

MINUTES OF

Meeting of the Board of Licensure for Professional Engineers & Professional Surveyors held at 8:00 a.m., June 11, 2010 at the State Engineer Office, 5550 San Antonio Dr. NE, Albuquerque, NM

Members Present: Chuck Atwell, Public Member, Board Chair
Severiano Sisneros, PE, Board Vice-Chair
Fred Sanchez, PS, Board Secretary, PSC Vice-Chair
Salvador Vigil, PS, PSC Chair
John T. Romero, Sr., PE, PEC Chair
Gilbert Chavez, PS
Subhas Shah, PE
Julie Petrocco-Samora, PE
Stevan Schoen, Esq, Public Member

Members Absent Dr. Rola Idriss, PE, PEC Vice Chair

Others Present: Edward Ytuarte, Executive Director, BLPES
Candis Bourassa, Business Specialist, BLPES

Guests Russell L. Koger, NMSPE

1. CONVENE/ROLL CALL/INTRODUCTION OF GUESTS

Mr. Atwell convened the meeting at 8:00 a.m. Roll call was taken, and it was noted that a quorum of the Board was present. Guests introduced themselves.

- 2. APPROVAL OF THE AGENDA** – Mr. Sisneros proposed that in Committee Reports agenda item 5.5 be added for the PE subcommittee report on Sunset Review. Mr. Romero motioned, second by Mr. Shah, and unanimously,

VOTED: To approve the agenda as amended.

3. APPROVAL OF THE MINUTES

3.1 April 9, 2010 Meeting Minutes – Mr. Sanchez motioned approval with the changes of his marked copy prepared for Mr. Ytuarte. In the section where Mr. Sanchez presented papers, he would like it to say “because he is secretary of the Board” and correct typos as marked, second by Mr. Vigil. Mr. Shah would like tense corrected to past tense, and at 4.3 the ending sentence should say “*at the Western Zone meeting.*” Then he questioned the “m” at 4.4 – “*Mary Smith Letter-m*”. Mr. Atwell requested that Mr. Shah give Mr. Ytuarte his corrected copy. Minutes went to vote, and unanimously,

VOTED: To approve the minutes as changed by Mr. Sanchez’s and Mr. Shah’s marked up copies presented to Mr. Ytuarte.

4. CORRESPONDENCE/COMMUNICATIONS

4.1 Proposed Amendments to Board Office Personnel Policies – Mr. Ytuarte opened discussion of policy changes. Mr. Sisneros has looked into this and talked to attorney, Paula Maynes, and the Board being involved in the grievance process does not fit. A formal grievance needs immediate attention. Mr. Sisneros recommended that a 30 day review of these proposed changes be done before the next meeting. The current policy has obsolete references as there is no SPO form #701. At page 4.1.5, the Level 3 complaint process will be removed. The

executive director makes the final decisions, as he serves at the Board's pleasure. Changes are not to remove any legal opportunities employees have. There is the EEOC and others, but the Board is removed from the process. Mr. Atwell requested a motion to open discussion on amendments to Board policies. Mr. Romero motioned, second by Mr. Sisneros and discussion began. Mr. Sanchez asked about the situation when the grievance is against the director. Mr. Sisneros answered that when the director is the complainant then these guidelines cannot be used. Other remedies would have to be used. Mr. Ytuarte would like this 30 day review to acquire additional information from state personnel, risk management, and the Governor's office. The State Personnel Board will make the final review of our changes as part of our policy. Mr. Sisneros pointed out this was created for this Board's use. It is saying the informal and discrimination grievance is not functional, and it is not a very viable when the complaint is against the director. The Board is charged with controlling licensure of surveyors and engineers to protect the public. Mr. Atwell asked if there is any more discussion and called for a vote, and unanimously,

VOTED: To take item 4.1 under a 30 day review for the proposed amendments to the Personnel Policy Number 10, Complaint Policy.

5. COMMITTEE REPORTS

5.1 Professional Engineering Committee – John T. Romero, PE, Chair – It was reported Mr. Shah was elected Chair and Mrs. Samora elected Vice-Chair. Mr. Sisneros gave a report that will be covered in agenda item 5.5. Mrs. Samora reported on the Western Zone Engineers Forum. Four cases were covered. One was dismissed as unfounded and NCAs were issued on two which were consolidated. One complaint was not completed for action. The whole committee serves as hearing officers. PEC is proposed to have a special meeting in July in Ruidoso. Applications were reviewed and outcomes posted in folders.

5.2 Professional Surveying Committee – Salvador Vigil, PS, Chair – It was reported Mr. Sanchez was elected Chair and Mr. Chavez elected Vice-Chair. Mr. Sanchez gave the Rules & Regulations report as chair of that committee. Rio Arriba County clerk requirements are out of the Board's jurisdiction according to legal counsel. It will be taken up with the NMPS, because the surveyors feel it is fraudulent to sign a plate for the county for example two years after completion. Gary Eidson, Chairman of NMPS, had emailed about machine controlled surveying and a sub-committee to be involved with input to the PSC. Applicant Scott Farnham addressed the committee on his qualification for licensure by comity and was accepted. Mr. Chavez gave the Western Zone Survey Forum Report. Mr. Ytuarte spoke on the upcoming Denver NCEES Annual Meeting. Case 10-10-42 had a NCA issued. The complaints were against the licensee and the person surveying without a license. A letter to cease and desist and \$5,000 fine will be issued. Action on Case 10-10-56 was to contact the licensee with letter of reprimand and a \$1,000 fine for not setting property corners within the allotted time. Discussion was held on the Sunset Review and Complaint Log. Legal counsel, Ms. Smith, advised the committee to catch up on pending complaints avoiding any more running the two year statute limitation. July 19th the PSC has a special complaint action meeting in Albuquerque. The committee reviewed the NM2HR exam report and applications. Mr. Shah asked about the plat signing issue, and Mr. Vigil explained that surveyors were told by Rio Arriba County that they could not submit plats that were signed two years ago even though the project was done two years ago. Attorneys and family can hold up a family transfer or boundary surveys with other issues, but for recordation the county will not take in documents signed and dated over 60 days. The county wanted it redone with current date regardless of when the work was done. Mr. Sanchez said this was common in Bernalillo County where it can take two years before the plat filing. The certifying nothing has changed is a problem, and the original notarization also needs

changing. Mr. Vigil explained the attorney for NMPS would write the county about the legal problems this requirement could create. Mr. Chavez advised the Board that there may be a way to have multiple certifications. One would be at the date of survey and a disclosure stating the second new certification is based on no changes in the original survey.

5.3 Rules and Regulation Committee – Fred Sanchez, PS, Chair – The final report for the Rules Committee charges was submitted by Mr. Sanchez. Charges included defining the Board’s approved related science surveying curriculum and reviewing the use of the engineering titles in Act. Also charged, was to determine if legislative changes to the Act need to be recommended for fiscal year 2010 legislative session. This was partly done while NMPS and the PEC will have additional information to add. Mr. Sanchez serves on the ACEC legislative affairs committee. The ACEC is gearing up to look at changes in their interest. The committee also was charged to review and make recommendations for the deletion of the Industrial Exemption with possible grandfathering. Mr. Sanchez stated this is an industry wide matter and certainly as a committee they would entertain a study on the matter focusing on first, “How did the exemption come about?”, second, “What has it evolved into?”, and third, “Who interprets any existing language?”. The committee suggested a task force be appointed to include professionals outside the Board from the industry at large. Mr. Sanchez personally does not know how to approach grandfathering. The problems he perceives are relative to constitutionality and different rules for different groups which would be against the U.S constitution. Some survey advisory opinions were adopted as rules, most were already in the Minimum Standards. Mrs. Samora worked on uniform electronic transactions. She presented material to the committee on the Industrial Exemption, showing this has been reviewed by different professional societies for a number of years. It showed how tough it is to get involved legislatively with making changes to the exemption. The committee also incorporated all the work done by past rules committees. Mr. Ytuarte, Ms. Bourassa, and Mr. Valdez assisted in creating this final committee report presented to the Board. Mr. Sanchez respectfully submitted the report for consideration, adaptation or additional changes. Mr. Shah added concern on Advisory Opinion 16 being made law. Mr. Sanchez said it had been addressed by the JES committee and most of the opinion was already law in that engineers were not to do survey work without a license. Mr. Atwell pointed out all changes are up for review.

5.4 JPC Committee – Mr. Sanchez, as Chair, announced Mr. Sisneros was elected Vice-Chair of the JPC which would make him Chair next year. The committee wants to get more involved with how they deal with all the represented members, architects, engineers, surveyors, and landscape architects. At a recent meeting during the court house scandal, there was discussion of licensure issues of architects, and they were working on the Procurement Code issues. Mr. Sanchez noted that there are so many divisions of the code, when legislative changes are made, they can change our Act. Mr. Sisneros had heard that because the Board of Architecture needs a new building, the state might consider housing the BLPES, Board of Architecture, and Landscape Architects in the same building. The Board of Architecture had told Mr. Sisneros only about 3% of the architectural professors were licensed. These boards are also working on their Sunset Reviews.

5.5 PEC Sub-committee Rules Review [amended agenda item] – The committee had 5 charges and one was to correct the Act. Mr. Sisneros said they also looked at engineering technology, the two year PE exam, increasing the numbers of licensed engineers along with licensing professors, and the benefits of achieving more Board autonomy. In the previous Sunset Act, Mr. Sisneros showed how the references got confused with the qualifications. Waiving the Fundamentals of Engineering exam confused the requirement for engineers by exam. The committee separated certified and noncertified and did a draft. In addition, they looked at

expired licenses and adjusting the grace period. The goal of two year PE exams was to increase licensure, and statistics show it is working. This should become part of the Act. Licensure of Engineering Technology degrees was reviewed, and there is a big push to make them a separate group as a defined discipline. In October, the department heads in Las Cruces can give their input. Mr. Chavez pointed out the universities lack of encouraging licensure. The JPC examined the registration of professors, and the Industrial Exemption is a big part of this. The elimination of the Industrial Exemption was discussed, but with an ABET degree and if they were practicing in NM, the Board could take a look at licensure for this group. Mr. Sanchez's group, defined a Board approved surveying curriculum with related Science Degree should be *"Any Science degree from an accredited institution that the Surveying Committee (PS Committee or the full Board of licensure on appeal) can recognize as appropriate together with the minimum standard surveying courses required for a Bachelor of Science degree in Surveying in New Mexico plus any other statute requirements. The related science degree must also include the core course (or their equivalence for the interim semester hours shown)"*. Mr. Sanchez said the PSC is leaning to keeping the four year degree when other states are not. The different rules for different groups are unconstitutional. If it requires a license, they should be licensed. Mr. Sisneros read their rule that would go from Bachelor, Masters, and PhD, *"obtained a bachelor's degree in an engineering discipline recognized by the Board from a Board approved engineering curriculum and has four years of engineer experience subsequent to the awarding of the degree;"* Mr. Sisneros started the discussion on the autonomy of Boards. How related is surveying and engineering? Mr. Sisneros addressed why was a full Board was needed. The Act has two separate professions. Staff would be split between the two and members would have two more votes on the JPC. Mr. Sanchez asked for this proposal in writing, so there can be joint input on something so changing to the Board's organization. Mr. Vigil said this was looked at once and the Governor's office said no to separation, because it was not financially feasible. Mr. Ytuarte added that all Boards and Commissions will be looked at for consolidation by the Governor's office. Mr. Vigil and Mr. Chavez said there could be a combining into a Board of Technical Registration. Mr. Romero wanted Mr. Ytuarte to follow up on any meetings the Governor may have.

6. NEW BUSINESS

6.1 Election of Officers for FY '11: Chair, Vice Chair and Secretary -
Nominations for chair were opened. Mr. Shah moved to nominate Mr. Sisneros, Mr. Chavez moved to nominate Mrs. Samora. Mrs. Samora withdrew her nomination. Mr. Romero seconded the nomination for Mr. Sisneros. Mr. Atwell moved to close the nominations. No other nominations were presented, and it was unanimously,

VOTED: To elect Mr. Sisneros as Chair of the Board by acclamation.

Nominations for Vice-Chair were opened. Mr. Romero moved to nominate Mrs. Samora, seconded by Mr. Schoen. No other nominations were presented, and it was unanimously,

VOTED: To elect Mrs. Samora as Vice Chair of the Board by acclamation.

Nominations for Secretary were opened. Mr. Romero moved to nominate Mr. Vigil, seconded by Mr. Chavez. No other nominations were presented, and it was unanimously,

VOTED: To elect Mr. Vigil as Secretary of the Board by acclamation.

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

6.2 Open Meeting Resolution for FY 2011 – Mr. Romero moved to approve the Open Meeting Resolution for FY 2011, second by Mr. Schoen. No discussion was presented, and it was unanimously,

VOTED: To approve the Open Meeting Resolution for FY 2011.

6.3 Approval of FY '11 Meeting Schedule – Mrs. Samora moved the acceptance of the following dates.

August 12-13, 2010 Santa Fe

November 4-5, 2010 Las Cruces

January 6-7, 2011 Santa Fe

June 2-3, 2011, Albuquerque

Special meetings:

PEC and PSC joint workshop July 22, 2010 , Ruidoso

Second by Mr. Schoen, and there was no discussion, and unanimously,

VOTED: to approve FY 2011 meeting schedule.

6.4 NCEES Annual Meeting – Mr. Ytuarte said it is scheduled August 18-21st. Registration deadline is July 12th.

6.5 NCEES Funded Delegate - The Board Chair, Mr. Sisneros is the funded delegate.

6.6 Proposed Board Workshop – covered in meeting schedule for FY 2010

7. OLD BUSINESS

7.1 Western Zone Conference Report/Minutes – materials are in the meeting book. Mrs. Samora pointed out subjects as computer based testing for the FE exam and the masters' equivalent is in their April bulletin. They also provided a thought provoking presentation of licensure of professors. Mr. Atwell added the Board is well represented with Mrs. Samora appointed to the EPE, Mr. Chavez to the EPS, and Mr. Vigil to the Exam Review committee.

7.2 Penalty/License Renewal Affidavit of Practice – Mr. Ytuarte has amended the renewal with penalty form to require certification of non-practice with a “Yes” or “No” as the Board had requested.

8. DIRECTOR'S REPORT

8.1 Staff Activities Report – Mr. Ytuarte reported we are still struggling to keep up with all the administrative activities. Staff is short two people right now. He has hired a temporary financial clerk three weeks ago. He is working to get another temporary to address filing. The two new complaint managers are working great, and their contracts need to be renewed. Articles have been gathered for a news letter in the near future. Ms. Bourassa mentioned a PDH audit was also ready to do. Mr. Ytuarte explained it would be for 2% and generally to observe what kind of PDH were being acquired and let licensees know it is being done. Mr. Vigil volunteers to review any the staff needs help with. Mr. Sisneros recommends this not interfere with catching up on claims and licensure.

8.2 Financial Report – Mr. Ytuarte has included in the meeting book the vouchers from July 1, 2009 through June 4, 2010. Page 1 through 16 is in account order. The account is the fourth column on the right hand side. The only thing not in the report is staff salaries. After page 16 it

is sorted by voucher number. Mr. Atwell requested a separate report showing budgeted items showing total budgeted and amount spent to date. Mr. Ytuarte said that could be done. Mr. Schoen would like a total balance sheet with totals showing assets, liabilities, income, and expenditures to date. Mr. Ytuarte explained this is in the auditor's annual report. Mr. Schoen remembered in the past they got a balance sheet of total income and total expenditures to date. Mrs. Samora and Mr. Atwell agreed there should be a summary sheet. Mr. Romero moved, second by Mr. Schoen, and in discussion Mr. Sisneros pointed out on 5.7 it said he was at the Rules and Regulations committee and he was actually at the PEC. Mr. Schoen motioned, second by Mr. Romero, and it was unanimously,

VOTED: To approve the financial report with any corrections submitted in timely basis.

9. OTHER BUSINESS

9.1 Mr. Romero spoke on the licensure of professors. As a member of the task force, he has drafted a letter to the president of NMSU, Mrs. Couture. When he met with Mr. Ike Pino, he suggested waiting a while. It will be sent later to Mrs. Couture, Mr. Pino, Dr. White and others and a meeting set up in Las Cruces.

Mr. Vigil showed his appreciation to Mr. Atwell, ending his term on the Board. Mr. Atwell has given guidance in handling meetings and approaching people. He wishes to graciously thank Mr. Atwell for the time he spent on the Board and for his direction and integrity. The Board joined in applauses. Mr. Atwell said it has been a pleasure, and thanked the Board for the 7 years he has had. He has had of fond memories and wished the Board well for the work ahead. Being self employed all his life, he has learned from working closer with government, and it has been fun.

Mr. Sisneros would like paper and pens provided at the Board meetings like at other agencies.

Mr. Sanchez suggested setting up public hearings in the near future. He had chaired before, and there was a lot of public input that had to be noted.

10. ADJOURNMENT Having no further business, Mr. Atwell adjourned the meeting

Submitted by:

Approved by

s/ Edward Ytuarte
Mr. Edward Ytuarte, Executive Director

s/ Severiano Sisneros, PE
Mr. Severiano Sisneros, PE, Board Chair

August 13, 2010 Approved Date