

MINUTES

**MEETING OF THE PROFESSIONAL SURVEYING
COMMITTEE of the Board Licensure of Professional
Engineers and Professional Surveyors held 10:00 a.m.,
Thursday, June 11, 2015, Best Western Plus,
97 Camelot Drive, Ruidoso, New Mexico**

Members Present- Augusta Meyers, PSC Chair
Glen Thurow, PS
Clifford Spirock, PS
David Cooper, PS

Others Present- Perry Valdez, Acting Executive Director, BLPEPS
Naomi Velasquez, Compliance Officer, BLPEPS
David Montoya, Licensing Manager, BLPEPS
Rick Word, Legal Counsel – via telephone
Chuck Cala, PS – via telephone
Clara Rice, Audience member
Connor G. Brown, Audience Member

1. Convene, Roll Call and Introduction of Audience

Ms. Meyers convened the meeting at 10:09 a.m., roll call was taken; a quorum was noted. Mrs. Rice and Mr. Brown introduced themselves as being in the audience.

2. Meeting Notification

Mr. Valdez informs the Committee that the meeting was noticed in the Albuquerque Journal as well the board's website.

3. Approval of Agenda

MOTION by Mr. Valdez to amend the agenda by correcting item 5. a. Clara Rice – Case 11-PS-9-25-2013 to Clara Rice - Case 13-PS-11-06-2013. Also to amend item 8. b. 1. From Case 11-PS-9-25-2013 to Case 13-PS-11-06-2013,
SECOND by Mr. Thurow, **PASSED** unanimously.

4. Approval of Minutes

a. Minutes of April 9, 2015

MOTION by Mr. Thurow to approve the minutes as presented for the April 9, 2015 meeting as is, **SECOND** Mr. Cooper, **PASSED** unanimously.

5. **Public Comment/Correspondence**

a. Clara Rice – Case 13-PS-11-06-2013

Mr. Spirock makes it known that his company was involved in the complaint and will recuse himself from the discussion. Mr. Thurow asks Mrs. Rice if she would like to make a statement at this time. Mrs. Rice thanks the Board for their patience and efforts to get this matter resolved. She is very confident with Chuck Cala, she appreciates him meeting with herself, her attorney, and the attorney of the people who bought the property. Whatever he decides she knows it was a very diligent investigation.

b. Reconsideration for Licensure by Endorsement – L. Ryon

Mr. Valdez informs the Committee members that Mr. Ryon's letter for reconsideration was placed on the ftp site and an addressed a letter to each member was placed at their seat.

6. **New Business**

a. Election of Officers

Mr. Thurow moved to nominate Mr. Cooper as chair of the Professional Surveying Committee for the next fiscal year. Mr. Cooper accepts the nomination. Mr. Spirock seconded the nomination for Mr. Cooper.

VOTED to elect Mr. Cooper as Chair of the Professional Surveying Committee by acclamation.

Mr. Cooper moved to nominate Mr. Spirock as vice chair of the Professional Surveying Committee. Mr. Spirock accepts the nomination. Mr. Thurow seconded the nomination for Mr. Spirock.

VOTED to elect Mr. Spirock as Vice Chair of the Professional Surveying Committee by acclamation.

b. Railroad Right of Way – Right of Entry

Mr. Thurow asks Ms. Meyers to clarify the obligation of surveyors when dealing with the railroad, whether it is Burlington Northern Santa Fe or the Rail Runner. Mr. Thurow is unsure if all surveyors understand the procedures and whether the state law that allows right-of-entry is at odds with the requirements of the railroads, as far as trespassing. Mr. Thurow understands that a person cannot get within 25 feet of the actual center line of the rail or 25 feet at the edge of the right of way. Mr. Thurow asks Ms. Meyers to explain what the procedure is for every surveyor to get permission.

Ms. Meyers states that Mr. Thurow is correct, under the regulations of the Federal Railroad Administration it is from the center of the track 25 feet to either side is considered the right of way, and anyone within that area is trespassing. Ms. Meyers explains to gain permission, the individual would call the operator of the train and in this case it would be Herzog. The operator would have to be informed by the person who is seeking that permission to go into the right of way. The individual would have to have the proper PPE, Personal Protective Equipment, which are toe steel boots, safety glasses and hard hat. The individual would have to agree to hire a flagger from Herzog for a minimum of 8 hours for 100 dollars per hour. This is the procedure to gain access.

Mr. Thurow thanks for Ms. Meyers for the information. Mr. Thurow states, theoretically, a surveyor should include an 800 dollar fee to his client in order to satisfy the specific requirements of the railroad. Ms. Meyers responds that an individual may ask for a special consideration be granted if the flagger isn't needed for that long, but that is dependent on Herzog.

Mr. Spirock states that this could be an item for the next newsletter.

7. **Old Business**

None to report

8. **Executive Session**

Motion by Mr. Thurow that the Board go into closed executive session to discuss only those matters listed on the agenda under executive session, pursuant to NMSA 1978 Section 10-15-1 (H) (1) and (2). **SECOND** by Mr. Cooper.

Roll Call was taken, voting 'Yes': Ms. Meyers, Cooper, Mr. Thurow, and Mr. Spirock.

Ms. Meyers states the Board is back in open session and affirms 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) and (2).

a. PS Investigator Selection

MOTION by Mr. Thurow to accept Mr. Valdez' recommendation to retain the services of Mr. Charles Cala as the investigator of the Surveying Committee, **SECOND** by Mr. Cooper, **PASSED** unanimously.

b. Disciplinary Cases

i. Case 13-PS-11-06-2013

MOTION by Mr. Thurow to accept Mr. Cala's report concerning this case, **SECOND** by Ms. Meyers

DISCUSSION: Mr. Thurow informed Mrs. Rice that the Board was accepting Mr. Cala's report as presented. Mr. Cala was on the phone with us and discussed his report at length. The one provision on the report was on the second page, in paragraph two; Mr. Cala went beyond the purview of the Board's deliberations, in presenting some facts that were not germane to the underlying issue. The report was accepted with that provision. The report confirms the earlier decisions that that easement falls inside of the subject parcel. A full copy of the report can be obtained by requesting one under the Inspection of Public Records Act which can be presented to our Board staff and they will send you a complete copy of Mr. Cala's report along with an additional letter of clarification of his report. You can send an email to the Board staff to request the copy, there is a fee associated with it.

Mr. Thurow offers an explanation, what constitutes a boundary is a matter of law, where a boundary is, is a matter of fact, a surveyor is essentially expressing an opinion about where a boundary is. Mrs. Rice you still have recourse that basically take it to a question of what a boundary is and that is a matter for the courts. What the surveyor has done is determine, based on the evidence, where that boundary is, so for what the Board can consider, we have considered what falls within the purview of the Board. In this case, we have not found the surveyor

in question to have erred based on the record he was provided. This was amplified by Mr. Cala's report. The Board is going to close this case once we've reviewed this report.

VOTED to accept Mr. Cala's report concerning this case. **PASSED** with two votes and one abstention.

Mr. Cooper abstained from the vote

Mr. Spirock recused himself from the discussion of the case and vote.

MOTION by Mr. Thurow to close case 13-PS-11-06-2013, **SECOND** by Ms. Meyers, **PASSED** with two votes and one abstention.

Mr. Cooper abstained from the vote.

Mr. Spirock recused himself from the discussion of the case and vote.

ii. Case 12-PS-10-25-2012 – Investigator's Review of Plats

MOTION by Mr. Thurow this case be given to Mr. Cooper for further investigation as to whether the original complaint has been satisfied or not, **SECOND** by Mr. Spirock, **PASSED** unanimously

iii. Case 5-PS-05-31-2013 – Request Case Closure

MOTION by Mr. Thurow to close this case due to the statute of limitation expiring, **SECOND** by Mr. Spirock, **PASSED** unanimously

iv. Case 10-PS-09-24-2013

MOTION by Mr. Cooper that case 10-PS-09-24-2013 be given to Mr. Thurow for further investigation, **SECOND** by Mr. Spirock, **PASSED** unanimously

v. 11-PS-9-25-2013 – Compliance Officer

MOTION by Mr. Thurow in case 11-PS-9-25-2013 that an NCA be issued against the surveyor in question now that a complaint has been

filed for abetting the unlicensed practice of surveying, **SECOND** by Mr. Spirock, **PASSED** unanimously

vi. Designation of Hearing Officer for FY16

MOTION by Mr. Thurow to appoint Mr. Cooper as hearing officer for fiscal year 2016 with other Board members serving as alternates if required or requested, **SECOND** by Mr. Spirock,

MOTION AMENDED by Mr. Thurow that whenever possible a second Board member, in addition to Mr. Cooper, be available for the hearing as an advisor, **PASSED** unanimously

c. Status Review of Complaints and NCAs

d. Applications for Review

i. PS Exam

a) Brown, C. – Reconsideration

MOTION by Mr. Thurow to accept Mr. Brown’s application for the PS exam, **SECOND** by Mr. Cooper, **PASSED** unanimously

ii. PS Endorsement

a) Ryon, L. – Reconsideration

MOTION by Mr. Thurow to not accept, under reconsideration, Mr. Ryon’s application for PS endorsement, **SECOND** by Mr. Cooper, **PASSED** with three votes in favor, One nay vote from Mr. Spirock.

b) McCullough, C.

MOTION by Mr. Thurow to accept Mr. McCullough’s application, **SECOND** by Mr. Spirock, **PASSED** unanimously

c) Tomerlin, M.

MOTION by Mr. Thurow to not accept Mr. Tomerlin’s application for PS endorsement, **SECOND** by Mr. Cooper, **PASSED** unanimously

MOTION by Mr. Thurow to allow Mr. Tomerlin to sit for the PS exam, **SECOND** by Mr. Spirock, **PASSED** unanimously

9. **Next Scheduled Meeting Date:** August 2015

MOTION by Mr. Cooper to have future meetings convene at 9 am to allow more time for discussion. **SECOND** by Mr. Thurow, **PASSED** unanimously.

10. **Adjourn**

MOTION by Mr. Thurow to adjourn the meeting, **SECOND** by Mr. Cooper, **PASSED** unanimously. Meeting was adjourned at 12:34 p.m.

Submitted By:

Approved By:

s/ Perry Valdez

s/Augusta Meyers

Mr. Perry Valdez, Acting Executive Director

Ms. Augusta Meyers, Committee Chair

August 14, 2015 Approved Date