

Meeting of the Professional Surveying
Committee of the Board of Licensure for
Professional Engineers & Professional
Surveyors held November 2, 2006 at
Goddard Hall #148, S. Horseshoe Dr.,
NMSU, Las Cruces, NM

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

Others Present Elena Garcia, Executive Director
 Candis Bourassa, Licensing Manager
 Mary Smith, Assistant Attorney General, Legal Counsel
 Ed Ytuarte, Complaint Manager, PEPS
 Grant Gourley, SI applicant
 Evans Ralston, NMSU survey student, licensed in NC
 Kathy Rogers, Dona Ana Co. Flood Commission, GSI mapping
 Earl F. Burkholder, PEPS, NMSU College of Engineering
 Tober L. Green, Colorado PS
 Tim Oden, PS
 Joe Werntz, Attorney

Members Absent Charles Atwell, Public Member, PSC Chair

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

Mr. Vigil convened the meeting at approximately 1:00 p.m. A roll call was taken, and it was noted that a quorum was present.

2. **APPROVAL OF THE AGENDA**

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

VOTED: To approve the agenda as presented

3. **APPROVAL OF THE MINUTES**

3.1 Amend Previously Approved Minutes of June 8, 2006 Meeting
(correction made after listening to tape) Motion by Mr. Vigil, second by Mr.
Sanchez and unanimously,

VOTED: To approve the June 8, 2006 minutes as amended to include the
assignment of hearing officers.

3.2 Minutes of the July 14, 2006 Meeting – Motion by Mr. Chavez, second by Mr. Sanchez and unanimously,

VOTED: To approve the July 14, 2006 minutes as amended on page 2 by correcting typographical errors.

3.3 Minutes of the August 3, 2006 Meeting – Motion by Mr. Chavez, second by Mr. Sanchez, and unanimously,

VOTED: To approve the August 3, 2006 minutes as amended on page 2, line 6 changing ft2 to “ft²”; page 4, line 21 change “His” to “The”; page 4, line 22, change “fee” to “fees”; at the end of that paragraph include “to use the system;” further on change “Mrs. Chavez” to “Mr. Chavez”.

4. **OLD BUSINESS**

4.1 Case 04-04-42 Matter of Timothy Oden – Board Granted Request to Reopen to Consider the Board’s Order & Consider Communications - Mrs. Garcia explained Mr. Oden’s request is to explain that he did not want to surrender his license, but to permanently “retire” it, in other words be placed on retired status so that he would be able to use the title of “PS (Ret.)” after his name. The Committee had accepted his proposal to mean to permanently surrender his license. Ms. Smith explained the acceptance of his offer of July 6, 2006 with “retired” wording is the reason the board will consider reopening the case to clarify his proposal and the Board’s acceptance of it. Mr. Oden was asked to state his reasons for the request to reopen the case. Mr. Joe Wernitz, counsel for Mr. Oden indicated Mr. Oden’s offer was to retire permanently his license. The Board’s final Order did not reflect the motion made at the hearing on August 3, 2006 or the offer made by Mr. Oden dated July 6, 2006. He asked the board for clarification. It was noted that Mr. Oden does not meet the requirements in the Board’s rule for retired status due to his age. Also, individuals on retired status may reactivate their license. The Board does not offer a “permanent retired status.” Mrs. Garcia noted that in the absence of the offer not being accepted by the Board and Mr. Oden not eligible for retired status, the Board’s Decision and Order in this case would go into effect. It was noted that Mr. Oden would need to comply with the one-year suspension of the license.

4.2 Presentation on Height Modernization in New Mexico-Professor Earl Burkholder, PE/PS – Mr. Burkholder presented the possibility of federal funding for height modernization. Height Modernization can mean different things to different people. Basically, it is putting elevations on benchmarks. Traditionally done by differential leveling while new technology utilizes GPS and geodetic leveling. The National Geodetic Survey (NGS) has brought this new technology forward. In a broader scope, it includes the use of 3-dimensional digital spatial data. There is a congressional earmark to the annual budget of the NGS. The NGS will work with states to write proposals that will go into the NGS budget as

submitted to congress for this earmarked money. Various state departments such as the DOT and others or educational institutions may take part. Ten states are currently involved in height modernization developed over the past 10 years with approximate funding of 10 million dollars per year. This is 1 million per state. New Mexico would not start out at this level, but could grow to utilize available funds. Through working with NGS, New Mexico can get separate funding with the support of our congressional delegation. A summary of suggested activities would be: 1) the development of a network of permanent GPS reference stations, and 2) development of the expertise and capability for establishing benchmarks by traditional geodetic leveling and GPS. In addition to reference stations and geodetic leveling, a program of gravity measurements should be included. Mr. Burkholder would like NGS to incorporate precise vertical component into the NGS automated GPS. The system will establish precise elevations to be used by NM DOT, the state engineers office, local city/county communities, the flood commission, LIDAR mapping, utilities companies and irrigation/water management. The board's minimum standard for geodetic surveying will need expanding. NMSU will use its congressional representation to try to promote a height modernization program. Back in October to get on the university legislative agenda, they submitted a formal proposal to the associate dean of research for the college of engineering. The idea was favorably received that they be part of the university legislative agenda. Benefits for NMSU were presented to the committee included keeping NMSU in the forefront of innovation, support land-Grant mission, capture benefits of digital revolution, support expanded use of spatial data with GIS users, and bolster enrollment in surveying engineering program. Bill Stone is the NGS geodetic advisor for NM and NM DOT will probably be a major player. There will be a forum conducted by NGS professionals at Las Cruces and Albuquerque sometime in early 2007. Mr. Burkholder passed out a copy of his presentation with web site links. During the board discussion following his presentation, Mr. Sanchez pointed out this system should not become a for-profit organization. Mr. Chavez, who indicated he has worked with Mr. Burkholder, pointed out there is a statute that defines the state plate coordinate system for horizontal only. NM needs to define a vertical definition of a statewide network. He supports the height modernization project not being for profit. Mr. Vigil pointed out the board will need to draw up the standards. Mr. Chavez added this has been started since Mr. Sanchez chaired a committee to establish the accuracies of positional accuracies for minimum standards. Mr. Chavez recommended this be brought to the full board and asked the chair to allow a task group to proceed to establish standards.

4.3 Appointment Ron Pratt-Residential Land Services-August 21, 2006
Letter- This item is to be considered after the November 3rd full board meeting on 11/3/06 when the PSC will reconvene.

5. **NEW BUSINESS**

5.1 Review/Approval of the NM 2HR Surveying Exam Results of Oct. 27, 2006 – Motion by Mr. Chavez for approval of the results of the exam, second by Mr. Sanchez and unanimously,
VOTED: to approved the NM 2HR exam results.

6. **CORRESPONDENCE**

6.1 David E. Cooper, RE: Advisory Opinion Requested Regarding Inconsistency in Minimum Standards – Mr. Cooper stated there seemed to be an inconsistency between 12.8.2.7A(8) An ALTA/ACSM Survey being considered a boundary survey and having to be recorded. He indicated sometimes a client does not want to have the ALTA/ACSM Survey recorded. The Committee indicated that as the language of 12.8.2.7 indicated, “The filed survey can be a separate plat and need not include all the detail of the ALTA/ACSM Survey but only the improvements affecting the boundary....”

7. **CLOSED SESSION** [Complaint and Violations] – It was moved by Mr. Chavez, second by Mr. Vigil 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. A roll call vote was taken. Voting yes: Mr. Sanchez, Mr. Chavez and Mr. Vigil. Motion carried unanimously.

7A. **OPEN SESSION** – Mr. Vigil reconvened the meeting in open session and further stated that the discussions in closed session were limited to those listed as 7.1 through 7.11 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 – Matter of Timothy Oden - Board’s Order – It was moved by Mr. Sanchez, seconded by Mr. Chavez and unanimously,

VOTED: To reopen the case, accept withdrawal of proposal presented by Oden at 8/3/06 meeting and withdraw its acceptance of his proposal dated July 6, 2006 and it latest Order and default or reinstate the Board’s Decision & Order dated February 20, 2006 and for Mr. Oden to complete the one-year suspension of his license and accept a letter of reprimand.

7.2 Cases 04-04-15 – It was moved by Mr. Sanchez, seconded by Mr. Chavez and unanimously,

VOTED: to send J. Robert Martinez a follow- up letter that he is obligated to record plat regardless of the status of taxes on the land. The Decision and Order required him to file the plat. Within six months of receipt of the follow up letter if

he has not filed the plat in accordance to state statutes, the Board will issue an Order to Show Cause why further action should not be taken against his license.

7.3 Case 04-04-44 – Joseph R. Maestas - Status of D&O – It was moved by Mr. Sanchez, seconded by Mr. Chavez and unanimously,

VOTED: to refer this case to the February meeting since the expiration date for the completion of the ethics course has not yet expired. [It was noted that Mr. Maestas has not complied with the requirement to reimburse the Board for the costs of the proceedings].

Case 06-05-44 Joseph R. Maestas after being served with a Notice of Contemplated Action did not request a hearing. Refer these cases to the Feb. meeting.

7.4 Case 05-04-01/05-04-09 AND 05-05-07 George Marquez, Jr.- It was moved by Mr. Sanchez, seconded by Mr. Chavez and unanimously,

VOTED: To refer the cases to the February meeting since Mr. Marquez is on probation for one year suspension in case 05-04-01 and 05-04-09 and under the Decision and Order is to appear before the Board. A notice is to be issued to Mr. Marquez to appear before the board for the February meeting to show compliance with board's order.

05-05-07 Mr. Marquez, Jr. – It was moved by Mr. Sanchez, seconded by Mr. Chavez and unanimously,

VOTE: to take action during the February meeting on case 05-05-07.

7.5 Case 06-05-45 – Mr. Vigil recused himself which left less than a quorum, therefore the case was tabled.

7.6 Cases 07-06-02 through 07-06-12 Ads for surveying in YellowBook – It was moved by Mr. Sanchez, seconded by Mr. Chavez and unanimously,

VOTED: to dismiss cases for respondents that agree to comply and continue for those who did not respond.

7.7 Case 07-06-13 – Mr. Chavez recuse himself so case was tabled due to no quorum.

7.8 Case 06-05-56 – It was moved by Mr. Sanchez, seconded by Mr. Chavez and unanimously,

VOTED: to dismiss as unfounded due to lack of jurisdiction; appears to be a civil matter.

7.9 Case 06-05-57 - It was moved by Mr. Sanchez, seconded by Mr. Chavez and unanimously,

VOTED: to dismiss as unfounded due to lack of jurisdiction; appears to be a civil matter.

7.10 Case 06-05-54 John Esquibel, PS (Stipulated Agreement) – It was moved by Mr. Sanchez, seconded by Mr. Chavez and unanimously,

VOTED: to accept the stipulated agreement.

7.11 Case 05-05-04 Wyatt Sparks, PS [Consider Decision & Order] - delayed until 11/3/06 when the committee will reconvene.

Appointment of Hearing Officer(s)

Case 05-04-05 – Leroy Smith - Appointed Mr. Sanchez as presiding officer with full committee hearing.

8. **REVIEW OF APPLICATIONS**

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

VOTED: to approve Richard E. Smith PS#5837 for retired status.

8.2 Applications for Exam – 3 applicants were approved for the PS and NM2HR examination. One applicant was denied for educational deficiency. Board decisions were recorded in the applicant files.

8.2.1 Herb Blair, Souder, Miller& Associates, Farmington, NM approved for NM 2HR. Mr. Blair was a certified surveyor intern by 5/25/1995 prior to the four year degree going into effect.

8.2.2 Grant Gourley, Carson Surveyors, San Lorenzo, NM – It was moved by Mr. Sanchez, seconded by Mr. Chavez and unanimously,

VOTED: that Mr. Gourley complete his application and that as a senior with surveying coursework successfully completed through May 2007, he would be able to sit for the Fundamentals of Surveying examination.

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

VOTED: to recess the PSC meeting until 10:00 a.m. on 11/3/06 to complete those items previously postponed. .

November 3, 2006 Open Session. Members present included S. Vigil, F. Sanchez, G. Chavez. C. Atwell was absent. Also present was Subhas Shah, PE, member of the Board who was in attendance at the request of the Professional Surveying Committee [Authority: Section 61-23-9B, NMSA (2005 pamphlet) which states, “B....In the event of a lack of a quorum and at the request of the committee, other board members may serve on this committee...”] Also present were Elena Garcia and Candis Bourassa. Mr. Vigil indicated he would be recusing himself from consideration and actions taken on case 06-05-45. Mr. Chavez indicated he would be recusing himself from consideration and actions in case 07-06-13.

4.3 Appointment Ron Pratt-Residential Land Services-August 21, 2006 Letter-

Mr. Pratt addressed the committees’ concerns of logos of professional real estate business involved in the transaction appearing on an ILR survey plat. They have tried to make change to cooperate with the board after it issued its cautionary letter to professional surveyors. Mr. Pratt indicated no logo will now appear on the surveyors’ sealed documents RLS and First American title Insurance Company. He provided copies of the revised documents. Mr. Sanchez summarizes the Board’s concerns on this issue for volunteer member, Mr. Shah. He indicated Residential Land Services, Inc., with 1st American Title, is approaching surveyors to do Improvement Location Reports (ILR) using their forms (templates) which include different logos on the documents. They have set fees and planned to sell advertising on the survey documents. He indicated the Board had a problem with this practice citing that the surveyor would have no control over his survey document and which may lead to violations of the ethical standards in the Administrative Code. He indicated the New Mexico Professional Surveyors had met and issued a “NMPS Statement of Concern” [dated 11-01-06] also which had been transmitted to the Board. It also expressed concern of such practices by licensed surveyors constituting a breach of ethical standards (rule 16.39.8.9A(1)(d)). Mr. Sanchez proceeded to read the NMPS statement. Mr. Pratt stated RLS now operates in Albuquerque, Las Cruces and Santa Fe. They met with surveyors to explain the whole program. The ILR is what the title company requires. It troubles them that a statement was put out by the Board and NMPS that tells the surveyors to be careful. Mr. Pratt’s position is that they have never asked surveyors to do anything that would go against New Mexico regulations. Problems with the use of ILRs and the practice of some title companies issuing them to the public existed prior the 1st American Title operations. Mr. Chavez noted an advisory was issued that no violations were found and it was up to the surveyors to use caution. The Committee thanked Mr. Pratt for appearing before the board and appreciates his open discussion of the issues and concerns. No further action was taken.

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

VOTED: To go into closed or executive session pursuant to NMSA 1978, Section 10-15-1 (H) (1) to discuss cases 06-05-45, 07-06-13, and 05-05-04 from the agenda . A roll call vote was taken. Voting yes: Mr. Sanchez, Mr. Chavez Mr. Vigil and Mr. Shah. Motion carried unanimously.

Open Session – Mr. Vigil reconvened the meeting in open session indicating only cases 06-05-45, 07-06-13, and 05-05-04 were reviewed in closed session.

7.5 Case 06-05-45 – (Mr. Vigil abstained from the review and action taken on this case) It was moved by Mr. Sanchez, seconded by Mr. Chavez and unanimously,

VOTED: to issue an NCA for alleged violations of the minimum standards listed in the complaint manager’s report with a possible stipulated agreement, including a \$500 fine, a letter of reprimand and requiring the corrected plat to be recorded once approved by the complaint manager.

7.7 Case 07-06-13 - (Mr. Chavez abstain from review and action taken on this case) It was moved by Mr. Sanchez, seconded by Mr. Shah and unanimously,

VOTED: to issue an NCA for alleged violations of the minimum standards listed in the complaint manager’s report with a possible stipulated agreement to correct the plat and record once approved by the complaint manager.

7.11 Case 05-05-04 Wyatt Sparks, PS [Consider Decision & Order] – It was moved by Mr. Sanchez, seconded by Mr. Shah and unanimously,

VOTED: To accept the hearing officer’s report and recommendations and issue a Decision and Order for violations of Section 61-23-27.11 (A)(7) and minimum standards for surveying, 12.8.2.9(J)(5), (6), (7), (11) and 12.8.2.9(K) NMAC. Mr. Sparks is to comply with the court order in the quiet title lawsuit to correct the easement and roadway where historically located and in accordance with the minimum standards correct the survey and submit to the Board for review by the complaint manager prior to recording. Licensee shall pay the costs of the administrative proceedings.

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

Submitted by:

Approved by:

Elena Garcia, Executive Director

Mr. Atwell, Chair, PSC

Approval Date