

Meeting of the Professional Surveying
Committee of the Board of Licensure for
Professional Engineers & Professional
Surveyors held at 1:00 p.m., August 2, 2007
at the Board Office, 4001 Office Court
Drive, Suite 903, Santa Fe, NM 87507-4962

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

Others Present: Elena Garcia, Executive Director, BLPEPS [attending later in the
meeting after the PEC adjourned]
Candis Bourassa, Licensing Manager, BLPEPS
Mary Smith, Assistant Attorney General, Board Counsel
Ed Ytuarte, Complaint Manager, BLPEPS

Guests Tommy Conley, PS
Berry Philips
David Cooper, PS, NMPS President

1. CONVENE/ROLL CALL/INTRODUCTION OF GUESTS

Mr. Atwell convened the meeting at 1:05 p.m. Roll call was taken, and it was noted that a quorum of the Professional Surveying Committee was present

2. APPROVAL OF THE AGENDA – Motion 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 14, 2007 PSC minutes – Correction by Mr. Sanchez: on page 4, section 4.6, the sentence “The city leases out by *meets* and bounds... should be “*metes*” and in several sentences below “highlight the *chances*...” should read “*changes*”. Motion by Mr. Sanchez, second by Mr. Chavez and unanimously,

VOTED: To approve the 6/14/07 PSC minutes with the noted changes.

4. NEW BUSINESS

4.1 Case 05-04-02 – Tommy Conley, PS – Review Compliance – Interview 1:00 p.m. – Mr. Conley appeared to comply with the Settlement Agreement in this case which required him to meet with the Board. Mr. Sanchez asked him if he learned from this experience. Mr. Conley responded that he did, especially from the ethics course. It was noted that the Board is very concerned over the practice of surveying by some surveyors and stressed that surveyors should only stamp work closely supervised by that surveyor. Mr. Atwell ended the interview and stated notification of the Board’s review will be sent to Mr. Conley. Motion by Mr. Chavez, second by Mr. Vigil and unanimously,

VOTED: To end Mr. Conley’s probation in case 05-04-02 based on his compliance with the Stipulated Agreement. Ms. Garcia will send him a letter.

4.2 September PSC Meeting in Farmington – RE: Opinion Regarding Surveying on Indian Lands - Mr. Vigil explained the problem in the four corners area and the sovereign status. Mr. Vigil explained New Mexico considers all tribal reservations sovereign but each state has to establish their own rules. Mr. Chavez would like to review what the other states base their opinion on at the September meeting. Mrs. Garcia stated she had calls from the Navajo Nation regarding surveying work completed by a formally-licensed NM surveyor on Indian lands. The question of jurisdiction by the state came up and Michael Paisano, PS requested an appearance before the Board. Mr. Chavez pointed out this also includes government surveys which are exempt until the work involves boundaries with private lands. In his opinion, if the tribes were surveying along boundaries with private land, it would be the same as performing on public lands. Mr. Vigil indicated he would like to obtain the rules of the three other states in order to have a full discussion and hear the tribal concerns. Ms. Garcia indicated the Board in the past has followed the opinion received from the Office of the Attorney General in 1997. Copies of the opinion were made available.

4.3 Review of Boundary Survey by Rio Arriba Planning – Inquiry by Douglas Critchfield – RE: Section 61-23-28.2 NMSA - indicating he had attempted to file for record a Boundary Survey Plat, but had the County impose additional fees and requirements for review. A copy of the inquiry was provided as well as Ms. Garcia’s inquiry letter to the Director of Planning and Zoning for Rio Arriba County and their response which indicated there was case law that allowed them to review plats. With the assistance of Board Counsel, the case law was provided to the committee members.

4.3.1 David Cooper, PS President, NMPS - Mr. Vigil stated that Rio Arriba Planning and Zoning’s Director is reviewing/signing boundary survey plats for approval for Rio Arriba County. Since Mr. Critchfield’s plat is not a subdivision, but a boundary survey, Mr. Critchfield has a problem with this practice. Mr. Vigil spoke with several surveyors in the area and found mixed feelings. Apparently, there has been a continuing problem with misinformation on the plats and agricultural areas not being shown, and Rio Arriba’s Zoning and

Planning Director states he is protecting the public. David Cooper addressed the committee and states it appears that from the court of appeals decision the county of Rio Arriba does have the authority to review plats. Mr. Vigil indicated he asked Mr. Patricio Garcia, Director of Planning and Zoning why there have been no complaints filed for incorrect plats and he said he did not have time. Mr. Chavez pointed out that he believes public official doing such reviews should be licensed. Mr. Vigil clarified Mr. Garcia is reviewing for compliance of county ordinances. Mr. Chavez pointed out designating the structures and farming land is beyond the scope of a boundary survey except in particular situations. He believes by statutes, the county cannot refuse to file a surveyor's plat. Ms. Smith indicated there is a conflict in the laws and the court's opinion that appears to say the county clerk has the right to review plats. Mr. Sanchez knows of six-month delays created by this review. Mr. Cooper understands the opinion to say that they can only review if the plat is in violation of the Subdivision Act, and if not a subdivision should be endorsed immediately within their 30-day rule. Expanding the power of public officials to dictate what the surveyors must do should not be allowed for the protection of the public. Motion by Mr. Chavez, second by Mr. Sanchez and unanimously,

VOTED: To table discussion and allow Ms. Smith until the November meeting to review the opinion further with the Committee.

4.4 Enforcement of Advisory Opinion No. 16 – Mr. Sanchez believes the policy is clear and is in accordance to the Act. Mrs. Garcia explained the engineering committee has concerns with the sentence “*Topographic surveys used in the design and construction of engineering and architectural projects are considered surveying services offered to the public.*” This will be brought up by the Engineering Committee. Motion by Mr. Chavez, second by Mr. Vigil. In discussion, Mr. Sanchez asked how it might be changed to address the engineering committee's concern. He thinks that adding the word “initiate” to clarify that engineers can work only with an existing survey. Ms. Smith added that at the present the opinion is not a rule and can be changed in committee; however, she has stated in the past that advisory opinions should be rules in order to have any effect. Mr. Chavez calls for the question and unanimously,

VOTED: After consideration, the statute is very clear and Opinion 16 should remain unchanged.

5. **COMPLAINTS & VIOLATIONS - Closed Session**– It was moved by Mr. Vigil to go into closed session, second by Mr. Chavez

VOTED: To convene in closed session pursuant to NMSA 1978, Section 10-15-1(H)(1) to discuss only those cases listed in 5.1 through 5.3 of the agenda. A roll call vote was taken. Voting yes, Mr. Sanchez, Mr. Vigil, Mr. Atwell, Mr. Chavez. Motion carried unanimously. Mr. Chavez recused himself from the room when cases 07-07-30 and 07-07-31 came up for consideration in closed session.

5A **OPEN SESSION** – Mr. Chavez joined the meeting. Action on cases on the agenda 5.1 through 5.3 – [*...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*]. Mr. Chavez moved to reconvene the meeting in open session and states that the discussions in closed session were limited to those cases listed under item 5.1 through 5.3 on the agenda, Mr. Vigil seconded the motion. It was unanimously,

VOTED: To continue in open session.

5.1 Case 07-06-13 Matter of Walter Black, PS Compliance with Stipulated Agreement of Settlement. Motion by Mr. Sanchez, second by Mr. Chavez and unanimously,

VOTED: To approve the stipulated agreement settlement and have Mr. Black correct the plat in accordance with the Board's complaint manager's directive.

Mr. Chavez recused himself from the following matter.

5.2 Case 07/07/30 Information on surveying job description/posting considered

5.3 Case 07-07-31 Information on surveying job description/posting considered

Motion by Mr. Sanchez, second by Mr. Vigil, and voted,

VOTED: to issue letter for both cases 07/07/30 and 31 dealing with the matter regarding the job description/posting to the proper hiring authorities, and caution them this is not acceptable advertising for job and hiring since all surveying positions must require a surveying license. Voting yes: Mr. Atwell, Mr. Vigil and Mr. Sanchez. Mr. Chavez abstaining due to recusal from matters.

6. CORRESPONDENCE

6.1 Evan Ralston – Petition to Sit for the NM Exam Sooner than on Exam Session Dates. Mrs. Garcia stated this would create extra staff work and a security risk due to limited questions on the databank. A different exam would not be able to be provided each time. Mr. Chavez would like to assign this matter to a committee to review the possibility of the NM2HR being offered additional times during the year and possible have it become a computer-based test. Motion by Mr. Chavez, second by Mr. Vigil and unanimously,

VOTED: To allow Mr. Ralston to take the NM2HR at the board offices.

7. OLD BUSINESS

7.1 Presentation of the NM Resolution at the 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 – Engineering committee is saying the resolution written is not what the full board approved. The action to have the resolution presented at the annual meeting was approved to delete “engineering surveying” from the model law, however, the resolution with the “whereas” sent did not have the same identical language as the resolution approved even though the intended action by the Board was the same. The engineering committee believes the back-up information was changed. The PEC will bring it to the full Board. The original resolution was presented at the Western Zone but had not passed by a small margin and the full Board had voted to carry it on to the annual meeting. For the annual meeting, it was required to be in a specific format for presentation. The background information was enhanced from what the full board approved; however, the resolution kept the same position. Ms. Smith asked if the full board vote pertained only to taking it to the Western Zone meeting. In the June 15 meeting in Ruidoso, item 6.3 the full board voted to authorize the survey committee to make their presentation at the NCEES annual meeting. The survey committee acted on that vote, prepared a letter, and sent it out to the NCEES. This matter is on tomorrow’s agenda.

8. REVIEW OF APPLICATIONS

8.1 Applications for Licensure – One PS exam application and one PS endorsement were reviewed with decisions posted in the individual applicant folders.

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

Submitted by:

Approved by

Elena Garcia, Executive Director

Mr. Charles Atwell, PSC Chair

Approval Date