

Meeting of the Professional Engineering  
Committee of the Board of Licensure for  
Professional Engineers & Professional  
Surveyors held February 2, 2006 at 1:00  
p.m., Enchantment Room 1, Albuquerque  
Convention Center, 401 2<sup>nd</sup> NW, West  
Complex, Lower Level, Albuquerque, NM

Members Present:     Patricio Guerrerortiz, PE, PEC chair  
                              Dr. Rola Idriss, PE  
                              Severiano Sisneros, PE  
                              Subhas Shah, PE  
                              John Romero, Sr., PE  
                              Stevan J Schoen, Public Member

Others Present:       Elena Garcia, Executive Director, BLPEPS  
                              Candis Bourassa, Licensing Manager, BLPEPS  
                              Ed Ytuarte, Complaint Manager, BLPEPS  
                              Mary Smith, Assistant Attorney General, Board Counsel  
                              Hank Rosoff, PE, NMSPE  
                              Glen Throw, PS, NMPS  
                              Ron Bohannon, Tieria West, LLC  
                              Richard Dourte, PE, City of Albuquerque  
                              Brad Bingham, City of Albuquerque  
                              Dennis Lorenz, PE, Brasher & Lorenz, Inc.  
                              Paul Brasher, PE, Brasher & Lorenz, Inc.

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

Mr. Guerrerortiz convened the meeting at approximately 9:10 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, second by Dr. Idriss and unanimously,

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

**3.     APPROVAL OF THE MINUTES**

3.1     Approval of the December 1, 2006 Minutes – It was moved by Mr. Shah, second by Mr. Romero and unanimously,

**VOTED:** To approve the minutes of 12/1/06

#### 4. NEW BUSINESS

4.1 Question on Reporting Discipline Imposed by Other Jurisdiction – Mrs. Garcia presents a proposed letter to be sent to a licensee disciplined in another state. She indicated that licensees must report such incidents to this Board within 90 days. She indicated that if the licensee was sanctioned by another state for an activity which would be in violation of the New Mexico Engineering and Surveying Practice Act and/or the Board's rules the Board can under the Board rules initiate disciplinary actions in accordance with state statute. Ms. Smith indicated a correction needs to be done to the cited section in the proposed letter (16.39.7.9 D NMAC). Mr. Schoen agreed that the proposed letter was appropriate in this case. Mr. Guerrerortiz suggested this subject be included in the next board's newsletter. It was moved by Dr. Idriss, seconded by Mr. Schoen and unanimously,

**VOTED:** to accept the letter as written with section correction.

4.2 Clarification of the Definition of Supplemental Surveying 4.2.1  
Hank Rosoff, PE Request for discussion of the changes to the Act as it relates to surveying activities and how changes affect engineers.

Mr. Rosoff indicated he participated in the committee working on recommended amendments to Practice Act before the 2005 legislature. The committee worked on the part of the statute that deals with supplemental survey work. One of the goals they had was to make it clear in the Act that engineers should not be providing primary surveying services to a client. Engineers can continue to do the necessary surveying to support a project where they are the designer, but not representing themselves as selling survey services. The Act states that engineers should not be doing surveying of real property for the establishment of land boundaries, right-of-ways, easements, and vertical and horizontal control. "Supplemental surveying" work was set up so it implies that there is some underlying surveying document that is being supplemented. That may be in a gray area between engineering and surveying, and it will probably come back to the full board. Mr. Rosoff pointed out the letter that went out on January 19, 2006 to all governmental review authorities from the Professional Surveying Committee of the Board on this particular matter. The Professional Surveying Committee tried to define a line between engineering and surveying; but obviously, he believes it needs further definition.

Paul Brasher, PE addressed the Board saying that historically the Engineering Practice Act has recognized the overlap between civil engineering and surveying especially in the area of topography. Civil engineers use topography for flood control studies and many other reasons. It has always been that civil engineers go out and shoot their own

topography or hire a surveyor. These topographies are not for sale or promoted to the public but for the engineers' own purposes. The statute used to recognize this under a definition called an "engineering survey", which entrusted engineers to make the field measurements they needed for their own work and even for photogrammetry. In July 2005, the Act was published and introduced the definition of "supplemental surveying" saying that engineers can enhance, densify or augment previously performed survey or site information. It does not exactly draw a line on what enhancement or augmentation is or whatever site information there might be. Mr. Brasher finds this definition creating difficulties in their engineering work. If they go out and shoot their own topography, there are surveyors saying they are actually practicing surveying. He [Paul Brasher] would call it enhancing, densifying or augmenting. He needs to be able to shoot his own topography for his own design purposes. Mr. Brasher does not mean to say engineers always do their own, as they do engage services of licensed surveyors to do topographic maps, but sometimes he wants to do his own. He indicated he went before the survey committee and explained this but they may have misunderstood him. While surveyors make measurements, the engineers need to be able to make measurements and use those measurements and be responsible for those measurements. Engineers ought to be allowed to gather topography. He might suggest the line be drawn when he shoots topography to only projects where surveyor have set property corners and only if a surveyor has set benchmarks on the vertical control somewhere. He believes he and others have skills to do his own topography while some engineer may not. He believes that as an engineer he can work more closely with his own assistants and get the information he needs specific to his design. He knows the important points needed to get in the analysis and accepts responsibility for it. He is going to be making his computations with that topography and stamping the plan. He would never set a property corner nor do the traditional survey work. He believes the definition is fine if it is understood and engineer can shoot as much topography as he/she needs for his own consumption and for his own project. This would be done with property corners and some vertical benchmarks established already by a licensed surveyor. Mr. Brasher added that out of the 48 states, engineering surveying is recognized in 34, and civil engineers are trusted to gather their own topographic information. The other states remain silent on this. As professionals, they are trusted to not practice in areas they are not qualified. Qualified engineers should be trusted to gather topography, and he feels the public is more protected when he takes full responsibility for all the measurements he takes that go into his design. Historically engineers have shot topography, and he is not sure why this new definition came about. Back in 1992, the Act recognized engineering surveying and he feels new changes were unnecessary. The "supplemental surveying" definition has imposed limitations on engineers to only augment, densify and enhance a survey. It is hard to tell where the

line is between the two professions. There are many departments making measurements, e.g. the police, archaeologist, anthropologist, farmers, earthwork contractors, homebuilders, and a whole lot of people doing this for their own use. Mr. Brasher asked the board to modify, clarify, or refine the supplemental survey definition and consider an engineer can shoot whatever topography he needs as long as surveyor has set property boundary and benchmark. He is appearing before the board because there was criticism that topography was being done even though the mapping was done before the new definition went into effect.

Mr. Shah asked Mr. Brasher if he had received board information back then for input. Mr. Brasher indicated he was aware there was much discussion. However, the publication sent before July 1, 2005 was the first time he saw the new definition, and then he received criticism for work prior to the new definition.

Ron Bohannon, PE, addressed the Board. He echoed what Mr. Brasher testified to and added that now with GPS and technological changes there are now contractors doing total GPS stations, and are taking the professional surveyor out of many aspects. Where grade and drainage plans used to come from surveys by licensed surveyors there is an evolution with the advent of GPS systems. Surveyors and engineers need to be looking at what contractors are doing in their professions to be sure they have the appropriate accuracy. At a national level, companies are going toward engineers doing the topography on site. This is constantly evolving. Now going into the construction with the advent of GPS and electronic systems and transferring information electronically to contractors, you are getting people that are not as educated as surveyors doing that work. It creates more gray areas for the board to look at. Mr. Bohannon stated he was raised in an environment where engineers did design survey. He sees engineers doing topographic work because they are taking responsibility for the work, but they should use licensed surveyor when needed. Mr. Bohannon would like the board to come up with proper direction between engineers, surveyors and review new conflicts with the construction industry.

Chair Guerrerortiz welcomed this feedback to the board. He indicated the board has tried to publicize changes to the Act and the rules in order to get this type of input into the process. It is important that the public and professionals be involved.

Mr. Richard Dourte, engineer for the City of Albuquerque had a question over the January 17, 2006 letter, and Advisory Opinion Regarding Unlicensed Practice of Surveying by Engineers that was sent to him together with the advisory opinion No. 16 by the Professional Surveying Committee. The final sentence of the letter reads, "*Projects containing*

*any elements of surveying as defined by 61-23-3 (N) of the Engineering and Surveying Practice Act NMSA, 1978 should note the surveyor of record along with the appropriate signature and seal".* He is concerned with this statement because this implies that drainage plans are now required to be stamped and signed by the professional surveyor. There is always a question of liability and with respect to the City and they might point to the professional engineer that stamped and signed them if there are problems with the grading plan. They would prefer not to try to dispute between the surveyor and the engineer if there is an issue. There is also a question about the topography received by the engineer on surveying information used, but the surveyor is no longer around. The City does receive about a thousand grading plans a year. They have checked with the other municipalities as Rio Rancho, City of Santa Fe, the engineer for Los Lunas, and others. Their main concern is that the surveyor of record be part of the information provided on the grading plan rather than just the engineer. He is bringing this to the attention of their technical review subcommittee, which is part of their development process executive committee for the City of Albuquerque. He suggests all municipalities are notified. Mr. Brad Bingham, City of Albuquerque stated that after checking with all the regional agencies, it has always been assumed that the engineer who signs and stamps the plan holds the responsibility. None of them requires a stamp or signature of the surveyor on their submittals. At the end of the project, as-built surveys are also certified by the design engineer. This decision can affect how they do business, so they want to make sure they are clear on it and everyone is consistent in the matter. Mrs. Garcia says the Professional Survey Committee requested their Opinion #16 be distributed to all public works directors throughout the state, but she indicated to the committee she needed to get an updated directory for the entire state. She did send it to key entities already. Mr. Brad Bingham asked if every single drainage plan will require the signature and seal of a professional surveyor. Mr. Guerrerortiz stated the board cannot answer that question right now. Dr. Idriss asked what specifically were their concerns. Mr. Bingham responded it is in the liability and who is responsible for its design and any revisions. Mr. Guerrerortiz, as a civil engineer, sees that in grading plans, professional surveyors' input would be only one small portion of the overall engineering project. Engineers are constantly depending on information provided by other licensed professionals. The engineer takes responsibly for his work based on that information. There may be gray areas that the board can issue opinions on to clarify. Mr. Guerrerortiz reminded the participants how all the Board's actions were well published and input was requested before changes take place. Board meeting and rules hearings are always open to the public and feedback welcome. Mrs. Garcia pointed out that in the Practice Act 61-23-10 E, covers the determination of practice exclusive to each profession. *The joint engineering and surveying standing committee shall have the exclusive*

*authority over practice disputes between engineers and surveyors to determine if any proposed rules of professional responsibility are exclusive to the practice of engineering or exclusive to the practice of surveying so that rule-making authority is delegated to the engineering committee or to the surveying committee. Determination of exclusive practice of engineering or surveying requires an affirmative vote by not less than three members of the committee. If an affirmative vote of three members cannot be achieved, the determination of exclusivity shall be made by the full board.* Mrs. Smith advises that she agrees with Mrs. Garcia that Section 10 E has the joint standing committee and that is where she thinks this discussion is appropriate. This is the second time in the last few years that engineers have brought concern about surveying to the engineering committee, and she thinks it is much more appropriate to bring it to the full board rather than taking the time of the committee about something over which they do not have jurisdiction. Her suggestion to everyone involved is first send it to the joint standing committee and if it cannot be resolved, at that level as the statutes anticipates, then it goes to the full board. This committee has absolutely no jurisdiction to decide whether the language in the statute needs a definition to “enhancing densifying or augmenting.” She suggests referral to the joint standing committee and at some point in time; it may come before the full board.

It was moved by Mr. Shah, seconded by Dr. Idriss and unanimously to send this matter to the joint committee for further clarifications.

In discussion, Mr. Sisneros points out how he has concern that many of the conflicts are geared toward the construction-staking end of it more than it is a difference between engineers and surveyors. It involves how public work projects are controlled in the state. He believed there was an opinion on whether the bigger agencies were in violation. Contractors are contracting out to contractors that go out and do survey themselves without acquiring a surveyor or engineer. Smaller companies as Mr. Brasher’s and public works are caught up in the problem. Mr. Rosoff pointed out it was not the intent of engineers on committee making recommendations for changes to the Practice Act before the last legislature to stop engineers from doing what Mr. Brasher described. They certainly felt an engineer should be able go out and shoot topography on an already surveyed property for the use in his design. A real question would be what is the minimum standard for an underlying document? In his discussion, they did not want to leave the definition of the gray area to the state legislature. The gray area changes as technology and education change and the board rules can change easier than the legislature. Mr. Dennis Lorenz added he agrees that the engineering community could have been more active in the legislative process, but now the wording is so broad and fuzzy that it makes working within his authority difficult. Some motivated surveyors are watching engineering work and are taking that

broad fuzzy definition of supplemental survey and leveraging it in their direction and trying to strip engineers of all their rights of taking measurements. Mr. Schoen suggests the participants today should be well advised to be present before the joint committee meeting and state their views. Through Mrs. Garcia, they can be informed of meeting dates. Mrs. Garcia asked if the motion means the PEC is in opposition to what the Professional Surveying Committee determined in this matter [because if the PEC agrees with the PSC, it stops here]. Mr. Romero stated they would like more clarity with no negative intent. Mr. Guerrerortiz believes the joint committee can make a recommendation for the board. Mr. Guerrerortiz calls for a vote and unanimously,

**VOTE:** To have the definition of “supplemental survey” work be further addressed and clarified by the joint committee.

## **5. OLD BUSINESS**

5.1 Committee Report on Landfill Gas – Specialty Sub-discipline – Mrs. Garcia reported that she believes the full subcommittee needs to look at the draft proposal from Fred Schelby (found on pg. 10, 5.1 of the meeting books). She indicated that the proposal was not part of the hearing for March 2, 2006; she believes it is incomplete. After the subcommittee has had a chance to review it, a recommendation needs to be sent to the PEC. It was noted the draft language is similar to the liquid waste task force’s recommendation. Mr. Guerrerortiz indicated he was on the liquid waste task force and the interested community was strongly suggesting needed solutions and the board was there to guide them more than anything else. Mrs. Garcia explained that once appropriate language is finalized by the subcommittee, it can be published, and the Board can conduct a rules hearing on this issue only. The City appears to have a need for a specialty sub discipline, but some of the criteria in the proposed rules for subspecialties still need to be addressed, e.g. training for this subspecialty. The City of Albuquerque is the only municipality who has conveyed a problem in this area. The currently proposed rule addressing criteria for specialty sub disciplines says the board would review the licensee’s experience; however, it must also make available through the industry or requesting entity the required specialized training. The recommendation at this time is not addressing all the criteria. Mr. Guerrerortiz believes the guidance was provided, but believes it is not the Board’s responsibility to formulate the need to create this sub discipline. Mr. Shah will convene another meeting and have something by April for the Board.

## **6. COMMUNICATIONS**

6.1 Clint Rapier, PE – Questions on Licensing by Comity – Sequence of Qualifications – Mr. Rapier wrote indicating he has been licensed in Arizona since 6/6/05 by passing both the fundamentals of engineering and the professional engineering examinations. He, however, will not graduate with an engineering

degree until December 2007. Arizona did not require an engineering degree for licensure. His question is whether he may obtain licensure once he obtains his degree. The board recognizes the problem that exists when applicants have worked under licensed engineers while going to school; however, NM laws for licensure by endorsement stipulate that applicants must have met equal or exceeding requirements as New Mexico had at the time they were initially licensed in another state. In 2005 when Mr. Rapier obtained his initial license, New Mexico required a four year degree in engineering and four years of board-approved engineering experience after graduation. It was noted that Mr. Rapier should submit his application once he completes the degree for a complete review.

7. **CLOSED SESSION (Complaints and Violations)** – It was moved by Mr. Sisneros, second by Mr. Shah and

**VOTED:** To convene in closed session pursuant to NMSA 1978, Section 10-15-1 (H) (#1) to discuss only those cases listed in 7.1 through 7.3 of the agenda. A roll call vote was taken. Voting yes: Mr. Guerrerortiz, Dr. Idriss, Mr. Sisneros, Mr. Schoen, Mr. Shah, and Mr. Romero. Motion carried unanimously.

- 7.1 Case 04-04-16
- 7.2 Case 04-04-20; 05-04-08
- 7.3 Case 05-04-15

7. A. **OPEN SESSION** – Action on the Above Cases – Mr. Guerrerortiz reconvened the meeting in open session and further stated that the discussions in closed session were limited to those cases listed as items 7.1 through 7.3 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, 61-23-24(E), NMSA 1978]*

- 7.1 Case 04-04-16 – It was moved by Dr. Idriss, seconded by Mr. Romero and unanimously,

**VOTED:** to dismiss this case since Board does not have jurisdiction over an agency; however, complainant is to be advised that the matter is being worked out with the State Personnel Office in resolving the issues of the use of engineering titles.

- 7.2 Case 04-04-20 and 05-04-08 – It was moved by Mr. Schoen, seconded by Mr. Romero and unanimously,

**VOTED:** to hold cases in abeyance until civil action is resolved. Additionally, the Respondent is ordered to inform the Board of all actions in the civil matter.



7.3 Case 05-04-15 – It was moved by Dr. Idriss, seconded by Mr. Schoen and unanimously,

**VOTED:** To issue a Notice of Contemplated Action (“NCA”) for allegedly providing engineering services outside of the engineer’s area of competency. If inquired a Stipulated Agreement may be in order in accordance with similar sanctions for similar proven infractions.

Chairman Guerrerortiz appointed Dr. Rola Idriss as hearing officer in this case.

## **8. REVIEW OF APPLICATIONS**

8.1 Applications for Retired Status – It was moved by Mr. Schoen, seconded by Mr. Romero and unanimously,

**VOTED:** to approve retired status to the following (29 total) applicants who have met the requirements: John Minor, PE 4921; Karl T. Feldman, PE 4543; Donald H. Schroder, PE 5413; Russell B. Givler, PE 7093; J. Thomas Cutchen, PE 7889; Raymond R. Gibson, PE 3789; Edward A. Lobnitz, PE 9333; Charles F. Rasor, PE 4645; Wellington R. Meier, Jr., PE 5587; Joseph H. Bell, PE 12345; Alfred C. Bateman, PE 4223; Robert E. Tempest, PE 11547; Robert B. Scott, PE 10395; Douglas Ditto, PE 5651; Anton C. Bogaty, Jr, PE 11875; Robert L. Swatwout, PE 6437; Olgierd K. Wodzianski, PE 6213; Eli Maesta, PE 4955; Edward R. Hermann, PE 1364; Frederick R. Allen, PE 1957; Earle E. George, Jr., PE 1265; John E. Touloumis, PE 8331; George Hartmann, PE 12477; J. Charles Jennett, PE 13103; Peter F. McEwan, PE 7491; Lorenzo (Larry) Larranaga, PE 5403; Douglas H. Loescher, PE 6139; Norm Ringhand, PE 6131, and William Hannah, PE 5439.

8.2 Applications for Inactive Status – It was moved by Mr. Shah, seconded by Mr. Romero and unanimously,

**VOTED:** to approve inactive status to the following applicants who have met the requirements: Albert Kerr, PE 13047; John C. Chirigos, PE 4847; Michael L. Rasmussen, PE 6501; Stephen N. Norris, PE 8343; James H. Suttle, PE 4665; Jan K. Novak, PE 10161; Johnny L. McAfee, PE 6583; Charles C. Colwill, PE 12207; P. Bruce Stockton, PE 5927; Nyles Lackey, PE 4309; William J. Fleming, PE 12577; Robert E. Clay, PE 4107; John A. Jehn, PE 6761; James R. Nelson, PE 10703; Robert A. Ball, PE 6181; Donald R. Cote, PE 11647; Richard T. Williams, PE 7309; Maurice Kruth, PE 9569; Michael S. Rodgers, PE 5821; James W. Lane, PE 12481; Lloyd J. Gronning, PE 9145; William De La Garza, PE 5967; Michael J. Benton, PE 11941; John G. Garrett, PE 10339; Jeremy Rivera, PE 11509; Franklin R. Flynt, PE 9141; Richard Bornfreund, PE 5387; Johnny L. Mcaffee, PE 6583; Pete E. Deaver, PE 5505; Robert T. Bates, PE 6369; John G. Garrett, Jr. PE 10339; Jon D. Hicks, PE 4553; John M. Vengrin, PE 12561; Mark J. Eberly, PE 8187; Carole L. Thomas PE 9837; Robert Shantz, PE 10255;

Aemineh Gharibans, PE 11653; Bruce N. Lovejoy, PE 9823; and Robert H. Ahearn, PE 11652.

8.3 Applications with “MLE” Council Records and “Substantial Equivalency” – 65 total - Motion by Dr. Idriss to approve, seconded by Mr. Sisneros and unanimously,

**VOTED:** to approve the MLE and substantial equivalency applicants. A record being in the board’s files.

8.4 Review of New Comity and Examination Applications – applications were reviewed and results noted in the applicant files. A list of approved applicants also available in the Board’s records.

8.4.1 Aurora Ramon Acosta –PE Applicant – page 19 - Mrs. Garcia explained Ms. Acosta will be submitting additional experience since she has indicated she would like the board to consider waiving the FE pursuant to 2003 statutes; Mrs. Garcia recommended the application be reviewed after the experience is updated. Ms. Acosta is a licensee from Mexico with a masters degree and 6 years of experience. The Committee agreed to defer the application to another meeting.

9. **ADJOURNMENT** – Having no further business, it was moved by Mr. Schoen, second by Mr. Romero and unanimously,

**VOTED:** To adjourn the meeting

Submitted by:

Approved by

\_\_\_\_\_  
Elena Garcia, Executive Director

\_\_\_\_\_  
Patricio Guerrerortiz, PE, Board Chair

\_\_\_\_\_  
Approval Date