

DRAFT

Meeting of the Board of Licensure for Professional Engineers & Professional Surveyors held at 9:00 a.m., August 3, 2007 at the Board Office, 4001 Office Court Drive, Suite 903, Santa Fe, NM 87507-4962

Members Present: Gilbert Chavez, PS, Board Chair
Severiano Sisneros, PE
Dr. Rola Idriss, PE
Fred Sanchez, PS
Subhas Shah, PE
John Romero, Sr., PE, PEC Vice Chair
Salvador Vigil, PS, PSC Vice Chair
Charles Atwell, Public Member, PSC Chair, Board Secretary
Stevan Schoen, Public Member

Others Present: Elena Garcia, Executive Director, BLPEPS
Candis Bourassa, Licensing Manager, BLPEPS

Members Absent: Patricio Guerrerortiz, PE, PEC Chair, Board Vice Chair

Guests None

1. **CONVENE/ROLL CALL/INTRODUCTION OF GUESTS** – Mr. Chavez convened the meeting at 9:05 a.m. Roll call was taken, and it was noted that a quorum was present. Mr. Guerrerortiz was unable to attend due to travel out of the state.

2. **APPROVAL OF THE AGENDA** - Mr. Sanchez moved, second by Mr. Atwell and unanimously,

VOTED: To approve the agenda as presented.

3. **APPROVAL OF THE MINUTES**

3.1 June 15, 2007 Minutes – Mr. Atwell moved, seconded by Mr. Vigil and unanimously,

VOTED: To approve the minutes of the 6/15/07 Board meeting.

4. **COMMITTEE REPORTS** -

4.1 Review/Assignments of Committees for FY 08 – Mr. Chavez reviewed the current committees and appointed Board members and made charges to committees as follows: the Photogrammetry Task Force is defunct. The Land Fill Gas Committee

chaired by Shah will be finalizing their work with one final meeting. The Consumer Information Committee needs to work on newsletters. Mrs. Garcia indicated two newsletters a year should be completed and there is a possibility of distribution via email. She also indicated that a consumer information pamphlet should be published. Mr. Chavez suggested combining the License Promotion Committee and the Consumer Information Committee. This would combine the newsletter and promotion of engineering and surveying into one Licensure Promotion and Public Information Committee. There was agreement and Mr. Sisneros was appointed Chair. Members of this committee include: Mr. Shah, Mr. Vigil, and Mr. Romero. The Committee is charged with exploring an electronic newsletter. It was noted the Fire Protection Committee is still very active and chair, Mr. Schoen, would like to see it continue. The Joint Practices Committee just finished the Public Officials Handbook and chair, Mr. Sanchez, reported the architects are in charge of the next meeting. There are usually two meeting a year with one planned for September. Mrs. Garcia stated this committee is established by legislature and indicated she has disturbed the *Handbook for NM Building Officials* to professional engineers in building construction and will be sending it to all building officials throughout the state. She will also be sending the FEMA flood certificate forms to the JPC for discussion since architects are listed along with surveyors and engineers as able to sign the form. Mr. Sanchez is Vice Chair of the JPC and is next in line for Chair of the JPC. Mr. Sisneros was appointed as representative with Mr. Guerrerortiz as an advisor/alternate. Chair Chavez asked Mr. Atwell to chair the Executive Committee along with Mr. Sisneros and Mr. Guerrerortiz as members. The Rules and Regulations Committee will be busy with the defined charges already established. Mr. Shah made a motion, seconded by Mr. Romero to appoint Dr. Idriss as chair. During discussion it was agreed that Dr. Idriss be Chair with Mr. Vigil as co-chair. Motion was withdrawn. Appointed members of this committee include: Mr. Sanchez, Mr. Shah, Mr. Schoen, Mr. Atwell and Mr. Romero. Chair Chavez asked Mr. Vigil to chair the Examination Committee and appointed Mr. Romero, Mr. Shah, Mr. Schoen, Mr. Sisneros and Mr. Sanchez as members. One of the charges includes the updating of the NM 2 hr. state specific exam. There is an immediate need for the new state specific survey exam questions to be reviewed, edited and new questions added from the new minimum standards for surveying. Chair Chavez would like to investigate the possibility of computer-based testing for the NM surveying exam with testing sites at NMSU and UNM and for the test administration to be given more than during the October and April exam sessions currently offered. An ethics exam could also be considered at renewal or possibly just a questionnaire on new laws. Mr. Schoen stated that such a requirement would be best during the initial licensure. Mr. Sisneros wants the Board to police under its judicial powers unlicensed person practicing engineering or surveying. Mrs. Garcia pointed out that some states do have a proactive program (e.g. Arizona), that is the Board's investigators do not wait for a complaint to be filed with the Board, they go out in the field and review plans submissions made with public entities. Mr. Vigil added he knows individuals are hesitant to file complaints, and the Board lacks staff and funds to actively look for violators. The burden of proof can be very time consuming. Other states, like Washington, have very high fines as deterrents. Mr. Sisneros sees the federal government as one of the biggest culprits of using unlicensed engineers and surveyors.

Mr. Chavez indicated the Rules Committee should look into possible changes and see what other states are doing regarding this problem.

Mr. Chavez would like to schedule committee reports for every meeting and have staff send a reminder to the chairs before the meetings.

4.2 Professional Engineering Committee – Mr. Romero reported the PEC, under new business, reviewed letters of appeals from applicants to take the PE exam that were previously denied. One decision was changed based on new information and a previous PEC decision was upheld. Some of the items of discussion during the PEC are on today's agenda. This included the proposed changes to the Code of Conduct and methods of communication to and among board members by email, calls and regular mail. There were four cases tabled until new information could be reviewed, and one case is under appeal. Many application files were reviewed and decisions made.

4.3 Professional Surveying Committee – Mr. Atwell reported Mr. Thomas Conley appeared before the PSC regarding his compliance with a Board's Decision and Order and to answer committee members' questions. The review of boundary surveys plats by Rio Arriba Planning and Zoning was tabled. Advisory Opinion No. 16 was discussed and it stands as is. Three cases were reviewed and acted upon: Walter Black, PS entered into a stipulated agreement and the Committee asked him to work with the Complaint Manager in correcting his plat. Mrs. Garcia will write a letter to the respondent on another case. Mr. Evans Ralson wrote the Board asking the NM2HR be administered more than the two times a year. All applications were reviewed and decisions were made.

5. **COMMUNICATIONS - none**

6. **NEW BUSINESS** - none

6. **NEW BUSINESS**

6.1 Presentation of the NM Resolution at Meeting for the Deletion of Engineering Surveys from the Practice of Engineering in the Model Law [July 23, 2007 letter, Formal Motion, and Case/Justification] – Dr. Idriss addressed the transmittal letter dated July 23, 2007 to NCEES. She cannot support the letter because it was not reviewed by the PEC or full board. Dr. Idriss moved to rescind the letter. Motion was seconded by Mr. Romero. In discussion, Mr. Chavez asked Mrs. Garcia what the process had been when the letter was prepared. Mrs. Garcia responded she drafted the letter, and it was emailed to Mr. Chavez and Mr. Sanchez. They had comments, and then she sent it to Mr. Chavez for approval as Board Chair. After it was approved, and Mr. Chavez signature was affixed, she emailed a copy of it with the prepared motion and "case" to all board members. She believes it was around July 23, 2007. She wanted for members to be aware of it and indicated that it would be mailed either that afternoon or the next morning. Only Mr. Sisneros responded that day and Mr. Shah later on. Unfortunately, Mrs. Garcia had left work that day around noon and left a directive with Ericca that if

there were any problems or board members called to give her a call. Apparently, Erica did not get any calls and since Mrs. Garcia was not in the office that afternoon, she did not see Mr. Sisneros' email until the morning. However, Erica had completed the mailing that afternoon. Mrs. Garcia was under the impression that she had to get it mailed right away. Mr. Chavez repeated Dr. Idriss' concerns as being that she did not have time to review the transmittal letter and asked if she has an opposition to the resolution or the case. Dr. Idriss stated she wanted to address the letter and resolution as two separate issues. She is uncomfortable with the process that was taken. If a letter is to be sent, it needs prior review to have due process. Mr. Chavez indicated this would be a procedure staff has to be directed on. Mr. Chavez asked former board chairs if letters needing their signatures always went before the full board for approval and Mr. Sisneros and Dr. Idriss believed they were. Mr. Sanchez asked if Dr. Idriss disagreed with procedure and content. She repeated the process did not give it due process as it represented all of the board and she never got a chance to discuss it. Mr. Romero handed out motions made at the PEC meeting the previous day (8/2/07). Mr. Chavez stated the rationale behind the letter was from the special meeting held April 5, 2007 on this topic and which was voted on to give the survey committee authorization to take this to the Western Zone for presentation. At the Western Zone meeting, it did not get full support as a zone resolution and the option was to take it to the national meeting as a state resolution. At the Ruidoso meeting, it was brought up before the Board, and the results of the Western Zone meeting were explained. During the June 15, 2007 full board meeting, it was voted on and passed that the survey committee would make the presentation at the annual meeting. At that meeting, Mr. Sisneros had concerns about it being against engineers. The survey committee acted on that and drafted the July 23 resolution letter to go ahead and make the presentation. He was not aware not everybody got to review the letter but they did have authorization. Mr. Romero stated he disagrees with the item in the letter that says surveying is no longer taught to engineers. Mr. Chavez handed out the curriculum of civil engineering at NMSU showing only one course. Mr. Sanchez states the letter indicates this is true in most engineering curricula, which is correct at this time. Mr. Chavez hands out additional information when a minor in surveying is acquired with 24 credits. Dr. Idriss' reiterates the problem is that this is being done after the fact, and she would have liked to discuss the transmittal letter at the last meeting. She believes the letter is an embellishment of the motion. Mr. Chavez stated they acted on the decision of the Ruidoso full board meeting and if they proceeded without approval of the transmittal letter, they apologize and need to rectify procedures so it does not happen again. Sometimes the time involved between meetings to approve board letters can make it difficult. The motion with second is to rescind the letter. Mr. Sanchez does not see anything in the letter that is not a fact and which would need to be rescinded. Mr. Shah asked why the resolution did not pass at the Western Zone. Mr. Chavez stated it was a very close vote and there had been limited time for all to do a complete review. Some assumed it took away from engineers, but the surveyor case was that if they are competent in surveying they could take the survey exam like everyone else. Mr. Shah believes that between the PSC Advisory Opinion 16, official motion and the July 23 letter, the PEC has not been fully aware of what was going on. Mr. Sisneros has two issues with the letter. First, are engineers taught surveying and second, due process when doing things as a board so there is similar ratification. He wants to look at

the letter as other engineers across the US would. Item 1, is saying all the good surveyors in New Mexico that do not have a formal education are unqualified (since it is saying engineers are not taught surveying in their curricula) which is far from true. Applied mathematics used in surveying is a part of civil engineering education. It is training for an engineering survey. Item 2, Engineers are being tested in surveying as part of the PE exam and there needs to be sub-disciplines in surveying. To remove construction surveying from engineers is taking something that is not a boundary survey. Item 4 [civil engineering body of knowledge], his concern is that at the full board or special meeting this was not discussed. It calls on ASCE quoting from Gibson's report of 1964 when Mr. Sisneros believes engineers and surveyors were still being grandfathered in. This argument is a disservice to New Mexico when bits and pieces are no longer true and misrepresented. Mr. Chavez asked if the motion is going to be changed to changing the letter wording or rescinded. Mr. Chavez added that the PSC's proposals were brought to the board multiple times and it is each member's responsibility to respond at that time. He is ready to call for the question.

VOTED: five "yes" for rescinding the letter sent to NCEES [Dr. Idriss, Mr. Romero, Mr. Sisneros, Mr. Shah, Mr. Schoen], four "opposed" [Mr. Chavez, Mr. Sanchez, Mr. Vigil, Mr. Atwell]. The motion passes.

Mr. Schoen suggested withdrawing the motion made does not need to be explained. We just have taken it off the agenda of the national meeting.

Dr. Idriss made a motion to withdraw the motion presentation at the annual meeting, second by Mr. Romero. In discussion, Mr. Atwell questioned if a motion can be made to change an already passed motion when the action on the original motion has begun. Mr. Chavez asked if the decision is to prepare another letter to send or do what with the original motion approved by the full board. This motion passed to proceed in presenting the motion at the annual meeting. This original approved motion is still out. Mrs. Garcia understands the resolution was acted on for NCEES, and asked if the board still wants to send the original resolution that was approved. Mr. Shah asked if the original passed motion can be withdrawn after action on it has started. Mr. Schoen suggested that withdrawing the request of the original approved motion for NCEES presentation will end action taken by the original motion. The Board can thank NCEES for considering our request, but at this time we wish to withdraw the letter and motion. Mr. Chavez asked why withdraw the motion along with the letter. Mr. Shah and Dr. Iris wanted further discussion on the subject. Mr. Romero calls for the question.

VOTED: five "yes" for withdrawing of the motion presentation at the NCEES annual meeting [Dr. Idriss, Mr. Romero, Mr. Sisneros, Mr. Shah, Mr. Schoen], four "opposed" [Mr. Chavez, Mr. Sanchez, Mr. Vigil, Mr. Atwell]. The motion passes.

Motion by Mr. Romero to send another cover letter stating the Board is withdrawing the motion, second by Dr. Idriss. Mr. Schoen added a clarification that he wanted to have the Board say, "thank you for considering our previous request, but at this time we wish to withdraw it".

VOTED: five “yes” for cover letter being sent to NCEES to withdraw the motion [Dr. Idriss, Mr. Romero, Mr. Sisneros, Mr. Shah, Mr. Schoen], four “opposed” [Mr. Chavez, Mr. Sanchez, Mr. Vigil, Mr. Atwell]. The motion passes.

Mr. Romero volunteers to write the withdrawal letter and Mr. Schoen will review it during this meeting.

Mr. Vigil asked how many are going to the national meeting. Mr. Sanchez, Mr. Chavez and Mr. Romero will attend.

Mr. Sisneros moved to table Case/Justification in item 6.1 until next meeting, seconded by Mr. Romero [no vote necessary]

6.2 Procurement Code – Qualifications-Based Selection – How it applies to Universities - Hank Rossoff sent Mrs. Garcia a request for bids on public works project put out by UNM. She asked Ms. Smith for an opinion, but has not discussed this with her. Mrs. Garcia stated that for public works project there is a cap of \$25,000 for engineering and architectural services. Over this amount, the qualifications selection process kicks in. She contacted Roger Lujan, an architect, with UNM and he indicated the purchasing department had indicated the process was appropriate. Mrs. Garcia sent him a copy of the advisory opinion and asked him if the university is exempt. She had not received a response from him or had spoken to Ms. Smith on this matter. Mr. Chavez motioned to table this item until further information is received.

6.3 Procedures for Agenda Items on Committee & Board Agendas – Mrs. Garcia advised the PEC would like anything that is going to affect the engineers to be on the PEC agenda before the full board meeting and vice versa. There have been emails missed by Board members or there have been times when there is little time to respond in the past. Sometime there is little time for a hard copy to be mailed or acknowledgements that materials were received to be confirmed. Mr. Atwell recommended distribution be as required by each member, those who want email and those who want a hard copy. Mr. Romero requested staff call him with notification of important issues. Dr. Idriss is available by cell phone for important issues and feels sometimes adequate time for review of issues has not been allotted before the meetings. Mr. Sanchez believes there are two professions involved and actions can be taken by either PEC or PSC when it effects that specific profession. He disagrees with staff deciding what is important and believes email must be used to keep up with what is going on. Dr. Idriss wants face-to-face discussion on all issues which emails cannot provide. Mr. Sanchez stated sides are being established between the professions by actions taken that dealt mostly with survey issues. When there is conflict, it should go to the JESS committee. The PSC can possibly restructure their motion simply as a concern coming from the PSC regarding unlicensed surveys. Mr. Romero wants all letters that are submitted with the chair’s signature to be discussed by the full board. Mr. Sisneros distinguishes the need to keep things moving forward in a good way even with everyone’s busy schedule. He is against special meetings being called since many members have scheduling conflicts. Special meetings only produce a short-term solution. Mr. Chavez summarizes that the working

pace needs to move on, members have to keep themselves aware of the board business and attend meetings. A policy of contacting members needs to be set up and they must respond. Mr. Vigil observes that being understaffed and the costs is also a factor. Mrs. Garcia says there are about seven regular meetings, but there were at least 54 meeting days scheduled last year. Working through emails has been the most effective for staff members. Other alternatives can be pursued but will take more time from staff. It was moved by Mr. Romero, seconded by Mr. Sisneros and after discussion with Mr. Sanchez stating the motion limits what is already in the rules unanimously,

VOTED: The executive director and board chair with advice from any board member shall establish the agendas for regular meetings. Important correspondence as determined by both the executive director and board chair will be discussed at a regular scheduled PEC, PSC and full board meetings except when an emergency occurs and then an emergency meeting may be called.

6.4 Resolution from New Hampshire for Annual Meeting – Re: NCEES Contributions to Zones – Mrs. Garcia presented the resolution as information to be discussed and voted at the national meeting. NCEES provides \$5,000 to the Zones when hosting a meeting and New Hampshire wants it raised to \$10,000.

Mr. Chavez added that another item before the Council is the type of additional engineering courses that would be required to augment the engineering curriculum required for registration. He also distributed to the board what the new engineers at NMSU are being taught in surveying today. There is little surveying in the curriculum. Mr. Chavez added that each state has one vote. A split vote really becomes a no vote so attendees need to be prepared to vote.

7. OLD BUSINESS

7.1 Proposed Revisions to the Administrative Code to More Closely Reflect the NCEES Model Code of Conduct & Other Revisions – For Public Hearing – The proposed revisions to the Code of Conduct has some board members confused because it was not discussed in the committees. Mr. Chavez says this is a first draft form for the full board to add comments. Mrs. Garcia explained there is little substantive change in the wording since staff was basically asked to reorganize the code under different headings following the national model code (rule). Mr. Sisneros and Mr. Sanchez did provide some comments/changes and these were pointed out. The Board concurred that it did not have to rush through this as first thought and that the Rules Committee can start over with the original documents and review the proposal with the added comments as it proceeds in the revision process.

7.2 Advisory on Flood Certification (who is legally qualified to certify) – Mr. Chavez explained the certification as it reads includes architects, engineers and surveyors. He feels the Engineering and Surveying Practice Act makes this a surveying item. He stated an advisory should be sent to the state flood zone managers association stating what is acceptable in NM. Mr. Romero stated engineers and surveyors should be

allowed to perform these services. Mr. Sanchez considers it a surveying activity as described by the Practice Act. Mr. Chavez noted that FEMA's flood managers do not have any engineering or surveying backgrounds. Mr. Vigil asked where the liability lies when there is a problem. Mr. Sisneros moved, seconded by Mr. Romero and unanimously,

VOTED: that the PEC and PSC committees review the situation and then bring it to the full board.

Mrs. Garcia asked if, as in the last meeting, a letter should go to the JPC for their meeting in September.

Mr. Sanchez stated that he will be attending several forums and discussing engineering surveys and raising awareness that it needs to be taken off the Model Law. Mr. Chavez added that other states may also take it up and members will seek support without representing the full board.

Mr. Shah and Dr. Idriss requested Advisory Opinion No. 16 from their PEC meeting item 4.17 be put on the next full agenda.

8. DIRECTORS REPORT

8.1 Staff Activities Report

8.1.1 Loss Control Plan – Mrs. Garcia emailed this to everyone a few weeks ago. She has developed the plan, utilizing state rules and models. She reported that it has been submitted to Risk Management pursuant to a specific deadline, however, it can be amended. Mr. Romero made a motion which was seconded by Mr. Sisneros and the Board unanimously,

VOTED: To approve the plan.

8.1.2 **Inspection of Public Records/Fees** – Right to Inspect Public Records must be posted in the lobby. Mrs. Garcia suggested the fee for copies should be at \$.50 per regular page and \$2.00 for large size, \$5.00 for 18" x 24" and larger plats. Mr. Sanchez asked if Mrs. Garcia sets the prices or is the Board responsible for setting the prices. Mrs. Garcia responded she is making a recommendation and needs board action on this. Mr. Sanchez made a motion which was seconded by Mr. Romero and unanimously,

VOTED: To approve the fees as presented by Mrs. Garcia.

8.2 **Financial Reports** – Mrs. Garcia was hoping to get final reports for FY 2007, but Ms. Bordenave, the Chief Financial Officer has been having problems with SHARE and was unable to provide them. Mr. Chavez tabled this until next the meeting.

Mr. Chavez asks what is going to be the preference for correspondence to the members. Mr. Romero prefers cell phone contact then email. Dr. Idriss likes cell phone also first along with email. Others will remain on email unless they give staff other directives.

Mr. Chavez requested the board consider Mrs. Garcia's upcoming retirement. Mr. Sanchez stated he would like to work on the additional 14% raise she was promised. Mrs. Garcia stated she will work with the executive committee on issues affected by her upcoming retirement.

9. **EXECUTIVE SESSION** – None

10. **COMPLAINTS/CASES**

10.1 Appeals to Board's Decision and Order in District Court

10.1.1 Daniel Armstrong, PE – Update – Licensee is practicing on a Court Granted Stay of the Board's Decision pending a hearing.

10.1.2 LeRoy Smith, PS – Court Granted a stay but a hearing will take place real soon.

10.1.3 George Marquez, Jr. – Update – His attorney is withdrawing at this point so it appears he has no representation.

11. **ADJOURNMENT** – Having no further business, Mr. Chavez adjourned the meeting.

Submitted by:

Approved by

Elena Garcia, Executive Director

Mr. Gilbert Chavez, Board Chair

Approval Date