

DRAFT Minutes

**MEETING OF THE PROFESSIONAL ENGINEERING
COMMITTEE of the Board Licensure for Professional
Engineers and Professional Surveyors held 9:00 a.m.,
Tuesday, January 21, 2020,
Hearing Room 1, Toney Anaya Building
2550 Cerrillos Rd., Santa Fe, NM 87505**

Members Present- Ron Bohannon, PE, Committee Chair
Dr. Walter Gerstle, PE
Karl Tonander, PE
Paul Brasher, PE

Members Absent- Julie Samora, PE

Others Present- Perry Valdez, BLPEPS, Executive Director
Miranda Gonzales, BLPEPS, Administrative Manager
Angelica Urioste, BLPEPS, Licensing Administrator
Joe Barela, PE, Board Investigator
Miguel Lozano, Legal Counsel
Thomas C. Moseley
Jack Richardson
Earl Burkholder, PEPS

1. Convene, Roll Call and Introduction of Audience

Mr. Bohannon convened the meeting at 9:15 a.m., roll call was taken and a quorum noted. Audience introductions made at this time.

Mr. Bohannon asked if there were any guests in the audience, Clay Moseley, Jack Richardson, and Earl Burkholder introduced themselves.

2. Meeting Notification

Mr. Valdez informed the Committee the meeting was noticed in the Albuquerque Journal as well as the Board's website.

3. Approval of Agenda

MOTION by Mr. Tonander to amend the agenda by moving item 10. c. after item 6. c., **SECOND** by Dr. Gerstle, **PASSED** unanimously.

MOTION by Dr. Gerstle to approve the agenda as amended, **SECOND** by Mr. Tonander, **PASSED** unanimously

4. Approval of Minutes

a. Minutes November 6, 2019

MOTION by Mr. Tonander to approve the Minutes of November 6, 2019, as presented, **SECOND** by Dr. Gerstle, **PASSED** unanimously.

b. Minutes of December 9, 2019

MOTION by Mr. Tonander to approve the Minutes of December 9, 2019, as presented, **SECOND** by Dr. Gerstle, **PASSED** unanimously.

5. Public Comment/Correspondence

a. Moseley, T.

Mr. Valdez introduced Mr. Moseley to the Committee. He informed them that Mr. Moseley was there to speak on behalf of his application for the Committee's reconsideration.

Mr. Moseley stated he applied for both the Engineer Intern (EI) certification and the PE exam. He informed the members one of his supervisors was present, Mr. Richardson. Mr. Moseley provided his background. He stated he earned a bachelor's degree in mathematics and a master's degree in construction management from the Civil Engineering Department at the University of New Mexico (UNM). Mr. Moseley briefed the members of his experience, five years with a consulting firm in Albuquerque which was mostly a sub-consultant for Molzen Corbin, Wilson Engineering, and other local engineering firms. He wrote software many engineering applications for data gathering. Eventually, he took a position with Johnson Controls as a construction specialist. Mr. Moseley stated he put together various construction projects and planning. The Department of Public Utilities, in Los Alamos, asked Mr. Moseley to work with them, where he has been since 2000. Incrementally he has advanced in the roles and level of work he has been doing, he further stated, that he has managed large projects, infrastructure projects, and small projects; such as projects from sewer lines to hydro-electrical plants. He said the scope and the breadth of his experience are quite vast.

Mr. Moseley provided a snapshot of a typical day at his job. He stated he has a lot of very interesting work, managing the wastewater collections asset management team. A lot of problem-solving day-in and day-out, troubleshooting, finding new ways to keep everything running. Mr. Moseley is also working on a FEMA project and a watershed project. He stated he is uniquely qualified. He works on the Parajito wells, working on the motors, different components, and the valves. Mr. Moseley continued to expound on the various projects he is working on in Los Alamos and his experience.

Mr. Moseley has been asked when he would be licensed as an engineer, he was asked to take the Construction Management program at UNM-Los Alamos, he

inquired if it was ABET-accredited and he was advised that it was. He went through the program and applied to take the PE exam last fall and was not approved because he didn't take the FE exam. He studied, sat for the exam, and passed it. Mr. Moseley stated he has taught and mentored many students.

Mr. Bohannon asked Mr. Moseley how the Construction Management program meets the engineering curriculum as defined in the Practice Act. Mr. Moseley stated the curriculum is half technical and half project-management, there were some materials classes. He added that 25% of the FE exam came from the program so it helped him pass the exam. Mr. Bohannon inquired where Mr. Moseley would see the deficiencies in the curriculum. Mr. Moseley responded he has done a lot of self-study in water and hydraulics, the most critical area would be materials and structural. He said he started an engineering curriculum when he was going for his bachelor's degree and did well with geological areas. He took a class with Professor Taha where he learned about materials, carbon fiber and others. Dr. Gerstle asked Mr. Moseley when he took the course, Mr. Moseley replied it was a graduate-level course. Mr. Bohannon queried if he could take some courses through UNM to test out or seek equivalent courses based on his experience. Mr. Moseley has reached out to UNM but hasn't received any feedback.

Mr. Brasher asked Mr. Moseley if he designs anything. Mr. Moseley answered he does and his work is reviewed by professional engineers who work with him. Mr. Brasher inquired what types of documents would he see himself stamping. Mr. Moseley responded he would stamp documents like water, distribution systems, or sewer systems.

Mr. Richardson spoke on behalf of Mr. Moseley. He briefly stated his background as an engineer. Mr. Richardson indicated he has been Mr. Moseley's supervisor for five years. He further stated he has mentored Mr. Moseley and he plays an integral part in the projects. Mr. Richardson said he relies on Mr. Moseley to find answers on detailed engineering, in his opinion, he does professional-level work.

6. Application Review – Recommended Approval

a. Recommended for Approval List (Exhibit A)

PE Exam Application(s)

PE Endorsement Application(s)

PE Reinstatement Application(s)

MOTION by Mr. Tonander to approve Exhibit A, dated January 21, 2020, the recommended for approval applications, **SECOND** by Mr. Brasher, **PASSED** unanimously.

b. PE Retired Status Request(s)

MOTION by Dr. Gerstle to approve the requests for retired status, **SECOND** by Mr. Tonander, **PASSED** unanimously.

c. PE Inactive Status Request(s)

MOTION by Mr. Tonander to approve the requests for inactive status, **SECOND** by Mr. Brasher, **PASSED** unanimously.

10. New Business

c. New Endorsement Application to comply with 61-23-14.1 D (3)

Mr. Valdez directed the Committee to draft endorsement application in their meeting packets. Mr. Tonander requested to make a motion for the purpose of discussion.

MOTION by Mr. Tonander to approve the draft application as presented by staff, **SECOND** by Dr. Gerstle

Discussion of the motion – Mr. Tonander asked Mr. Valdez about the title of the document, 'Engineering application for licensure by endorsement'. He stated the title infers it may be the only application for endorsement, shouldn't the application be qualified in some way to designate as another path to licensure by endorsement? Mr. Valdez responded that it should be renamed because Mr. Tonander was correct. Mr. Tonander also pointed out in section 2, 'Previous licensure', the question below the table, it asks, "Has any of the licenses listed above not been active for ten contiguous years immediately preceding application to New Mexico?" He clarified the applicant only needs one license to meet the requirement and further stated, the way it was currently worded it may produce several false 'yeses'. Mr. Tonander proposed the corrected language of "Has any of the licenses listed above been active for ten contiguous years immediately preceding application to New Mexico?", striking out the word 'not'.

Dr. Gerstle stated the document has some misspellings and some grammatical errors. He expressed his concern that these documents should be of quality and professional. Dr. Gerstle asked what the intent of the application is for, Mr. Valdez responded it is for the expedited licensure path described in the Practice Act, 61-23-14.1 D (3). Mr. Bohannon asked Mr. Valdez if he and staff needed it approved at this meeting, Mr. Valdez answered that he and staff would like to have it approved, but understood if it wasn't. There was further discussion regarding the application. Mr. Bohannon requested the application be tabled and have legal look at the application. Mr. Lozano recommended the Committee members take a look at it and provide their input to Mr. Valdez.

Dr. Gerstle stated all applications and forms need to be looked at. Mr. Bohannan stated the motion is withdrawn and the application tabled until the March 6th special meeting.

7. **Executive Session**

MOTION by Dr. Gerstle that the Committee enters into closed Executive Session to discuss the items listed on the agenda pursuant to NMSA 1978, Section 10-15-1 (H) (1) and (3) to discuss matters pertaining to the issuance, suspension, renewal or revocation of a license and to deliberate on pending cases. **SECOND** by Mr. Tonander, **PASSED** unanimously.

Roll call vote taken, voting 'Yes': Mr. Bohannan, Dr. Gerstle, Mr. Tonander, Mr. Brasher.

8. **Action on Items Discussed During Executive Session**

Mr. Bohannan brought the Committee back into open session and affirmed that while in closed session it discussed only those matters specified in the motion to close the meeting and listed on the agenda under executive session, in accordance with NMSA 1978 Section 10-15-1 (H) (1)

a. **Applications for Review**

1) **EI Certification**

a) **Ferguson, M.**

MOTION by Dr. Gerstle to approve for EI certification, **SECOND** by Mr. Tonander, **PASSED** unanimously.

b) **Moseley, T.**

MOTION by Mr. Brasher to not approve for lack of meeting the educational requirement, **SECOND** by Mr. Tonander, **PASSED** unanimously.

2) **PE Exams**

a) **Egnal, S.**

MOTION by Mr. Tonander to not approve due to insufficient engineering experience, **SECOND** by Mr. Brasher, **PASSED** unanimously.

b) **Maestas, J.**

MOTION by Mr. Tonander to not approve and request additional information on the applicant's engineering experience, **SECOND** by Dr. Gerstle, **PASSED** unanimously.

- c) **Menk, L.**
MOTION by Mr. Brasher to approve for the PE exam, **SECOND** by Mr. Tonander, **PASSED** unanimously.
- d) **Moseley, T.**
MOTION by Mr. Brasher to not approve for lack of meeting the educational requirement, **SECOND** by Mr. Tonander, **PASSED** unanimously.
- e) **Ryu, D.**
MOTION by Dr. Gerstle to approve for licensure, **SECOND** by Mr. Tonander, **PASSED** unanimously.
- f) **Sivakoti, S.**
Mr. Bohannan tabled the application until the March 6th special meeting.
- g) **Sornkhampan, N.**
Mr. Bohannan tabled the application to request clarification on the applicant's work history.

3) PE Endorsement

- a) **Bitnreowska, A.**
MOTION by Dr. Gerstle to approve for endorsement for Electrical discipline, **SECOND** by Mr. Brasher, **PASSED** with one Nay vote from Mr. Tonander.
- b) **Caldwell, J.**
Mr. Bohannan tabled the application and requested the applicant to clarify his application.
- c) **Evers, D.**
MOTION by Mr. Tonander to approve for endorsement for Mechanical discipline **SECOND** by Dr. Gerstle, **PASSED** unanimously.
- d) **Hilbig, J.**
MOTION by Dr. Gerstle to defer and request the applicant describe engineering aspects of the experience submitted, **SECOND** by Mr. Tonander, **PASSED** unanimously.
- e) **Moghaddam, R.**
MOTION by Dr. Gerstle to approve for endorsement for Geotechnical discipline, **SECOND** by Mr. Tonander, **PASSED** unanimously.

- f) **Pappas, K.**
MOTION by Mr. Tonander to approve for endorsement for Electrical discipline, **SECOND** by Mr. Brasher, **PASSED** unanimously.
- g) **Rosencutter, W.**
MOTION by Mr. Tonander to approve for endorsement for Mechanical discipline, **SECOND** by Mr. Brasher, **PASSED** unanimously.
- h) **Scurlock, S.**
MOTION by Mr. Tonander to approve for endorsement for Civil discipline, **SECOND** by Mr. Brasher, **PASSED** unanimously.
- i) **Shumway, L.**
MOTION by Mr. Tonander to approve the bypass of the FE exam and for endorsement for Civil discipline, **SECOND** by Mr. Brasher, **PASSED** unanimously.

MOTION by Mr. Tonander to table items 4, 5, and 6 until the March 6th special meeting, **SECOND** by Dr. Gerstle, **PASSED** unanimously.

4) **PE Reinstatement**

- a) Doss, D.

5) **PE Retired Status Request**

- a) Blasingame, J.
- b) Nanis, W.
- c) Zellmer, J.

6) **PE Inactive Status Request**

- a) Romero, S.

b. **Disciplinary Cases**

1) **Case 7-PE-11-07-2018**

Mr. Bohannon directed Mr. Valdez to continue with the pre-NCA settlement agreement terms.

2) **LKP-12-22-2017**

MOTION by Mr. Tonander to close the case for satisfaction of the settlement agreement, and to remove his license status from probationary status, **SECOND** by Dr. Gerstle, **PASSED** unanimously.

MOTION by Mr. Tonander to table items 7. b. 3), 7. c., and 7. d. until the March 6th special meeting, **SECOND** by Dr. Gerstle, **PASSED** unanimously.

3) ZBU-12-31-2018

c. Licensee Self-Reporting Issues

- 1) DJT-12-02-2019
- 2) DMP-12-20-2019
- 3) KAD-11-23-2019
- 4) LV-11-20-2019
- 5) MAM-12-11-2019
- 6) RKM-12-23-2019
- 7) RWT-12-20-2019
- 8) SDA-12-18-2019

d. Status Review of Complaints and NCA Referrals

9. Old Business

- a. Policy Advisory – Surveyor Stamping Construction Plans**
Tabled until the March 6th special meeting.

10. New Business

a. White Paper on Case 2-PE-03-13-2015 – J. Barela, PE, Board Investigator

Mr. Bohannon stated he was not present at the special meeting where this was discussed. He requested Mr. Barela to prepare and present a white paper so the Board could inform the licensees about this case. He further requested Mr. Barela to provide details on how the Board felt that this case did not rise to the level of violating the Practice Act.

Mr. Barela began his presentation by stating the case was very long, very involved, and very convoluted, it contained a lot of moving parts. He indicated items in the case became apparent once the Complainant submitted additional information, back in March 2019. Mr. Barela pointed to a large box next to himself of evidence he received in September 2019. He reported he began going through the evidence and things really started to become apparent when he read the depositions. Mr. Barela asked the Committee if they recalled back in January 2017 when this case was first presented to them there were some very serious allegations, by the Complainant, related to criminal activity, by several engineers all from the city of Albuquerque and a local engineering firm in Albuquerque.

Mr. Barela recapitulated that the complaint was labeled Case 2-PE-03-13-2015, there were six respondents, A through F. The Complainant is not an engineer, he

is a contractor and land developer. Respondents A and B are high-level engineers who belonged to the local engineering firm and involved in the design of the Boca Negra dam, as well as, the engineers for the SADs. Mr. Bohannan clarified what the acronym "SAD" represents: Special Assessment Districts. Mr. Barela specified there were two SADs involved, 227 and 228.

Mr. Barela stated that in the depositions, Respondent A was considered an expert in the SADs because he had been working with them since the 1990s. He further stated, the engineer worked for 40 years and retired from the local engineering firm in 2010; the engineer was brought back on contract as a consultant.

Mr. Barela went on to provide background on Respondent B, who was the lead engineer and engineer of record on the Boca Negra dam project. He added that the local engineering firm contracted with Respondent B for the dam, portions of Unser Boulevard, and the associated drainage structures.

Mr. Barela reported that Respondent C was an employee with the City of Albuquerque as the Director of Municipality Development. He stated Respondent C's involvement was with the SADs, 227 and 228.

Mr. Barela said Respondent D was also an employee with the City of Albuquerque. He continued and stated that, Respondent D is a professional engineer and mostly involved with the dam and hydraulic department, with hydraulic materials.

Mr. Barela noted both Respondents E and F work for the Albuquerque Metropolitan Arroyo Flood Control Authority (AMAFCA). He reported that Respondent F was an executive engineer and retired in 2010, therefore Respondent E took over as the executive engineer after Respondent F retired. Their involvement was being the in-between entity with the Office of the State Engineer dam safety bureau and with the Volcano Cliffs Property Owners Association (VCPOA). Mr. Barela indicated the VCPOA contracted with the local engineering firm to oversee and design the SADs 227 and 228.

Mr. Barela finished summarizing the complaint and began informing the Committee of his white paper report. He informed the members that pages one and two provide more in-depth information. He said there was no new information on those pages, just additional detailed information on the project, the Special Assessment Districts (SADs). Mr. Barela noted the SADs are very involved, very difficult to work with, and do take a specialty to work through the SADs. He said in his white paper he provided background on the Boca Negra Dam project.

Mr. Barela indicated what triggered the mess was, in 2005 the Office of the State Engineer dam safety bureau went through some changes in administration, people retired or left the State. He further explained that the local engineering firm had a contract with the Complainant to begin design on the dam, the firm had begun the design of the dam. Mr. Barela said the Office of the State Engineer made some changes to the design criteria due to the change in administration. He explained the changes made by the Office of the State Engineer were from the original design which included a hydrologic model based on AHYMO and ½ Probable Maximum Participation (PMP) criteria to a HECMS and full PMP, as well as, changes to the dam spillway. Mr. Barela said the changes lead to a new design on the dam and the spillway which caused a huge delay. He further added that the design was supposed to be finished in 2006 and construction scheduled for 2007 but didn't occur until 2011 or 2012.

Mr. Barela informed the Committee the case information was provided in the case manager's reports he has provided including the one he presented in December 2019. He went on to brief the Committee that both the civil and criminal issues went to court. He said there was a summary hearing judgment and the judge ruled there were no findings and dismissed those issues. Mr. Barela reported the judge said there were possible issues relative to the New Mexico Administrative Code 16.39.8.9 D. (2), which the judge stated would be left to a jury to decide at trial scheduled for April of 2018. Mr. Barela stated that the trial didn't occur because the Complainant settled the case prior to it reaching a jury trial, so transcripts were not available.

Mr. Barela stated he and Mr. Bohannon discussed the case and stated that some issues still seemed unresolved. He further added there was one issue in the original complaint manager's report where Respondent B and Respondent A purchased pieces of land in the Volcano Cliff's subdivision, this appeared to be a violation or conflict of interest. Mr. Barela referred to the court depositions, where Respondent C indicated that in a typical SAD project the City of Albuquerque contracts with engineering services through a selection process based on qualifications, then they upfront the money, and then they recuperate the money at the end of the SAD project once it's completed. Respondent C, in his deposition, indicated this project was treated more like a standard City project and the VCPOA was required to hire and sign contracts with a private engineering firm to oversee the SAD. Respondent C further stated that the biggest difference was that the City of Albuquerque did not have a contractual relationship with the local engineering firm. Mr. Barela continued and stated that in the depositions, it was stated the VCPOA selected the local engineering firm as their engineer on SAD 227 and 228, therefore VCPOA had a contractual relationship with the local engineering firm. Mr. Barela continued and stated;

Respondent B was acting under the capacity as a SAD engineer in lieu of the City of Albuquerque. Mr. Barela stated that one of the most significant requirements in the contract was that the local engineering firm was required to purchase the right-of-way for the SAD and then be reimbursed later.

Mr. Bohannon asked Mr. Barela, who required the local engineering firm to purchase the right-of-way, Mr. Barela responded it was in the contracts. Mr. Barela provided and handed out copies of the full contracts for SAD 227 and 228 projects.

Mr. Barela referred the Committee to page 11 of the SAD 227 contract. He pointed out at the bottom of the page, it reads, "Real Property Appraisal and Acquisition: The Engineer shall be required to obtain the right-of-way required for this project with the assistance of the Owner. The Engineer shall be reimbursed upon the sale of the bonds as specified in Article XVIII." Mr. Barela informed the Committee members that 'Owner' is referring to the VCPOA. Mr. Barela further directed the members to Article XVIII of the contract which provided the project description and listed the streets involved within the project. Mr. Barela then refers to page 3, to section 4.2, "Payment Schedule for Basic Fee: All Basic Fees shall be paid upon the sale of the bonds for this SAD. If the bonds are not sold, the Owner shall have no financial responsibility to the Engineer; however, the plans, the right-of-way, and all other items developed with the project shall be the property of the Engineer."

Mr. Barela stated the contract for SAD 228 had identical language and some differences because it was project-specific.

Mr. Barela continued and stated in the depositions, Respondent C stated the local engineering firm was required to purchase the properties for the right-of-way, and that Respondent C's concerns were the assessments, property taxes, and the fees or liens levied on the properties were paid. Respondent C further said, if Respondent B personally purchased the properties in the SAD, he was not concerned and did not see the purchase as a conflict of interest.

Mr. Barela stated, Respondent B, in his deposition, said Respondent A retired from the local engineering firm on December 31, 2010. Then Respondent A returned on January 1, 2011, as a contract engineer with authority to bind the firm by contract. Mr. Barela informed the Committee that the local engineering firm contracted with the VCPOA and not the City of Albuquerque, as the Complainant in his original complaint alleged.

Mr. Barela further stated both contracts for SAD 227 and 228 were signed by Respondent A on behalf of the local engineering firm. He said Respondent A

served as the expert SAD engineer on the SAD review committee. Mr. Barela added, Respondent B signed an agreement consisting of four parties and was the Engineer of Record for the dam project. Respondent B further stated in his deposition, for SAD 227, the local engineering firm was required to purchase and fund the right-of-way for the SAD in the amount of 1.1 million dollars. Mr. Barela stated that Respondent B, in his deposition, said the local engineering firm was going through a major ownership transition and hired a lot of new personnel, therefore in SAD 228 a decision was made not to fund the right-of-way acquisition because of the high risk involved, and the firm was not in a position to take on the risk. Respondent B stated that Respondent A decided to take on the risk and acquire the properties for the right-of-way through his own personal company.

Mr. Bohannon asked Mr. Barela if Respondent A's company was in contract with the VCPOA. Mr. Barela responded the local engineering firm was. Mr. Lozano replied that the judge decided, in the summary judgment, that there was not a client relationship between Respondent A and VCPOA.

Mr. Barela continued, Respondent B stated he did not see any problems with the land purchases in the SAD, and that no conflict of interest existed as long as the assessments on the properties were being paid. Mr. Barela said this was a very important point because, in the original complaint, the Complainant provided a 3-page exhibit which showed all the properties that were purchased by Respondent A. He said the exhibit document showed costs but it wasn't clear, as to what the basic fees were, the assessment fees, what were the tax amounts levied, and there was no breakdown that showed a loss or a profit.

Mr. Bohannon asked Mr. Barela if Respondent A disclosed to the VCPOA that he purchased those properties. Mr. Barela replied that Respondent A did disclose to VCPOA, he further responded, in the original report the President of VCPOA knew about it and didn't have a problem with it.

Mr. Barela pointed out if the Committee still sees that as a possible conflict of interest, then he would have to go back and investigate this. He stated the investigation would entail finding out how much Respondent A paid for the properties, what was the assessment values on each of those properties were, what taxes were paid on the properties, how much Respondent A sold those properties for, and if he sold them for a profit. Mr. Barela further stated, if the Committee determined that this was a problem, then this could be a possible conflict of interest.

Mr. Bohannon said his understanding of this is if there was a clear indication that the party disclosed, and it sounds like they were under contract to purchase

property, and that they met the requirements of the disclosure portion of the ethics for a conflict of interest. He added, the question is this: was there a clear disclosure that if there was a potential conflict of interest; Respondent A said I'm doing this, and you are aware of it. And it appears like it because you're under contract to do that.

Mr. Bohannon requested this so it could be used for material for the ethics courses and second for transparency to be able to advise future licensees, that they go the extra mile for transparency and disclosure. He added this is a learning tool to say to all licensees you need to error on the side of disclosure.

Mr. Tonander pointed out the one piece that is missing is, which would make it clearer, if there was a statement that the engineer is not allowed to profit from the purchase of the properties. He continued, right now it brings up the question that was just mentioned, if someone buys it at one price and sells it for another. Mr. Tonander said the engineer acknowledged they were buying the property to make the SAD go through and get paid, etc. but it leaves open that you could gain a substantial amount of money. Mr. Brasher responds to Mr. Tonander asking if in the SAD 227 contract, on page 11, in section K titled, 'Conflict of Interest' addressing his concern. Mr. Tonander replied section P is almost in opposition to section K, it also matters who drafted up the contract, if it was the engineer and left out that they wouldn't profit from it. Mr. Tonander added it isn't a violation per se, but it would have been better.

Mr. Bohannon said it was important to note, and with his experience with SADs, this is a SAD in name only because you have property owners banded together that hired an engineer to design improvements and then used the funding mechanism under a SAD to finance those improvements. He added, the big difference with a regular SAD is that you have multiple owners that are disconnected and relying on the Engineer of Record to get you the fair, the best, price for those improvements that meet the public's interest. He further stated that this was a contractual matter between the property owners, as a group, and the engineer which, in his opinion, takes it out of the regular SAD realm; it is a contractual issue versus any violations of the Practice Act.

Mr. Valdez asked Mr. Tonander if under the SAD 227 contract, Article XVIII, on page 3, letter h, addressed the issue of the engineer profiting from the purchase of the property. Mr. Tonander responded that it does specify what the profit is.

Mr. Barela also stated there were also concerns about the bonds, if the bonds sold, that there was no clarification from the Complainant if the bonds were ever sold so if Respondent A could get reimbursed, and it was still unclear if Respondent A still owns the properties. Mr. Bohannon expressed that this is

going into contractual issues versus Engineering and Surveying Act issues. He added that this was the reason he requested Mr. Barela to provide this report, to articulate to the public that the Board thoroughly looked at this, and based on the Act, it did not rise to the level of a violation of the Act.

Mr. Barela addressed the matter of a possible violation of section 16.39.8.9 D. (2) of the New Mexico Administrative Code. He reported that he emailed the Complainant regarding his allegations that the engineering firm, and more specifically Respondent A, was paid by VCPOA, the City of Albuquerque, and by the Complainant for the same project. Mr. Barela requested canceled checks or any other documentation to demonstrate that Respondent A was being paid by the various entities for the same project. Mr. Barela presented copies of the payment documents provided by the Complainant, which showed payments to the local engineering firm and not to Respondent A.

Mr. Bohannon reiterated if an engineer discloses, they are working for both sides and doing a fair amount of engineering work then they should be compensated for that engineering work. He continued, it would behoove the parties to set-up some sort of checks and balance system, again this is outside of the Act.

b. Dr. Gerstle email – Wyoming reciprocity

Dr. Gerstle informed the Committee he received an email from Mr. Jeff Fuller, from the Wyoming Board. He said it was received on November 26, 2019. Dr. Gerstle read the email to the Committee. The email was regarding the peer review of the licensure requirements requested by the National Council of Examiners for Engineering and Surveying (NCEES) Western Zone Vice-President, Brian Robertson, PE. Mr. Fuller went on to relay a story of how a geotechnical engineer in Wyoming tried to get licensed in New Mexico. Mr. Fuller presented an idea for the New Mexico Board regarding licensure, he also informed Dr. Gerstle that the Wyoming Board would be discussing this to comply with Mr. Robertson's request.

The Committee members discussed the email and Mr. Robertson's request. Also discussed was the expedited licensure between Wyoming and Nevada through their Memorandum of Understanding its requirements.

There was further discussion of the process of licensure for the Professional Engineering Committee. Discussed was also the possibility of whether the Board could delegate authority to staff to approve for licensure. Mr. Valdez reported at one time this was done until it was pointed out by a past legal counsel the applicants had to be Board-approved per the Act. He further stated the current Act doesn't include this language, but such an action would need legal counsel's, Mr. Lozano's, opinion on the matter.

Mr. Valdez reminded the Committee the New Mexico Board is to review the Utah Board's licensure requirements, per Mr. Robertson's request.

Mr. Bohannon said the Committee would take the Wyoming Board's suggestions under consideration.

- c. **Proposed Rule Changes to 16.39.3.7 NMAC**
Tabled until the March 6th special meeting.

11. Next Scheduled Meeting Date:

- a. March 6, 2020 – Albuquerque, NM
- b. April 16, 2020 – Ruidoso, NM

Adjourn

Meeting adjourned at 12.:35 p.m.