

DRAFT

Meeting of the Board of Licensure for Professional  
Engineers & Professional Surveyors held November  
3, 2006 at Goddard Hall #200, S. Horseshoe Dr.,  
NMSU, Las Cruces, NM

Members Present	Patricio Guerrerortiz, PE, Board Chair Gilbert Chavez, PS, Board Vice Chair Fred Sanchez, PS Dr. Rola Idriss, PE Subhas Shah, PE, PEC Chair John Romero, Sr., PE, PEC Vice chair Salvador Vigil, PS, PSC Vice Chair Severiano Sisneros, PE
Members Absent	Stevan J Schoen, Public Member Charles Atwell, Public Member, Board Secretary, PSC Chair
Others Present	Elena Garcia, Executive Director Candis Bourassa, Licensing Manager Mary Smith, Assistant Attorney General, Board Counsel Ed Ytuarte, Complaint Manager Link Summers Ron Pratt Kevin Frank

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

Mr. Guerrerortiz convened the meeting. Roll call was taken, and it was noted that a quorum of the Board was present. Guests introduced themselves.

**2. APPROVAL OF THE AGENDA**

It was moved by Mr. Romero, second by Mr. Chavez  
and unanimously,

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

**3. APPROVAL OF THE MINUTES**

3.1 March 2, 2006 Minutes of Public Hearing – It was moved by Mr. Sisneros the minutes be approved with the meeting tapes being also official record. second by Mr. Romero and unanimously,

**VOTED:** To approve the minutes of the rules hearing (Title 16) held 3/2/2006.

3.2 July 14, 2006 Minutes – Mr. Sanchez corrected “f” to “full” on page 3. It was moved by Mr. Romero, second by Mr. Sanchez and unanimously,

**VOTED:** To approve the minutes of 6/14/2006 as amended

3.3 August 4, 2006 Minutes – It was moved by Mr. Sanchez, second by Mr. Romero and unanimously,

**VOTED:** To approve the minutes of 8/4/2006.

**3A. CORRESPONDENCE – None**

**4. COMMITTEE REPORTS**

4.1 Professional Engineering Committee – Subhas Shah, PE, PEC Chair reported the Committee reviewed a Proposed Statement of Regulatory Intent with regard to 16.39.3.7 B and 16.39.3.8 E and F On-site Wastewater Treatment Engineering. After discussion, the statement was approved. The statement recommended amendment of the rules to reflect what was approved prior to the filing with State Records Center. The change was made as a formatting change by Board and NM State Records Center and Archives. The change was in compliance with what the board initially approved and what the affected parties wanted to see. A PE applicant, Aurora Acosta, addressed the committee. She held a PhD and engineering license from Mexico. The committee approved her request for exemption of the FE examination. Mr Gary Hoe asked for clarification of an Advisory Opinion regarding the review of engineering plans and sealing requirements. Opinions were provided but they may need more clarification. Mr. John Tinseley presented a question on sealing and the committee decided it required the proper discipline for the work being sealed. In closed session, case 05-05-08 was deferred until the next meeting; case 05-04-15 a request to reopen the case was denied; case 05-04-20 was settled informally with some conditions; case 05-05-41 an NCA will be issued; in case 06-05-50 a letter will be sent with some clarification; case 07-06-01 was settled informally; case 06-05-55 had a stipulated agreement approved. All applications were reviewed with all, but two, approved. Mr. Guerrerortiz added the revisions to the code (rules) addressed by the PEC affected what the board had initially adopted. It had come to the attention of the PEC that the language in one of the sections specifically was creating a sub discipline was confusing and was found to have created too much misinterpretation. It was agreed with the complainants that confusion could create problems. Current language was being interpreted that all installation of septic tanks (now covered under the environment department rules) constituted engineering work and that was not the board’s intent. Solution was to have a Statement of Regulatory Intent and work with affected state agency and interested parties. Mr. Guerrerortiz asked for a motion to ratify the statement as approved by the PEC. Motion by Mr. Romero to approve the Statement of Regulatory Intent, second by Mr. Sisneros. Mr. Sanchez asked for explanation of size limits, and Mr. Guerrerortiz clarified that for example residential projects were excluded if under 2,000 gallon usage per day. The Board unanimously

**VOTED:** To approve the Statement of regulatory Intent as presented by the PEC which would amend the Board rules as noted on the Statement.

4.2 Professional Surveying Committee – Mr. Salvador Vigil, PS, PSC Vice Chair – Mr. Vigil reported the PSC met with surveyor Timothy Oden. Board had accepted a proposal which he had presented in lieu of meeting requirements of a PSC Decision and Order as a surrender of his license. Mr. Oden requested the meetings since he felt the board had misunderstood his proposal which was to be kept on the Board's roster on Retired Status. He asked to reopen the case and request retired status. The PSC determined that he did not meet the requirements of the rule for retired status, thereby Mr. Oden withdrew his original proposal and the Board reinstated its Decision and Order which included a license suspension for one year. On the subject of Height Modernization in New Mexico, professor Burkholder made an excellent presentation. He discussed height modernization of GPS technology for spatial references systems which gives a broader scope to digital data for many disciplines. The goal is a network system for the entire state. Mr. Sanchez is involved with an Albuquerque system being established with the users also being the owners. It was noted other cities have systems established for profit. A future task force has been suggested to unify work being done in different cities and counties. In the review of applications for the NM 2 Hour exam, all candidates passed. Eleven cases were addressed: Case 04-04-42 T. Oden (Decision & Order was reinstated), case 04-04-15 (Mr. Martinez is obligated to record his plat regardless of what the county requires regarding taxes on the land), case 04-04-44 and 06-05-44 (Mr. Maestas needs to complete his ethics course), case 05-04-01/05-04-09 (George Marquez, Jr. is on suspension for one year. He has not requested a hearing on an additional case 05-05-07. He will be called before the board during the February meeting to show compliance with Board's Order. Case 06-05-45, Mr. Chavez recused himself, so case was tabled until there is a quorum for this case, case 07-06-02 through 07-06-12 were cases regarding ads in the Yellow Book. Mrs. Garcia reported most firms reported they were unaware that the Yellow Book placed a free ad under the wrong heading of surveyors since they were mainly architectural and planning firms. Letters were sent by firms to the Yellow Book to delete misleading ads. Case will be dismissed as they are confirmed to have been resolved. Case 07-06-13 was tabled until there is a quorum due to member being recused on this case. Case 06-05-56 and case 06-05-57 were both dismissed since they involve civil matters. Case 06-05-54 John Esquibel PS entered into a stipulated agreement with Board and committee accepted. Case 05-05-04 Wyatt Sparks, PS will be reviewed and decision and order is scheduled to be issued. During the review of applications Mr. Herb Blair was approved for the NM2H exam and Mr. Grant Gourley was approved for the SI exam.

4.3 Licensure Promotion Committee – Mr. Chavez, Mr. Shah, Mr. Sisneros, Mr. Romero, and Mr. Vigil - Re: Inquiry Regarding PDHs - With board's direction Mr. Chavez will examine the education articles Matthew Stuart is referring to in his email to the Board along with NCEES guidelines and address the board at the next meeting. Mrs. Garcia explained NCEES has RCEPP and this group does evaluate correspondence providers, but it appears they do not accept courses where there is no interaction between the participant and the provider. Mrs. Garcia suggested that the educational articles Mr.

Stuart refers to under current rule may be covered under the self-study provisions. With the board's direction, Mr. Chavez will contact the local chapters to make an effort to promote the use of the Speakers' kits at local job fairs. Promotion for engineering and surveying with videos could also be used at high schools career days. It is suggested the creation of a PD committee to study upcoming situations be on the next meeting agenda. Ms. Garcia indicated the PD committee was just recently integrated into the Licensure Promotion Committee.

4.4 Joint Practice Committee – Fred Sanchez, PS - The revisions to the NM Building Official Handbook have been accepted. When printed, Mrs. Garcia will get the books to the building permitting officials. Fire protection is still going on and will have to be an addendum later to the Handbook. There was talk about sustainability and technical professions are moving more and more toward green design, capturing wind and sun power. They reminded us that the committee and Elena have to schedule the next meeting. Mrs. Garcia added that on the Handbook she still has to get meaningful language for the use of electronic seals as all three boards differ in policy. She has asked for electronic seal use rules from architect and landscape architects boards.

4.5 Task Force Appointment for Developing Professional Services Contract Document – Mr. Guerrerortiz reported he has noted in the past that among engineers and surveyors in private practice there are many situations where professionals come to a project as a second field to contractors, especially with public work contracts. An example would be a state agency with contractors bidding for all services including professional engineers and professional surveyors. The lowest bidder is what they look for which provides opportunity for conflict with the New Mexico procurement code, because it says services will not be procured on the basis of cost. To protect the public and consumer from unlicensed engineering or surveying services and contractors procuring services in contradiction to the code, he would like the board to look at the problem. Several national societies have done a lot to normalize the situation among architects and engineers, but there is nothing for surveyors. Mr. Guerrerortiz asked for a charge from the board for a task force to come up with a standard agreement form that could be used by licensed surveyor particularly in the area of public's works contracts. Mr. Guerrerortiz clarified this is not for the construction contracts, but engineers and surveyors. Mr. Romero asked how a system long in place could be changed and Mr. Chavez recalled a national situation two years back when the issue was dealt with as part of fire protection sprinkler design. A statement was designed to cover the issue when construction firms were doing a turnkey job finding engineers and surveyors to fit their budgets. Question came up as to how much control did the engineer or surveyor have with the price-setting contractor. The NCEES did not review it but made a decision at a recent meeting. Mr. Chavez added all this could be considered along with the Public Works Act. Mr. Sanchez stated engineers and surveyors are being asked to agree to schedules on contracts when they have no control of the project. He added this can leave the public in danger. Mr. Guerrerortiz agreed the professional engineer in private practice finds the public is not protected when services are rendered on the basis of lowest bidder. Mr. Shah pointed out that public officials watch how money is spent. Mr. Romero believed a separate independent group would have to decide who is more

qualified and public and private business would not go for this change. Mr. Guerrerortiz has persons he wants to get input from and meet with a task force to discuss a standard contract for public works contracts where professional surveyors are involved. Mr. Guerrerortiz asked that Mr. Sanchez, Mr. Schoen, Steve Metro, private engineer, Bob Dean, insurance expert, Kevin Sexton, attorney, and Chuck Cala, private surveyor, and possibly a DOT engineer and surveyor be on such a task force. Mr. Sanchez suggested Steve Harris from the DOT. It was moved by Mr. Vigil, second by Mr. Guerrerortiz,

**VOTED:** To establish a Task Force as noted with the listed members. Votes: five members voted yes; two voted no, and one abstained due to having missed the discussions. Motion carried.

In discussion, Mr. Romero and Mr. Shah do not believe public works procedures can be changed.

## **5. NEW BUSINESS**

5.1 2007 Board Presidents Assembly – Atlanta, GA. – It was moved by Mr. Romero, seconded by Dr. Idriss and unanimously,

**VOTED:** To have Mr. Guerrerortiz and Mrs. Garcia represent the Board at the Presidents assembly with any other board member attending as they wished.

5.2 Gary Hoe – Request for Clarification of Two Policy Advisories – Mr. Chavez stated Mr. Hoe is asking for a clarification regarding the review of plans by public officials and the Board's policy on electronic signatures. He handed out information as another example of the need to clarify the Board's policy when it comes to the review of professional drawings by unlicensed personnel. He indicated he would need to recuse himself from the process. He indicated there must be requirements that protect engineering and surveying work from subordinate review changes to projects under the responsibility of the licensed professional. Mary Smith advised the board that any advisory opinion that affects anyone outside the board and staff should be a rule, and it has to be processed in accordance to the state Rules Act which would include a hearing with the opportunity for the public to comment. She cautioned against creating too many advisor opinions or policies affecting people outside the board. It was moved by Mr. Chavez, seconded by Mr. Romero and unanimously,

**VOTED:** To send these two advisory opinions and related issues to the rules committee for review and recommendations.

5.3 Update form NCEES Annual Meeting in August 2006s – Mrs. Garcia will send a written notice of what took place.

## **6. OLD BUSINESS**

6.1 Opinion Request Made by Board Over a Year Ago Regarding New Mexico Procurement Code – Status - Mr. Sanchez requested a status report. Mr. Guerrerortiz had written to the AG’s office requesting a status report. Mary Smith responded that some information has been compiled but her office is short staffed and behind on such requests.

6.2 Appointment of Liaison to NMSPE Board of Director’s Meetings – NMSPE does not have a schedule of meetings posted on their web site yet. It was moved by Mr. Romero, seconded by Mr. Guerrerortiz and unanimously,

**VOTED:** to appoint Mr. Sisneros as the liaison to attend the NMSPE meetings and if unable to attend he should notify another board member.

**7. DIRECTOR’S REPORT**

7.1 Staff Activities Report – referred.

7.2 FY 08 Budget Request – LFC Hearing – Mrs. Garcia summarized the financial Request which was mailed to all members. It was moved by Mr. Vigil, seconded by Mr. Romero and unanimously,

**VOTED:** To approve/ratify the FY 08 Budget Request as submitted.

**7A. EXECUTIVE SESSION** – The Board may convene in closed or executive session pursuant to NMSA 1978, Section 10-15-1 (H). Board decides not to use executive session

**8. COMPLAINTS 7 VIOLATIONS**

8.1 Case No. 04-04-08 Daniel Armstrong, PE – Hearing Update – Mary Smith reported the rescheduling of court hearings until Armstrong’s attorney returns from Africa.

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

**VOTED:** To adjourn the meeting

Submitted by:

Approved by:

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Elena Garcia, Executive Director

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Mr. Patricio Guerrerortiz, Board Chair

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Approval Date