

Meeting of the Board of Licensure for Professional  
Engineers & Professional Surveyors held 10:00 a.m.  
January 10, 2008 at 4001 Office Court Dr., Ste. 903,  
Santa Fe, NM

Members Present	Gilbert Chavez, PS, Board Chair Fred Sanchez, PS Severiano Sisneros, PE Subhas Shah, PE John Romero, Sr., PE, PEC Vice Chair, Board Secretary Salvador Vigil, PS, PSC Vice Chair Charles Atwell, Public Member, PSC Chair Stevan J.Schoen, Public Member, Esq.
Members Absent	Patricio Guerrerortiz, PE, PEC Chair, Board Vice Chair at legislative transportation meeting Dr. Rola Idriss, PE, prior engagement
Others Present	Elena Garcia, Executive Director, BLPES Candis Bourassa, Licensing Manager, BLPES Roman Garcia, Investigator, BLPES Ed Ytuarte, Complaint Manager, PEPS, BLPES
Guests	Severiano Sisneros, Jr. Tamara Sisneros

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

Mr. Chavez convened the meeting. Roll call was taken, and it was noted that a quorum of the Board was present. Guests were introduced.

**2. APPROVAL OF THE AGENDA**

Mr. Atwell motioned, second by Mr. Romero and unanimously,

**VOTED:** To approve the agenda.

**3. APPROVAL OF THE MINUTES**

3.1 November 2, 2007 Minutes – Mr. Sanchez motioned, second by Mr. Romero and unanimously,

**VOTED:** To approve the minutes of 11/2/2007.

Mr. Shah's arrival is noted for the record.

3.2 December 14, December 21, 2007 minutes – Mr. Shah motioned, second by Mr. Romero and discussion began. On 12/21/2007 minutes, Mr. Shah notes for correction that he is not the chair of the PEC. Mr. Chavez entertained a motion to vote.

**VOTED:** To approve the minutes of December 14 and December 21, 2007 meetings as corrected.

#### **4. COMMITTEE REPORTS**

4.1 Professional Engineering Committee – Mr. Romero reported no quorum was present, but Mr. Thompson appeared to request a structural discipline. He was told he would be notified later of the Board’s decision. Applications were reviewed with decisions posted on them.

4.2 Professional Surveying Committee – Mr. Atwell, Chair reported six cases were reviewed. Continuing case 07-06-22, Mr. Oden, will be set for a hearing, two cases were unfounded and two NCAs were ordered. The FEMA certificate was discussed but no action taken.

4.3 Joint Practices Committee – Mr. Sanchez & Mr. Sisneros – Mr. Sanchez attended and discussion was on the FEMA certificate that is required by NM law only surveyors’ signatures. Also discussed, were a couple of complaints received about landscape architects being asked by the City of Albuquerque to perform surveying. The Landscape Architects Board said they would take up the issue. A letter was written to the City of Albuquerque requesting they use surveyors for survey work. Mrs. Garcia reported that she has created a list of PE volunteers for the JPC to use for the architects engineer selection committee of property control for the General Services Department. She will pass this on to Mr. Ytuarte. They will get the same mileage and per diem as board members. Mr. Sisneros has attended past meetings and found increased professionalism in working together. Mr. Sanchez has observed when working on the handbooks and presenting it, it took some time for the JPC to accept the changes.

4.4 Rules & Regulations Committee – Dr. Idriss – In her absence, the report is found on page 8 in meeting book. Mr. Sanchez comments that as a member of the committee he had noted the reference to licensees as meaning surveyors and engineers. He suggested specifying PE or PS but was voted down. In the review on the status of the Code of Conduct, it will now go to the full board. As the co chair of the committee, Mr. Vigil decided it was time for a review of the whole Code rather than individual changes. In June, all recommendations for the Code by the full board will be decided. Mr. Chavez wants the June meeting to have an annual report from all committees on the status of all the committee charges. The June meeting could be extended to include planning and goal setting for the next year. Mr. Sisneros suggested an agenda item for the April meeting could be specifically to look at the direction of the Board one year at this planning meeting and use the meeting for the committees’ direction on alternating years.

4.5 Examination Committee – Mr. Vigil - 2-hr. Prof. Surveying Exam – Subcommittee Report – They met October 15, 2007 and 37 questions were reviewed with six new questions being written pertaining to new standards, two repetitious ones were deleted, and 15 were modified. Next meeting is scheduled for January 14, 2008. Mr. Chavez pointed out that it has been some time since a review has been done and there should be continuation of bringing it up to date. So far, the idea of an open book renewal test on new laws has not found support.

4.6 Executive Committee – C. Atwell – After application review, Mr. Ed Ytuarte was the board's choice for director and the paper work is being processed. Mrs. Garcia passed out the Budget Increase request to cover her and Mr. Ytuarte increased salaries for FY '08 by transferring \$30,000 in funds. Revenue collections are \$54,000 higher from fee increases than expected for FY'07, and there is extra money due to the vacant investigator position. No budget changes for staff salaries were included in this BAR request. Mrs. Garcia explains the new staff classifications have to be done first. Mr. Sisneros suggests with increased income it looks like \$37,000 might be directed toward staff reclassified salaries. Mrs. Garcia explains her FY '09 budget planned only \$7,000 for staff. Mr. Chavez agrees that there is a need to look into this. Mr. Sanchez would like to see assignment to a special committee to get with staff and the director and start the necessary process. Mr. Romero would rather wait and leave it until the new director is in place. Mr. Romero volunteers to work with the director and Governor's office when it is time to approach LFC and DFA. Mr. Atwell has addressed this issue with Mr. Ytuarte and he is aware of it.

Mr. Sanchez motioned, second by Mr. Vigil and unanimously,

**VOTED:** Yes, to budget adjustment of \$30,000 in the BAR for double fill and increased director salary.

4.7 Landfill Gas Committee – Mr. Shah – the committee has completed its work and is ready to dismiss to committee.

## 5. NEW BUSINESS

5.1 David Whitman – Candidate for NCEES President Elect – Requests Support – Mr. Romero motioned, second by Mr. Shah and in discussion Mr. Chavez notes Mr. Whitman is the vice president of the Western Zone and believes the Board should support him. Vote is called and unanimously,

**VOTED:** To support David Whitman as NCEES President in the August election.

## 6. OLD BUSINESS

6.1 Engineering Surveys – Rescindment of Resolution to NCEES – 8/16/07 Letter [NM Resolution and Case for Resolution] – Motion to withdraw letter and motion at

NCEES annual meeting [pg. 16] – Mr. Chavez explains the earlier motion was done out-of-order without a 2/3 vote required to resend a motion passed earlier. The earlier motion was followed and the resolution was withdrawn from the NCEES meeting. Motion By Mr. Atwell, second by Mr. Romero and unanimously,

**VOTED:** To table this item until next meeting.

6.2 Procedures for Agenda Items on Committee & Board Agendas [pg. 20]. Mrs. Garcia, after legal council, decided it was not good to have the public included in those who can ask for activity/agenda items for the Board. The PSC passed a motion to remove the wording “*or member of the public*” from section 1.1. Mr. Shah observes there is a comma missing after “*staff member*” in this sentence that can also be corrected. Mr. Romero motioned, second by Mr. Atwell and unanimously,

**VOTED:** To strike “*member of the public*” as shown on page 20.

6.3 Procurement Code – Qualifications – Based Selection – How it applies to Universities [pg.22] – Mrs. Garcia stated there are still questions about the universities not doing qualification-based selection. It was taken to the Joint Practice Committee and to the AG’s office where there has been no response for two years. Both the JPC and the BOL are waiting for AG’s response before attempting charges, if ever. Mr. Sanchez’s experience with Bernalillo County has been that they equally qualify every bidder and then use price to choose one. Mrs. Smith has advised the Board in the past that they are not charged with upholding the Procurement Code. It remains out of the Boards jurisdiction. Mr. Schoen understands the difficulty making this a priority with the AG’s office. If the board wished, he could meet with Mr. King. Mr. Chavez noted other laws also have no enforcement except if the public wished to take action. As the board represents the public, it should have a right to enforce or request a special prosecutor. Mr. Schoen said this is accomplished by having a special assistant Attorney General appointed. Mr. Sanchez motioned, second by Mr. Romero and unanimously,

**VOTED:** To address Mr. King with the Board’s concerns and the take specific examples of current situations that could require requesting a special AG assistant. This assistant could issue an opinion on these situations and advise the Board on how enforcement is accomplished.

6.4 Advisory Opinion No. 16 [supplemental surveying] [pg. 24] – Mrs. Garcia explains the PEC’s letter asks that the last sentence be taken out, and the PSC decided to leave it in the document. Mr. Sanchez reviewed the PEC request letter by Mr. Romero stating the last sentence was not in keeping with the Act, but the letter did not point out any exact section of the Act. Mr. Sanchez continued to explain the opinion was a result of a complaint that dealt with an engineer doing topography and that was the primary violation. Mr. Chavez points out that Mrs. Smith has advised the board that opinions have no legal authority when challenged, and the board should use written rules instead. Mr. Sanchez distinguishes value in opinions to back up the rules that are being broken. Mr. Schoen noted the AG’s office uses them to clarify the meaning of a statute/regulation.

Mr. Romero asked if the sentence is not taken out and the PEC issues their opinion, where does that get us. Mr. Sanchez disagrees with the PEC taking action on surveying issues. The PSC, full board, and JES committee had looked at this issue. He believes it should have not been brought up again. Mr. Sisneros has seen issues before that are not simply PEC or PSC, and in the future incidental surveying by engineers is going to have to be defined. Mr. Vigil reaffirmed this opinion was only written when an engineer did a boundary and topographic survey. Mr. Sisneros remembers this problem when the engineer wrongfully did a boundary survey, but the opinion by the PSC changed the incident to give an opinion on a topography survey instead. The issue changed when topography was included along with a boundary survey problem. Mr. Sanchez agrees boundary survey does not appear in the opinion. Mr. Sanchez continued that “supplemental surveying work” is defined clearly at NMSA 61-23-3 S and topography other than aerial extrapolation is not in the practice of engineering. Mr. Romero considers licensed engineers trained to do topography by their college education. Mr. Atwell agrees this may be so, but the law is not based on having the skills, but only being licensed to do the work. Mr. Sanchez has seen the board becoming an evaluator of skills instead of regulating the business of licensure. Mr. Atwell motioned to approve the Advisory Opinion No. 16 as it was originally presented, second by Mr. Vigil and discussion continues. Mr. Sisneros supports the opinion that the PEC thought it should have only dealt with boundary survey and not topographical. He supports licensing individuals by specialized surveying skills. Mr. Chavez calls for the question.

**VOTE:** Motion died with a vote of four to four.

Conflicts continue between engineers and surveyors even after JES determinations and Mr. Sanchez recommended a special committee of the board be appointed to discuss these conflicts and possible solutions instead of having a verbal exchange each time anything is brought up that someone does not agree with.

## **7. DIRECTOR'S REPORT**

7.1 Staff Activities Report [Info beginning page 26] Mrs. Garcia has included it in the meeting book for your review. It shows 7562 active licensees and 904 applications received by the board, 532 examinations registered for, and other FY '07 statistics.

7.1.1 Matter Before Risk Management [page]. Mrs. Garcia reviewed Mr. Abeyta's letter of September 20 and stated the investigation by Risk Management continues, staff has been interviewed and did follow procedures set by the NMSA.

7.2 Financial Reports [pg. 33-45-pg. 47] Mrs. Garcia points out a cash reserve of \$333,224. DFA wants no less than half to a full year's budget kept in reserve. Revenues were estimated at \$588,900 but actual came in at \$633,636. Engineers increase by 3% to 5% while the surveyors go can go from 4% to 1% for recent years. Page 45 has the Budget Status report. On page 46, paid vouchers, which Mrs. Garcia approves if within the budget, need board approval. Motion by Mr. Sanchez, second by Mr. Romero and discussion began. Mr. Sisneros asks about the expense on line 1, page 47 for expert

witness, and Mrs. Garcia explains the board pays any expenses by the litigator in the AG's office. This could get expensive for the Board, but so far, they have been good about letting the Board know about the expenses they are going to incur. Mr. Chavez called for a vote and unanimously,

**VOTED:** Approval for the payment of vouchers presented.

7.3 FY 09 Budget Request [pg. 49-53] Mrs. Garcia explains this has not been ratified by the Board. Motion by Mr. Vigil, second by Mr. Romero and unanimously,

**VOTED:** To approve the FY 09 Budget

7.4 FY 07 Audit Progress [pg. 54] Mrs. Garcia reports the audit was late due the SHARE, but the audit is not public yet and needs to be on the next agenda for approval.

- 10. **Case Report** – Appeals to Board's Decision and Order in District Court – LeRoy Smith, PS – Update [pg.55] Appeal by LeRoy Smith was denied by the District court and the Boards decision was affirmed.
- 11. **ADJOURNMENT**–Mr. Sanchez sites the need for a procedure or special committee to discuss issues of conflict between PSC and PEC before votes are called. Mr. Chavez will work on this task and adjourns the meeting.

Submitted by:

Approved by:

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Perry Valdez, Acting Executive Director

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Mr. Gilbert Chavez, Board Chair

April 18, 2008 Approval Date