

DRAFT

Meeting of the **Professional Surveying Committee** of the Board of Licensure for Professional Engineers & Professional Surveyors held at 9:00 a.m., November 29, 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
Fred Sanchez, PS

Others Present: Elena Garcia, Executive Director, BLPEPS
Candis Bourassa, Licensing Manager, BLPEPS
Roman Garcia, Investigator, BLPES
Mary Smith, Assistant Attorney General, Board Counsel
Ed Ytuarte, Complaint Manager, BLPEPS

Absent: Gilbert Chavez, PS

Guests: John Esquibel, PS

1. CONVENE/ROLL CALL/INTRODUCTION OF GUESTS

Mr. Atwell convened the meeting at 9:00 a.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 September 13, 2007 PSC minutes – Mr. Sanchez motioned, seconded by Mr. Chavez and unanimously,

VOTED: To approve the 9/13/07 PSC minutes

4. NEW BUSINESS

4.1 Order to show cause hearing – Case 06-05-44 Joseph R. Maestas 9–a.m. – Mr. Maestas did not appear [It was later noted that there was no proof that he had received the certified letter.]

4.2 Survey Vendor Management (Survey VM) and the Surveyor Network – Brokering of Survey Vendor Management (Survey VM) and the Surveyor Network – Brokering of Surveying Services – Mr. Vigil addressed a concern over these organizations contacting surveyors to enroll in their program. He has found that surveyors find it hard to get paid, the organizations add their logos to plats and surveyors are complaining about these organizations. After some discussion, it was determined that the board does not have jurisdiction over business transactions, but it can issue a general warning to surveyors to be careful in these dealings. It was noted that this was done in the

last similar matter addressed when representatives from similar organizations asked to address the board in Las Cruces in 2006. Mr. Sanchez suggested surveyors use the Professional Service Contract developed by the special committee of the Board. It specifically addresses not signing a document that makes surveyors work under the laws of another state. Mrs. Garcia indicated the form is ready for posting on the website once a disclaimer has been added. Mr. Sanchez pointed out it is not copyrighted and can be used and changed to meet the situation. Mr. Sanchez motioned, seconded by Mr. Vigil and unanimously,

VOTED: To make known through the website and the next newsletter, the board's advice/caution not to use contracts with laws from other states and not laws of New Mexico.

4.3 Request by PEC to Modify Advisory Opinion 16 Supplemental Surveying – Mr. Sanchez explained Opinion 16 was a result of an informal complaint where an engineer without a surveying license was doing survey work. It dealt specifically with topography. The PEC requested the PSC to modify advisory opinion 16 [to delete the sentence: “Topographic surveys used in the design and construction of engineering and architectural projects are considered surveying services offered to the public” because they claim it does not follow the Act. The request fails to clarify the parts of the Act that it does not follow. If they have a specific complaint, the PSC would reconsider. Mr. Sanchez is of the opinion the Act is definite in not allowing unlicensed practice. Mr. Atwell added that this has been thoroughly discussed. Mr. Sanchez motioned, seconded by Mr. Vigil and unanimously,

VOTED: To not modify Advisory Opinion 16.

4.4 Proposed Modifications to Responsible Charge Definition/Referral – F. Sanchez stated there are problems with licensees rubber-stamping work of unlicensed individuals with little knowledge of a firms' operations. If the Act is opened for changes, there might be a way to change the law to inhibit this practice. For example, at the Farmington meeting it was brought out that surveyors living out-of-state were serving as the surveyor of record for NM firms. Texas and other boards have addressed this by registering firms. Ms. Smith notes that the law already defines responsible charge. Mrs. Garcia states part of the language Mr. Sanchez has presented is clarifying the responsible charge definition in the law; however, the other part of the language would need to be an amendment to the current law, possibly requiring all surveying firms to be registered with the Board. Ms. Smith added that then it could be incorporated into the rules. The NM Practice Act can only be clarified in the rules, not changed. Mr. Sanchez would like to rewrite his suggestion from that standpoint and then take it to the rules committee. Mr. Sanchez motioned, second by Mr. Vigil and unanimously,

VOTED: To forward this matter to the rules committee when prepared and if the ACT is open for changes the PSC should head up these changes.

4.5 Procedures for Agenda Items on Committee & Board Agendas – The Committee approved the 11/19/07 version of the Procedures with changes to item 2.1 deleting the words “member of the public”. Pursuant to Counsel's advice members of the public should not be permitted to submit agenda items.

4.6 Registration of Firms – This was covered with Item 4.4

4.7 Case 06-05-54 John Esquibel, PS – Mr. Esquibel spoke to the board and apologized for being slow in the completion of his required ethics course indicating he had problems and has changed companies. Mr. Sanchez has been concerned with his lack of attention to directives issued by the board. Mr. Vigil also reminds him of the importance of responding to the board's orders. Mrs. Garcia asked in reference to the change in firms why he had not notified the Board that he was not longer the Engineer of Record. He indicated he thought the firm would do it. She pointed out it is in the Board rules that the licensee shall notify the board when they no longer are the surveyor of record for a firm. Mr. Esquibel will be notified of the Board's decision in writing.

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

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 5.9 of the agenda. A roll call vote was taken. Voting yes: Mr. Sanchez, Mr. Vigil, Mr. Atwell, motion carried unanimously.

5A **OPEN SESSION** – Action on cases on the agenda 5.1 through 5.9 – Mr. Vigil motioned to reconvene the meeting in open session and stated that the discussions in closed session were limited to those cases listed under item 5.1 through 5.9 on the agenda, nothing else was discussed, Mr. Sanchez seconded the motion. It was unanimously,

VOTED: To convene in open session.

5.1 Case 07-07-25 – Mr. Sanchez motioned, seconded by Mr. Vigil and unanimously,

VOTED: To dismiss the case as unfounded since it has been settled informally.

5.2 Case 07-07-39 – Mr. Vigil motioned, seconded by Mr. Sanchez and unanimously,

VOTED: To table the case until further information from court case.

5.3 Case 08-07-01 – Mr. Sanchez motioned, seconded by Mr. Vigil and unanimously,

VOTED: To dismiss the case as unfounded; out side of Boards jurisdiction.

5.4 Case 08-07-03 – Mr. Sanchez motioned, seconded by Mr. Vigil and unanimously,

VOTED: To dismiss the case as unfounded since it has been settled informally.

5.5 Case 08-07-06 – Mr. Sanchez motioned, seconded by Mr. Vigil and unanimously,

VOTED: To dismiss the case as unfounded since it has been settled informally; but with a letter to professional surveyor of record regarding mandatory disclosure of professional liability insurance.

5.6 Case 06-05-44; 04-04-44 Joseph R/. Maestas [Suspension ends 4/21/08] Mr. Sanchez motioned on case 06-05-44, seconded by Mr. Vigil and unanimously,

VOTED: To table the case until staff received status of last certified letter sent certified.

Mr. Sanchez motioned on case 04-04-44, seconded by Mr. Vigil and unanimously,

VOTED: To suspend licensure until December 31, 2008 unless the board takes other action in other case.

5.7 Case 04-04-42 Timothy Oden Suspension ends 12/05/07 – for information only

5.8 Case 06-05-54 J. Esquibel [Ethics Course was due 5/01/07] Mr. Sanchez, seconded by Mr. Vigil and unanimously,

VOTED: To render Mr. Esquibel as having complied with the settlement agreement by having submitted on November 27, 2007 a copy of completion of the ethics course.

5.9 Case 05-04-05 LeRoy Smith, PS – Mr. Sanchez motioned, seconded by Mr. Vigil and unanimously,

VOTED: To reject the proposed time payment plan presented by Mr. Smith but accept his peer reviewer.

Ms. Smith will advise his attorney.

6. OLD BUSINESS

6.1 Review of Boundary Survey by Rio Arriba Planning-Discussion of Case Law & Board's Position (including Advisory Opinion 12) - Mr. Sanchez believes the board has reviewed this and has taken all the action within its jurisdiction and there appears to be case law supporting their recording of plats in their county. Ms. Smith added the Court of Appeals said that due to their independent responsibility to insure compliance with the Subdivision Act, they review plats to determine if plats comply with the Act. They accept plats but will not record them until this is done. Mr. Vigil asked about the county requirements for special non-survey information being on the plat (as the 5-year exemption statement required). Ms. Smith stated the court did not address this matter. She suggested professional surveyors bring this up with the board of county commissioners and county clerk. Mr. Sanchez suggested a disclosure statement referring to non-responsibility of non-surveying information and again Ms. Smith suggested addressing the question to the county.

Mrs. Garcia inquired whether Advisory Opinion 12 needs to be updated. Mr. Sanchez motioned, seconded by Mr. Vigil and unanimously,

VOTED: To change Advisory Opinion on 12.8.2 to comply with the court ordered opinions. Included should be changes for removal of effective date in paragraph one and word change to “regulatory agencies may not be required” in paragraph four.

6.2 Status of Cease & Desist Orders and Compliance Direction to Organizations/Firms/Municipalities, etc. Mr. Sanchez reported he has heard complaints about counties continuing to do business as usual contrary to rules and statutes, including violators of the procurement code. He indicated the Board's investigators drop in on those entities previously contacted. Ms. Smith pointed out the board has no authority over the Procurement Code including

contracts between surveyors and public bodies. If this is taken up by the board both DFA and GSD would be involved. The Procurement Code has a provision Ms. Smith recalls that says other public bodies may adopt ordinances that affect them leaving exception to the code. Mr. Sanchez sees when the bidders are all considered equally qualified they go to price to award the bid. Ms. Smith says this is beyond the board's jurisdiction. The GSD and DFA are the departments with oversight to the code. Mrs. Garcia reported that on the matter with the City of Roswell she invited the city engineer to this meeting and did provide the schedule of future meetings. It appeared he was very interested in meeting with the Board. She also stated the City of Albuquerque responded to the Board's letter on preparation of easements and assured the Board they would adhere to the law and rules in the future. The City further asked if easements parallel to a tract do not necessary have to have a legal description by a surveyor. Mr. Vigil read 12.8.2.12 B as an answer to this question. This supports their assumption that it is not necessary and Mrs. Garcia will address this in a letter to the City.

7. REVIEW OF APPLICATIONS

7.1 Applications for Retired Status & Inactive Status – Mr. Sanchez motioned, second by Mr. Vigil and unanimously,

VOTED: To approve retired and inactive applications since they meet the requirements.

7.2 Review of Applications by Exam [Includes Comity Applications] four comity applications were reviewed with decisions posted in the individual applicant folder.

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