present.

2. **APPROVAL OF THE AGENDA**

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

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

3. **APPROVAL OF THE MINUTES**

**3.1 Approval of the June 8, 2006 Minutes** It was moved by Mr. Vigil, seconded by Mr. Chavez and unanimously,

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

4. **NEW BUSINESS**

**4.1 Interview with Tommy Conley, PS** – Ms. Garcia indicated Mr. Conley was contacted to appear before the Committee at this meeting; however, he wrote requesting an extension due to computer difficulties (on-line problems) in completing the NMSU ethics course. It was moved by Mr. Sanchez, seconded by Mr. Vigil and unanimously,

**VOTED:** to give Mr. Conley an extension until the next Board meeting in Santa Fe or Albuquerque in January. Ms. Garcia will notify Mr. Conley.

**4.2 Requirements for Survey Plat Imposed by City** It was noted by Ms. Garcia that this information was brought to the Board's attention by a professional surveyor who provided a copy of the information sheet which requires "area to be defined to nearest 0.0001 acres, ft<sup>2</sup> may be provided." The question the Chapter/NMPS has is whether the City can impose such a requirement for surveyors submitting plats for review. Mr. Sanchez indicated that if one really wants the truth, there should really be five places in order to be able to go from square foot to the exact acreage and back in order to get the same number. If you have it just to the nearest hundred when you multiply it you do not get the square feet, so what difference does it make? He, however, is not supporting a non-practitioner to review anything else. Mr. Vigil indicated that the real issue is the direction the City is taking in telling surveyors how their plats should look when the individual at the City has not right to do so and no surveying experience. Mr. Chavez indicated that he agrees that a public officer can not dictate what needs to be on a survey plat if the officer is not licensed as a surveyor.

Mr. Cooper indicated their local chapter has been discussing this issue. Mr. Thurow pointed out that the Board advisory opinion adopted November 2001 by the Board applies in this instance. It says that an individual not licensed in the profession (a reviewer) can not make decisions about surveying matters. Ms. Garcia added that the advisory opinion is posted on the Board's web site.

After a brief discussion, it was moved by Mr. Vigil, seconded by Mr. Chavez and unanimously,

**VOTED:** to advise the City of Santa Fe, through the Deputy City Manager of the Board's position on these types of activities and include the Board's advisory opinion.

Mrs. Garcia will prepare the letter under the Chair's signature and submit a draft copy to the PSC members.

**4.3 Brokering of Surveying Services First American/Residential Land Services Solicitations to Professional Surveyors** – Mr. Vigil summarized that Residential Land Services (RLS) is contacting professional surveyors in the state to contract with them to provide surveying through them to the First American Title Company. Surveyors contract directly with RLS. Mr. Sanchez indicated that the concern he sees is that it is difficult to find out who is responsible to whom when something goes wrong. Chair Atwell indicated that he was familiar with the matter and that it is not a local problem; it is going on across the country. They are providing Improvement Location Reports (ILR) through local surveyors on contracted prices. They say they have better control with the escrow agents. Most realtors leave the assignment of a surveyor to the title companies. This will take it out of the escrow agent and place it on the hands of RLS who will pick the professional surveyor. Mr. Chavez indicated that this arrangement is similar to what HMO's do with physicians.

Mr. Cooper indicated he was invited to meet with First American to find out how this would work. A surveyor signs up with them and they will set surveyors up with a website and began sending you orders. They do establish a minimum cost for a certain size of lot. The surveyors thought that was price fixing. They would set minimum requirements for the ILR that would meet NM requirements and also there would be certain marketing information on the ILRs.

Mr. Thurow stated that in his opinion, it is not price fixing because the surveyors themselves are not getting together and saying this is what we are going to charge. He believes, however, there is a problem with the advertising they are putting on a surveying document. The surveyor has no control over whose advertisement goes on that surveying document which belongs to the surveyor. This has been established in the past that any survey out of a surveyors office that carries the surveyors' signature and seal of the surveyor is that surveyors documents. He stated that under the NCEES under their model rules of professional conduct dated July 1990 one of the items state that registrants shall not permit the use of their name or firm name by nor associate with business ventures with any person or firm which is engaging in fraudulent or dishonest business or professional practices. He is not suggesting that anyone that advertises is necessarily engaged in questionable business practices; however, he is suggesting that the surveyor has no control over who appears on that document. In essence you could have smiley sam the used car man have a little advertising on there and smiley sam could be running the biggest boiler room operation this side of the Mississippi River, and his ad would be on the surveying document with his seal and signature. The other one under the model code is that registrants shall not affix their signature or seals to any plans or documents dealing with subject matter in which they lack competence nor to any such plat or document not prepared under their direct control and personal supervision. If the surveyor has no control over who is being sold advertising space on their surveying document, he believes they do not have complete control. While this practice may not be a legal violation, he believes it violates the ethical canons of professionalism as articulated by the NCEES.

Ms. Garcia indicated that the same provisions in the NCEES model rules are incorporated in the Board's rules [16.39.8.9 A(1)(d) 7 B.] She also believes that there is another advisory opinion that may be pertinent.

Mr. Sanchez stated that he recommends that the Board should let them know that they are not supportive of this process, including the selection of surveying services based on prices and the use of advertisements.

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

**VOTED:** that the Surveying Committee issue a letter of concern as to the solicitation of these services since these practices may be in violation of the rules of professional conduct for professional surveyor in New Mexico and that the NMPS working with the Board try to establish a definite position on this issue.

It was noted that the Board would need to address practitioners since the title companies are not under the jurisdiction of the Board. Mr. Sanchez stated that we include with the letter all of the supporting documentation that we already have, e.g. code of conduct, supporting advisory opinion, and anything else that may be pertinent.

Ms. Garcia wanted to clarify if the letter will go to NMPS. She recommended that RLS be copied on the letter.

Mr. Sanchez indicated that the letter be addressed to NMPS as a letter of concern.

**4.4 Height Modernization Issue** – G. Chavez brought this item to the attention of the Board because it may need to be placed in law similar to the New Mexico State Coordinates. Mr. Vigil indicated the biggest question was elevation to benchmark. Mr. Chavez stated that sea level is now obsolete and the advantage of new systems is the definite reference. Mr. Chavez handed out papers on *NGS Height Modernization* and his and Earl Burkholder's February 2006 paper "*Need for and Benefits of a Modern Spatial Reference Network in Southern New Mexico*". It is important that others can share compatible information at the appropriate level of accuracy. Mr. Sanchez indicated the City of Albuquerque has a grant from the Department of Transportation and they want to establish (6) six stations. The reason they are trying to do this is so that someone else does not do it for profit, as has been done in other states. The practitioners will own it and Albuquerque along with the DOT will administer the stations. The City of Albuquerque will be one of the biggest users in utility information. Mr. Chavez pointed out that after a statewide network is established there will be interstate data sharing. The current system has been upgraded for cell phone usability. User fees are varied between locations across the country. In an area of North Carolina it is \$500.00 to get a license to use the network while in Phoenix and other places it ranges from \$200 to \$300 a month when it is a commercial operation. In Las Cruces, Mr. Chavez says there will be cost recovery and maintenance, but it will not be a business for profit. Mr. Vigil asked if the Department of Defense and the Department of Energy had looked at whether it was segregated to one type of equipment or could any subscriber with any GPS equipment use it? Mr. Chavez responded that with the correct setting any brand of equipment can be used and cluster networks will be tied into one across the country. The Department of Defense will control licensure **to use the system.**

**4.5 NM DFA RFP for GIS Consulting Services** – Mr. Chavez handed out a State issued RFP for GIS and would like to set a time for the board to discuss the need for a licensed surveyor to establish center lines and the scope of other work. Mr. Chavez will bring a report to the board. Mr. Sanchez suggested it be arranged for someone from DFA to come speak about their concerns; he indicated this may require a special meeting.

**4.6 Providing Surveying Services Outside Your Place of Business & Business License Requirements** – S. Vigil requested an opinion from the Board regarding the practice of municipalities requiring separate business licenses to practice within their specific city even if the surveying business is not located there. Mrs. Smith advised that

practitioners need to discuss with the municipalities what the business license requirements are and the code or ordinance for such a license. She suggested contacting the city manager or city attorney. She did not think the state license would preclude a municipality from requiring an additional business license. Mr. Sanchez stated that he had a situation where a separate city license also turned into requiring a county license as well. David Cooper stated this occurs when the municipality states you must have a business license to record plats with the county clerk. Mrs. Garcia pointed out that this could be a problem that would affect the public due to the limited number of surveyors in the state and she added 62% of licensed engineers are from out-of-state and may not have a New Mexico office; however, she has not heard of municipalities requiring business licenses to practice engineering. It was decided to continue this item to another meeting when more information is acquired.

## **5. OLD BUSINESS**

**5.1 Geomatics Program @ CNM community college** Glen Thurow, PS, NMPS reported the geomatics program at CNMCC (formerly TVI) is beginning this fall and had a test run on a plane surveying class this summer. For 12 weeks the group met at 7 a.m. on Saturdays to learn the fundamentals of construction surveying. This course will be offered again in the fall with emphasis on plane surveying and less construction along with photogrammetry. In the spring, they plan a class on the public land survey system as they apply to New Mexico. UNM continuing education division has also contacted him concerning offering courses in ethics for surveyors. Saturday at the seminar in Ruidoso there will be a four (4) hour class in ethics and they hope to have online classes in the future. Mr. Sanchez stated he took the NMSPE ethics class which was general, and he would like to see one that addressed ethical interaction between engineers and surveyors. Mr. Sanchez added the board appreciates all that Mr. Thurow has done in working and advising the board.

## **6. CORRESPONDENCE**

**6.1 Scott Andrae, PS** RE: Question on whether surveyors with State Engineers Office follow the Board's interpretation on the determination of the surface area of an untransferred original water right. Mr. Sanchez stated that in his opinion and unless Mr. Andrae has proof that the public is being harmed, the Board should stay out of the State Engineers internal operations. Mr. Andrae does however have the right to file a formal complaint with the Board if he wishes to. Mr. Sanchez will draft a response letter to Mr. Andrae. The Committee concurred.

**6.2 Response to David M. Storey, PE, City Engineer Roswell, RE:** Supplemental Surveying – A copy of the letter was provided to the Board Chair. A letter of response was drafted with input from the committee, and it will be presented for signature.

**6A. HEARING ORDER TO SHOW CAUSE** – Case 04-04-42 Matter of Timothy Oden, PS – On the plat, Ms. Garcia indicated that the only thing that is outstanding is that his previous plat did not meet all the requirements; he submitted another revised plat that is

scheduled to be reviewed at this time. He is appearing at the request of the Committee and its Order for a Show Cause Hearing. Mr. Ytuarte indicated that when he reviewed and presented to the committee the revisions that had been submitted prior to the latest submission, there was a very definite disagreement amongst everyone on the committee that the county line between Santa Fe County and Sandoval County was definitely in error and corrections to the plat were supposed to address that as well. He believes that was the only outstanding issue on the plat that had not been corrected by Mr. Oden; and therefore, the plat was directed back to him with an order to show cause. He indicated there was a jog in the county line and there was a state statute that delineated where that county line should be. Since then, Mr. Oden submitted new revisions; and the plat was recorded. He indicated that communications to Mr. Oden had indicated that all revisions to the plat would need to be reviewed before a revised plat was to have been recorded. Nevertheless, it was recorded before it was reviewed by him or the Committee; however, it appears that the county line has been corrected as requested. There was a question whether the fine has been paid. It was noted that it was. Mrs. Garcia indicated that everyone had received a copy of a letter from Mr. Oden's attorney with a proposal. Mr. Werntz on behalf of Mr. Oden stated that they recognize that there is certain disciplinary action pending that comes out of the February Decision and Order, and after discussing it at some length with Mr. Oden they came up with the proposal that is contained in their letter. Mr. Oden is prepared to retire permanently and not reapply for a surveying license in this state. They believe their proposal addresses probably issues on a much broader level and they would ask the Board to consider that in lieu of any other disciplinary action that may be pending and under consideration. Mr. Sanchez indicated that he did not have any problem with his request. Chair Atwell indicated the Committee is prepared to address this letter (proposal by Mr. Oden). It was moved by Mr. Sanchez, seconded by Mr. Chavez and unanimously,

**VOTED:** To accept the proposal made by Mr. Oden to retire his license and not reapply.

Mr. Werntz and Mr. Oden left the meeting.

7. **CLOSED SESSION** [Complaint and Violations] It was moved by Mr. Vigil, seconded by Mr. Sanchez and unanimously,

**VOTED:** To convene in closed or executive session pursuant to NMSA 1978, Section 10-15-1 (H) (1) to discuss only those cases listed in item 7 of the agenda, [items 7.1 through 7.7 ]. A roll call vote was taken. Voting yes, Mr. Sanchez, Mr. Atwell, Mr. Chavez and Mr. Vigil. Motion carried unanimously

- 7A. **OPEN SESSION** – Action on cases on the agenda – Mr. Atwell reconvened the meeting in open session and further stated that the discussions in closed session were limited to those cases listed as 7.1 through 7.7 on the agenda. [ *All charges, unless dismissed as unfounded, trivial, resolved by reprimand, or settled informally shall be heard in accordance with the provisions of the ULA, 61-23-27.11(D), NMSA 1978*].

7.1 Case 04-04-42 address in 6A, completed as Mr. Oden has corrected plat and filed the plat; and the board accepted his proposal to permanently retire his surveying license and not to reapply.

7.2 Case 05-04-02 - T. R... Conley - motion to grant extension to next board meeting by Mr. Sanchez, second by Mr. Chavez and unanimously,

**VOTED:** To approve motion.

7.3 Case 05-05-26 – Motion by Mr. Chavez to issue NCA based on the complaint manager’s report with a possible Stipulated Agreement of \$1000 fine, ethics course, and to correct the plat and submit for review by the complaint manager prior to filing, second by Mr. Sanchez and unanimously,

**VOTED:** To approve motion, Mr. Chavez & Mr. Atwell will be hearing officers.

7.4 Case 05-05-27 - Motion by Mr. Sanchez that a letter be sent to the Central Valley Electric Cooperative, Inc. that the appeal testimony presented has been reviewed and the board stands on its original decision, second by Mr. Vigil and unanimously,

**VOTED:** To approve the motion.

7.5 Case 06-05-53 – Motion by Mr. Sanchez to to issue an NCA based on the complaint manager’s report, second by Mr. Chavez and unanimously,

**VOTED:** To approve motion, Mr. Vigil & Mr. Atwell will be hearing officers

7.6 Case 06-05-54 – Motion by Mr. Sanchez to issue NCA based on the complaint manager’s report with a possible Stipulated Agreement of \$500 fine, correct plat, ethics class, and letter of reprimand, second by Mr. Vigil and unanimously,

**VOTED:** To approve motion, Mr. Sanchez & Mr. Atwell will be hearing officers

7.7 Case 06-05-45 – Motion by Mr. Sanchez to continue the investigation/review and address at the next board meeting, second by Mr. Chavez

**VOTED:** To approve motion.

Appointment of hearing officers as noted above.

## **8. REVIEW OF APPLICATIONS**

8.1 Applications to Reactivate License from Retired Status and Inactive Status/Approve for Retired Status – none presented at this meeting.

8.2 Applications for Exam – four PS examination applicants reviewed with decisions noted in files, and one PS by endorsement approved for NM2HR.

9, **ADJOURNMENT** – Having no further business, Mr. Atwell adjourned the meeting.

Submitted by:

Approved by:

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Elena Garcia, Executive Director

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Mr. Charles Atwell, Chair, PSC

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Approval Date