

Meeting of the **Professional Surveying Committee** of the Board of Licensure for Professional Engineers & Professional Surveyors held at 9:00 a.m., September 13, 2007 at the Farmington City Civic Center, 200 W Arrington St., Farmington, 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
Edward Ytuarte, PE/PS, Complaint Manager, BLPEPS

Guests Michael Paisano, Navajo Housing Authority
Earl Tulley, Navajo Housing Authority
Marc DePauli, PE, DePauli Engineering
Melanie Johnson, Navajo Housing Authority

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 the entire 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 August 2, 2007 PSC meeting –Motion by Mr. Sanchez, second by Mr. Chavez and unanimously,

VOTED: To approve the 8/2/07 PSC minutes.

4. NEW BUSINESS

4.1 Appointment: Michael Paisano, PS – Surveying on Indian Lands – Board’s Jurisdiction – Requirements by Indian Tribes and Federal Government – Mr. Paisano wished to address the Board regarding the Board’s jurisdiction over unlicensed surveyors working on the reservation. Mrs. Garcia explained an opinion from prior Board Counsel to the Board from the Office of the Attorney General stated the state’s regulatory interest is likely to be minimal when compared to the federal interests in encouraging tribal self-government. In other

words, tribal sovereignty is paramount to any other consideration. It was noted that the federal government may require a license, but it can be from any other state for work through the BIA on tribal lands. If there is an individual who no longer has a license to practice in New Mexico and does so on tribal lands the Board may not have jurisdiction; however, if he used the NM issued license to seal the plat and the license is not current that is a separate issue. Ms. Garcia indicated that the Board back in August of 1997 wrote to all Indian tribes and pueblos to share its interpretation of the Engineering and Surveying Practice Act; and how the Act relates to engineering and surveying on Indian Lands. It stated tribal interest and Indian self-government are paramount within Indian lands, and the Board would not infringe on the right of Native American Tribes to regulate their affairs. She indicated that surrounding states make similar interpretations on these matters. She indicated; however, that if the tribal government requests the Board to step in and assist, she believes the Board may be able to assist in matters of engineering and surveying services being provided by unlicensed individuals. Mr. Paisano stated the Navajo Housing Authority is interfaced with the tribal government and the BIA, but it works by itself. The Housing Authority has no set standards or guidelines for contracts. They have had problems with the contractors using subcontractors as surveyors. From his experience, Mr. Vigil believes contractors have to be licensed in order to contract with the tribes and federal government. Mrs. Garcia explained that the Board in the past determined that contractors to the federal government must be licensed; however, her interpretation of the Assistant Attorney General's opinion is that contractors with the tribal governments do not. Mr. Chavez suggested the Navajo Nation set up a committee to work with the board on practice and licensing issues. Mr. Sanchez pointed out that the Board would have control over a NM licensee if a complaint were filed against him. He is not sure about the non-licensee or out-of-state surveyor. Mr. Atwell stated that tribal governments might wish to pursue new laws through the legislative branch. Mr. Paisano asked if all the work done in the last six years would have to be redone and certified because the surveyor was unlicensed. It was noted that perhaps the issue needs to be decided through their government. Mrs. Garcia pointed out that the governmental entity could file a complaint against an unlicensed individual and the Board would consider it. Mr. Chavez made a motion, seconded by Mr. Sanchez and unanimously,

VOTED: To pursue the issue at the written request of the Navajo Nation government.

4.2 Appointment: Marc DePauli, PEPS – Concern of Multiple Out-of – State Surveying Companies/Surveyors Practicing Surveying in New Mexico Leading to Problems of No Responsibility and Accountability and Infractions of New Mexico's Surveying Laws and Professional Standards. Mr. DePauli stated he has found out that out-of-state companies have been filing substandard survey plats. Also, when he has requested information from the surveyor who signs and seals the plat, he has found that the surveyor does not have the data being requested and he is referred to the firm(s) whose logo appear on the plat. There is no accountability as to who really is responsible for the work. Mr. Vigil pointed out these firms are also pursuing business in New Mexico using the word

“Surveyor” or “surveying” when they are not authorized surveying firms in New Mexico. After further discussion of the problems with the brokering of surveying services, it was noted by the committee that ultimately the professional surveyor who signs and seals a survey plat is the person who is accountable as the person in responsible charge. If there are any problems with the survey, he/she will assume all responsibility for the survey.

Mr. DePauli, on another issue, indicated that while there are individuals in New Mexico who know surveying and would make great professional surveyors they are unable to get licensed due to the four-year B.S. requirement; however there are out-of-state surveyors who have become licensed in New Mexico [by endorsement] and do not follow the standards. He would like the surveyors to have something that would allow licensure by experience mixed with education without having to have a 4-year degree in surveying. He works with engineers who are very knowledgeable in surveying, but could not take the time to go back and get another 4-year degree. Ms. Garcia and Ms. Bourassa indicated that engineers may be eligible under the related-science category as long as they have taken 18 hrs of surveying courses. Also, Metro State in Colorado offers a B.S. in surveying that is ABET-accredited with a “distance- learning” option. Mr. Sanchez stated he supports the existing educational requirements for the protection of the public. Just because a person may know how to do something does that render him/her eligible for licensure. Mr. Chavez added that in the future there will probably be separate sub-disciplines of surveying such as GIS, boundary, construction, and photogrammetry which may require different educational pathways. Mr. Chavez moved to table discussion and allow Mr. DePauli to file an actual complaint on any survey plats he feels are substandard or against unlicensed surveyors.

4.2.1 Surveyor of Record – Responsible Charge Survey for Firm.

Mr. Sanchez stated he has seen problems with several firms having the same surveyor of record. Some of these are out-of-state firms. This creates major problems when licensees allow the use of their stamps without being present in the state or without having provided sufficient supervision. These cases lead to illegal rubber-stamping practices. It was noted that information is needed to ascertain how surveyors from far are contractually committed to the firm and proof of how they actually oversee the work being done. Mr. Vigil stated this policing could be very difficult. Mr. Chavez suggested a certificate of surveying authorization be issued to the firm, which would require a new one each time the surveyor of record changes. Mrs. Garcia stated that this has been a problem for many years and although the Board in the past has been opposed to more legislation, new laws for registration of firms may be the only solution. Mr. Sanchez moved, seconded by Mr. Chavez and unanimously,

VOTED: To create a committee to propose changes to the Board for NMPA
61-23-27.9

4.3 Permanent Easement Document Prepared for Municipality by Someone Other than a Professional Surveyor. Mr. Sanchez explained

easement documents from the City of Albuquerque where landscape architects were being requested to and providing easement surveys. After consideration of the easement documents, it was moved by Mr. Sanchez, seconded by Mr. Chavez and unanimously,

VOTED: to have Mrs. Garcia sent a letter to the City of Albuquerque indicating only licensed professional surveyors may perform easement surveys as per the Minimum Standards for Surveying and cite the statutes and standards.

This item is also to be brought to the attention of the Joint Practices Committee at their next meeting in the next few weeks.

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 5.3 of the agenda. A roll call vote was taken. Voting yes: Mr. Sanchez, Mr. Vigil, Mr. Atwell, and Mr. Chavez. Motion carried unanimously.

- 5A **OPEN SESSION** – Mr. Chavez moved to continue the meeting in open session and stated the discussions in closed session were limited to those cases listed under item 5.1 through 5.4 on the agenda, Mr. Vigil seconded the motion. It was unanimously,

VOTED: To continue the meeting in open session.

- 5.1 **Case 07-07-37** – Mr. Vigil moved, seconded by Mr. Chavez and unanimously,

VOTED: To dismiss 07-07-37 as unfounded because an ILR is not a survey and there were no violations found in respondent's work.

- 5.2 **Case 07-07-38** – Mr. Chavez moved, seconded by Mr. Vigil and unanimously,

VOTED: To dismiss case 07-07-38 as unfounded, but have respondent work with the complaint manager to get minor plat corrections made.

- 5.3 **Case 08-07-02** – Mr. Vigil moved, seconded by Mr. Chavez and unanimously,

VOTED: To dismiss case 08-07-02 as unfounded with an acknowledgement letter to the surveyor that a complaint had been filed. Case is of a civil nature.

- 5.4 **Case 08-07-01** – Motion by Mr. Chavez, second by Mr. Sanchez and unanimously,

VOTED: To table case 08-07-01 for now, continue the investigation, and get a response from the surveyor.

6. OLD BUSINESS

6.1 Mr. Chavez brought up the issue of the June 2006 meeting in Red River regarding the wording in the NM statutes, Section 14-8-16 Recordation Act that uses the words “professional engineer or land” referring to who can do legal descriptions. This section is in direct conflict with the Practice Act. Mrs. Garcia stated she had communicated with an officer of the association of county clerks and she was very receptive to meeting with representatives of the Board on these types of concerns. Mrs. Garcia will arrange a meeting or get on the agenda of a meeting of the Association of Counties regarding this matter. Mr. Chavez notes the whole Act is actually out of date.

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