

Meeting of the Professional Surveying  
Committee of the Board of Licensure for  
Professional Engineers & Professional  
Surveyors held at 1:00 p.m., June 14, 2007  
at Carrizo Canyon Road, Mescalero, NM

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  
Candis Bourassa, Licensing Manager, BLPEPS  
Ed Ytuarte, Complaint Manager, BLPEPS  
Mary Smith, Assistant Attorney General, Board Counsel

Guests Thomas Leyba  
Evan Ralston

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

Mr. Atwell convened the meeting at 1:10 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. Chavez, second by Mr. Vigil and unanimously,

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

3. **APPROVAL OF THE MINUTES**

3.1 Approval of the April 19, 2007 PSC minutes – Motion by Mr. Sanchez, second by Mr. Chavez and unanimously,

**VOTED:** To approve the 4/19/07 PSC minutes

4. **SHOW CAUSE HEARING and Hear Testimony From Licensees**

4.1 Case 06-05-48 Thomas Leyba – Show Cause Hearing – 1:15 p.m. Mr. Leyba appeared and presented documentation of the business relationship between him and Mr. Martinez. Mr. Leyba stated he hired Mr. Martinez to do ILRs and today he brings an affidavit that Martinez was the surveyor of record with authority to bind the firm on all surveying contracts. Ms. Smith reads the new affidavit presented by Mr. Leyba. It appoints Mr. Martinez as the surveyor of record and grants him authority to bind the firm. Mr. Martinez' affirms that he is appointed and has been appointed and accepts the responsibility of position as

surveyor of record for the newly created corporation. At the April meeting there was concern because at an earlier time Mr. Martinez submitted an affidavit that he was doing ILRs for his own firm. The legal connection to Mr. Leyba and means of solicitation for work was causing the board concern. The current statute is not precise beyond requiring that Mr. Leyba's firm has a licensed surveyor of record. Mr. Sanchez would have liked having both Mr. Martinez and Mr. Leyba to appear together, but Ms. Smith thinks this unnecessary as the signed affidavit states Mr. Martinez accepted the appointment as surveyor of record. Legal counsel suggested the board review the articles of organization of the LLC, the operating agreement, and today's new affidavit for the surveyor of record and then make a decision. Mr. Leyba will be notified after this review.

### **OTHER**

4.2 Case 25-24-02 Tommy Conley, PS – Review Compliance – Interview – 1:30. Mrs. Garcia reported Mr. Conley will not be at the meeting but he is currently in compliance. He will remain on probation until he can appear before the board.

4.3 Correspondence from Timothy Ray Oden – Voluntary Surrender of Survey License. Mrs. Garcia explained Mr. Oden's license is currently under suspension until December 2007. There is another case against him with the Office of the Attorney General, Litigation Division which the Board has requested. Mr. Chavez moved, seconded by Mr. Atwell and unanimously,

**VOTED:** To notify Mr. Oden that the Board is in receipt of his letter and holding his license and stamp however at this time the board is unable to take action until the end of his current suspension and a board review of the status of this case and any other cases against him at that time

4.4. Evan Ralston, PS Applicant/Education Requirement – 2:00 p.m. Mr. Ralston addressed the board to appeal the Board's denial of licensure by comity. He is a North Carolina licensed surveyor and full time student at NMSU's Surveying Engineering program. He lacks a calculus class which has been a challenge to him, but he will take it again this fall. This will be his fourth degree since he already holds a Masters of Science in Finance, Operations Management degree from Vanderbilt and an Associate's degree in Surveying Technology. He feels these degrees support his qualification in the business and practice of surveying. He is actively representing the survey profession in New Mexico as Secretary of his local Surveyors chapter, as a Trustee of the Surveyors Educational Foundation, and he has overseen the first round of certification examinations for Survey Technicians in the Las Cruces area. He asked the committee to use the flexibility in the requirements and grant him allowance to take the NM2HR exam and acquire licensure by comity at this time.

The committees recommended Mr. Ralston enhance his application with several NM character references from NM professional surveyors and staff will evaluate his transcripts for the required 18 hours of survey education. He may be able to meet the related-science requirement. This additional information will be reviewed and placed on the agenda for the August meeting when a decision will be made.

4. **COMPLAINTS & VIOLATIONS Closed Session**– It was moved by Mr. Vigil to go into closed session, second by Mr. Atwell and

**VOTED:** To convene in closed session pursuant to NMSA 1978, Section 10-15-1(H)(1) to discuss only those cases listed in 4.1 through 4.12 of the agenda. A roll call vote was taken. Voting yes, Mr. Sanchez, Mr. Vigil, Mr. Atwell, Mr. Chavez. Motion carried unanimously.

- 4A **OPEN SESSION** – Action on cases on the agenda 4.1 through 4.12 – [*...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 motioned to reconvene the meeting in open session and states that the discussions in closed session were limited to those cases listed under item 4.1 through 4.12 on the agenda, Mr. Vigil seconded the motion. It was unanimously,

**VOTED:** To convene in open session.

4.1 06-05-48 Thomas Leyba – Show Cause Hearing – Mr. Chavez moved, seconded by Mr. Atwell and

**VOTED:** To accept the new information on the business organization [LLC] and operation of the firm that Mr. Leyba has provided today and that the committee will request clarification if after a thorough review there are additional concerns. Roll call vote: Yes, Mr. Atwell, Mr. Vigil and Mr. Chavez, Mr. Sanchez abstaining.

4.2 05-04-02 Tommy Conley, PS – Review Compliance – Interview -1:30 p.m. - Motion by Mr. Chavez, second by Mr. Atwell and unanimously,

**VOTED:** To reschedule for the third time an interview appointment required in accordance to the settlement agreement. If Mr. Conley fails to appear at the next meeting and comply with the stipulated agreements of settlement of February 2006 per paragraph 5F, the committee can extend the probation period up to one year.

4.3 07-06-22 – Information only of Mr. Oden’s surrender of licensure request

4.4 06-05-45 Gary E. Gritsko, Stipulated Agreement of Settlement - Motion by Mr. Sanchez, second by Mr. Vigil and unanimously,

**VOTED:** To approve the Stipulated Agreement of Settlement

4.5 07-07-24 [Complaint Manager’s Report for reconsideration]

Staff will issue a letter to the Governor's office advising of the status. Motion by Mr. Sanchez, second by Mr. Chavez. and unanimously

**VOTED:** To issue a letter of caution to the respondent that the errors on the plat must be corrected and taken seriously or there could be future action by the board.

4.6 Complaint on Use of Surveying Information by Architect without Reference or Certification to Surveyor Mr. Chavez described a situation where a surveyor came to him about the construction of a hanger at the City of Las Cruces's airport property. Mr. Chavez could not tell where some of the survey information came from but he found out the site plan was prepared and sealed by an architect showing contours and boundary information. He further investigated and found out the architect had hired an engineering firm to provide the civil information and they provided a topography map. The architect used this plat as an exhibit for lease agreements. Plats used carried legal descriptions, in some cases bearings, distances, and corners with no surveyor's certification. The City of Las Cruces is not following state statues and their own subdivision ordinance. The city ordinance defines a subdivision as a division of land into two or more parts by platting or meets and bounds for any purpose. It can be improved or unimproved land. The state defines a subdivision as a piece of land of 25 lots or more with further definitions for the purpose of sale or lease. Mr. Chavez points out that for the protection of the public, when a subdivision is done the leaseholders have an interest in that property and should know where the boundaries are. The city leases properties out by meets and bounds or a simple sketch and nothing is ever filed. Home improvements as hangers are done on the airport reserve leases. Mr. Chavez is now working with the City of Las Cruces to do a subdivision plat to identify these properties for the city. Mr. Vigil has had a similar experience where a drawing looked like a survey but was not called a survey and this goes on all over the state. Mr. Sanchez refers to the Committee's advisory Opinion 16, which tried to highlight the chances in the New Mexico Engineering and Surveying Practice Act, but home rule counties in particular continue to ignore it. Ms. Smith suggested getting the association of counties and other municipal entities involved by bringing the board's concerns to them. Mr. Ytuarte remembers an opinion of a previous board that the Subdivision plats are considered boundary survey plats and must meet the minimum standards. A task force could uncover such issues. Motion by Mr. Chavez, second by Mr. Vigil and unanimously,

**VOTED:** To take this to the full board for discussion and to recommend a task force to investigate an approach to the problem.

4.7 07-07-25 – Motion by Mr. Chavez, second by Mr. Sanchez and unanimously,

**VOTED:** To dismiss as unfounded at the next meeting if he follows through on plat corrections that he has agreed to do.

4.8 07-07-27 – Motion by Mr. Vigil, second by Mr. Sanchez and unanimously,

**VOTED:** To dismiss as unfounded

4.9 07-07-29 – Motion by Mr. Sanchez, second by Mr. Vigil

**VOTED:** To dismiss as unfounded

4.10 07-07-33 – It was reported the firm was advertising construction staking without a surveyor of record on file. Sometimes there has been a problem when a surveyor moves from company to company. Mr. Chavez would like to recommend a task force to the full board to investigate the definition of a surveyor or engineer of record. For this case the firm has submitted affidavits naming the Surveyor of Record who is also the Surveyor of Record for other firms.

4.11 06-05-53 Ector Alvarado, PS Stipulated Agreement of Settlement – Motion by Mr. Vigil, second by Mr. Chavez and

**VOTED:** To dismiss as unfounded based on reconsideration of all the information filed and that the NCA be rescinded. Yes votes: Mr. Vigil, Mr. Atwell, Mr. Chavez. Mr. Sanchez abstained

4.12 07-06-13 Walter Black, PS Stipulated Agreement of Settlement – Motion by Mr. Sanchez, second by Mr. Vigil and unanimously,

**VOTED:** To approve the Stipulated Agreement of Settlement

**4A** Appointment of hearing officers (if required) for new cases. None required

## **5. NEW BUSINESS**

5.1 Election of officers for FY 2008: Chair & Vice Chair – Motion by Mr. Chavez to nominate Mr. Atwell for Chair, second by Mr. Sanchez and unanimously,

**VOTED:** To elect Mr. Atwell as Chair for a second term by acclamation.

Mr. Chavez nominates Mr. Vigil for Vice Chair, second by Mr. Atwell and unanimously,

**VOTED:** To elect Mr. Vigil as Vice Chair for a second term by acclamation.

5.2 Ratification of NM 2HR. Surveying Examination Results and National Score Results. Motion by Mr. Sanchez, second by Mr. Chavez and unanimously,

**VOTED:** To ratify the scores for the 12 applicants of the NM2HR exam as well as the NCEES scores for the PS and FS applicants.

## **6. REVIEW OF APPLICATIONS**

6.1 Applications for Licensure – One PS exam application and 1 PS endorsement were reviewed with decisions posted in the individual applicant folder.

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

Submitted by:

Approved by

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Elena Garcia, Executive Director

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Mr. Charles Atwell, PSC Chair

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Approval Date