

MINUTES OF

Meeting of the Professional Surveying Committee
of the Board of Licensure for Professional
Engineers & Professional Surveyors held at 11:00
a.m., June 10, 2010 at the State Engineer Office,
5550 San Antonio Dr. NE, Albuquerque, NM

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

Others Present: Edward Ytuarte, Executive Director, BLPES
Candis Bourassa, Business Specialist, BLPES
Roman Garcia, Investigator, BLPES
Mary Smith, Assistant Attorney General, Board Counsel
David Cooper, PS investigation consultant

Guests Scott Farnham, PS applicant
Russell L. Koger, NMSPE

1. CONVENE/ROLL CALL/INTRODUCTION OF GUESTS

Mr. Vigil convened the meeting at 11:00 a.m. Roll call was taken, and it was noted that a quorum of the Professional Surveying Committee was present. Guests introduced themselves.

2. APPROVAL OF THE AGENDA – Mr. Atwell motioned, second by Mr. Chavez and unanimously,

VOTED: To approve the agenda as presented.

3. APPROVAL OF THE MINUTES

3.1 Approval of the April 8, 2010 Minutes – Mr. Atwell motioned, second by Mr. Chavez and Mr. Sanchez discussed several changes he would like to see made. Mr. Sanchez submitted a marked up copy of the 4/8/2010 minutes with his comments. On page 5 at 5.3 insert at “*within or adjoining land grants*”. In center of page 5, Mr. Ytuarte stated all Acts “*effect on July 1st*” and Mr. Ytuarte confirms that is the date. Below that Ms. Smith “*recommends that they check with the legislature counsel*” and who would that be? Ms. Smith clarifies that unless Act states something differently they are active 60 days after the end of the session. At 5.4 at “*Mr. Sanchez states*” the second sentence, needs a comma after the word “*practice*”. Page 6 after “*The committee agrees*” add “*the license is expired*”. Mr. Atwell motioned approved as corrected, second by Mr. Chavez and unanimously,

VOTED: To approve the 4/8/2010 PSC minutes as corrected.

4. NEW BUSINESS

4.1 Election of Officers for FY '11: Chair and Vice Chair – Nominations for chair were opened; Mr. Atwell moved to nominate Mr. Sanchez, seconded by Mr. Chavez. No other nominations were presented and it was unanimously,

VOTED: To elect Mr. Sanchez as Chair of the PSC by acclamation.

Nominations for vice-chair were opened and it was moved by Mr. Atwell to nominate Mr. Chavez, seconded by Mr. Sanchez. No other nominations were presented and it was unanimously,

VOTED: To elect Mr. Chavez as Vice Chair of the PSC by acclamation.

The terms for these offices are July 1, 2010 through June 30, 2011

4.2 Rules & Regulation committee report as pertaining to Survey Proposed Changes – Mr. Ytuarte explained the report is in the full Board meeting book, and Mr. Sanchez will report on survey proposed changes. The committee of Mr. Sanchez as chair, Mr. Chavez, Mr. Romero, and Mrs. Petrocco-Samora started back in November with 5 defined charges by the Board Chair. They included; 1. Define Board approved surveying curriculum; 2. review use of the engineering titles in Act; 3 Determine if legislative changes need to be recommended or fiscal year 2010 legislative session; 4 Review and make recommendations for the deletion of the Industrial Exemption with possible grandfathering; 5. Change the fines for unlicensed practice to a higher amount. Mr. Sanchez stated these were taken up and resolved. After review, a full board discussion will be done Friday to cover this report for consideration for amendments. Mr. Sanchez asked for Ms. Smith's opinion on trying to make the advisory opinions into rule. He reads the language used. "Where we adopt a rule relative to a specific advisory opinion, we mean that all the language in the advisory opinion is the rule." Opinion 16 and 17 are the ones not already covered by the Minimum Standards. Mary agrees this is the way to adopt the advisory opinions for public review. Mr. Sanchez has respectfully submitted to the BLPEPS for consideration, adaption or additional changes the complete report. Ms. Smith explained along with Mr. Sanchez that each committee can have their own public hearing or they can combine into one hearing.

4.3 Moises Morales/ Rio Arriba County Clerk Plat Recordation Issue – Mr. Vigil has had a couple of surveyors discuss with him that Mr. Morales wants plats signed on the current date, even if the work was done two years ago. Shown in section 4.3.1 in the meeting book the standard 61-23-28.2 Surveying; record of survey is believed by their attorney to mean it must have the current date signed. Mr. Vigil questions if this should cover subdivisions and land divisions or all surveys. Mr. Sanchez has a problem with doing a survey 2 years ago and changing the date as it brings up notary date questions. Ms. Smith said that unless this impacts the Board that is intended to protect the public from incompetent or unprofessional surveyors then it is beyond the province of this committee to weigh in on what a county is doing. Ms. Smith said the Board has no jurisdiction. Mr. Chavez suggested a second certification as a disclosure with the current date. Ms Smith said one could bring private action questioning the county, but not in the name of the Board.

4.4 Gary Eidson Email – Mr. Ytuarte got an email from Gary Eidson stating NMPS would like to be involved in input as the Board justifies the continuation of the Board with the Sunset Act. Mr. Sanchez added that he belongs to Consulting Engineering Companies

(CEC) of New Mexico, and he serves on their legislative affairs committee. Mr. Koger confirms the NMSPE does have recommendations, and there will be more interaction between the Board and NMSPE.

5. CORRESPONDENCE

5.1 Scott Farnham Request – Mr. Ytuarte explained Mr. Farnham requested a hearing for approval of his endorsement by science related civil engineering degree from 1985. Mr. Farnham discussed the ways he has through his 25 years of practice he has self educated himself in the areas covered by formal credited education advisory opinion of 2002. He meets the standards [1979-1995 NM law] at the time he was initial licensed in Colorado.

His application will be reviewed, and he will be notified.

5.2 Western Zone Surveyors Forum Report – Mr. Ytuarte reported the survey forum was attended by Mr. Chavez. Mr. Chavez stated the main discussion was the four year degree requirement. There was concern about the dropping numbers taking the Fundamentals of Surveying exam. For the engineering surveying degrees like NMSU, it is possible the applicants are claiming to be engineers when it is a survey curriculum. The forum also discussed computer based testing. The exam is ready for this. Practitioners from around the country will submit questions that will assist toward a new blueprint for the October, 2011 exam. Patty Monkia was elected President and Mr. Chavez as Assistant Vice President for the next two years.

5.3 Denver NCEES Annual Meeting – Mr. Ytuarte advises those attending to get registered. The packets for presentations of resolutions and motions will be coming out online Monday or Tuesday. A CD or flash card can be requested for those with low computer storage. Administrator and individual state Board issues seem to have some conflict. Concerns include the expense of going to computer based testing, restructuring for B+30 for implementation in 2020 for the professional engineers, and cost to applicants. Mr. Chavez will serve on the NCEES Professional Surveyors Committee again, and his registration is covered with his election to Assistant Vice President of the Western Zone. Mr. Vigil was appointed to the Exam Review Committee, but Mr. Ytuarte believed the conferences are not paid for.

6. COMPLAINTS & VIOLATIONS- Closed Session - It was moved by Mr. Sanchez to go into closed session, second by Mr. Atwell and unanimously,

VOTED: To convene in closed session pursuant to NMSA 1978, Section 10-15-1(H) (1) to discuss only those cases listed in 6.1 through 6.2 of the agenda. A roll call vote was taken. Voting yes, Mr. Sanchez, Mr. Vigil, Mr. Atwell, and Mr. Chavez, motion carried unanimously.

6A OPEN SESSION – Action on cases on the agenda 6.1 through 6.2 – [*...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 stated that the discussions in closed session were limited to those cases listed under item 6.1 through 6.2 on the agenda, Mr. Sanchez seconded the motion. It was unanimously,

VOTED: To convene in open session.

6.A.1 Case 10-10-42 – Mr. Sanchez motioned, second by Mr. Atwell and discussion is opened. Ms. Smith was asked options for early resolution for the NCA. She said there could be stipulated agreement or pre-NCA settlement agreement that includes the person's acceptance of a cease and desist letter. The committee decides to offer a possible early resolution with a pre-NCA settlement agreement with a cease and desist letter and a \$5000 civil penalty for unlicensed practice covering cost of processing. Mr. Sanchez's motion went to vote, and unanimously,

VOTED: That a NCA be issued against the non-licensee for unlicensed practice [61-23-27.15], and they approved the staff to issue a complaint against the licensee in light of correcting the plat that has already been recorded as well as the ethics involved as not advising the Board of being the surveyor of record.

6.A.2 Case 10-10-56 – Mr. Sanchez motioned, second by Mr. Chavez and discussion is opened. Mr. Cooper advised the committee the plat discrepancies have already been done by another surveyor and the new plat is going through county approval. Mr. Sanchez's motion went to vote, and unanimously,

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VOTED: That a NCA be issued against the respondent for violation of the Minimum Standards. Early resolution to the NCA will be a \$1000 fine and letter of reprimand.

6A.1 Appointment of Hearing Officers (if required) For New Cases – Case 10-10-42 will be Mr. Sanchez with Mr. Vigil as back up

6A.2 Appointment of Hearing Officers (if required) For New Cases – Case 10-10-56 will be Mr. Chavez with Mr. Sanchez as back up

7 OLD BUSINESS

7.1 Sunset Review – Mr. Ytuarte suggested the PSC may want to form a committee to review any changes they may want. The PEC has already formed a committee. Mr. Ytuarte is doing a separate report on keeping this Board in place to the Legislative Finance Council due July 18, 2010. The Act changes are done during the next legislature. Mr. Sanchez pointed out that he worked with Mr. Miguel Garcia in the House and Ms. Linda Lopez in the Senate on past Act changes. If the Board wishes, when the time comes, Mr. Sanchez is available to contact them again.

7.2 Complaint Log – Mr. Sanchez asked if Mr. Ytuarte and Mr. Romeo got together to point out the cases very close to running the statute. Mr. Ytuarte explained on June 4th the PSC was given from Mr. Garcia the complete log of SOL, closed, and active cases, while the meeting book report is only the current cases as of 6/9/2010. It shows which ones are getting close to the two year statute of limitations. Ms. Smith pointed out when the statute of limitations runs out on complaints the committee can be accused of if not found guilty of malfeasance, which would be enough to remove anyone from service on the Board. Ms. Smith advised that there is no excuse to let the statute of limitations run. She suggested a receipt date become part of the numbering system to better tract the time run.

7.3 PSC Proposed Special Meeting Date to Hear Complaints – Special meeting to present cases will be July 19th in Albuquerque at 11:00 a.m. Approximately 10 cases will be presented that are reaching the statute of limitations..

8. REVIEW OF APPLICATIONS

8.1 PS Exam Report – Ms. Bourassa explained the scores are typical.

8.2 Arlando Gilbert – PS Exam – was not ready to present at this meeting

8.3 Scott Farnham - Ms. Smith read 61-23-27.4 E (1) (a), where related science curriculums qualify through meeting requirements at the time of initial licensure. After discussion on how the 2002 policy advisory of 18 hours of survey classes should or should not apply to initial licensure between 1979 though 1995, Mr. Farnham is approved for licensure.

8.4 Additional Applications from Licensing Managers – applications were reviewed with decisions posted in the individual applicant folder.

9. ADJOURNMENT Having no further business Mr. Vigil adjourned the meeting

Submitted by:

s/ Edward Ytuarte
Mr. Edward Ytuarte, Executive Director

Approved by

s/ Salvador Vigil, PS
Mr. Salvador Vigil, PSC Chair

July 19, 2010 Approved Date