

Minutes

MEETING OF THE NEW MEXICO BOARD OF
LICENSURE FOR PROFESSIONAL ENGINEERS
AND PROFESSIONAL SURVEYORS held at
9:00 a.m., Friday, January 15, 2021,
Virtual/Telephonic Meeting

Members Present – Paul Brasher, PE, Board Chair
Glen Thurow, PS, Board Vice-Chair
Augusta Meyers, Public Member
Dr. Walter Gerstle, PE
Karl Tonander, PE
David Cooper, PS
Cliff Spirock, PS
Ron Bohannon, PE
Julie Samora, PE

Members Absent –

Others Present – Perry Valdez, BLPEPS, Executive Director
Annette Thompson-Martinez, BLPEPS, Deputy Director
Earl Burkholder, PEPS
David Dexter, PE (OH)

1. Convene, Roll Call and Introduction of Audience

Prior to convening the meeting Mr. Brasher read the meeting script regarding the virtual meeting protocols. He convened the meeting at 9:10 a.m., roll call was taken and a quorum noted.

2. Meeting Notification

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

3. Approval of Agenda

Mr. Valdez requested amending the agenda by removing item 8. b. 3) because he had not received a letter of reconsideration from Mr. Vigil.

MOTION by Mr. Bohannon to approve the agenda as amended striking item 8. b. 3),
SECOND by Mr. Spirock,

Roll Call Vote:

Voting 'Aye': Mr. Brasher, Mr. Spirock, Ms. Meyers, Mr. Bohannon, Dr. Gerstle, Mr. Tonander, Mr. Cooper

PASSED unanimously.

4. **Approval of Minutes**

a. **Minutes November 6, 2020**

b. **Minutes December 18, 2020**

MOTION by Dr. Gerstle to approve the Minutes of November 6, 2020 and December 18, 2020 as presented, **SECOND** by Mr. Bohannan,

Roll Call Vote:

Voting 'Aye': Mr. Brasher, Mr. Spirock, Ms. Meyers, Mr. Bohannan, Dr. Gerstle, Mr. Tonander, Mr. Cooper

PASSED unanimously.

Ms. Samora joined the meeting at 9:15 a.m.

5. **Requested Public Comment**

Mr. Burkholder provided a public comment. He reported he sent an email, dated January 6, to Mr. Valdez requesting to ask two questions. Mr. Burkholder said the first question, what was the status of the revision to the Minimum Standards as related to the basis-of-bearing; and the second question, was the Board immune to the Professional Cannon of Ethics concerning practice outside one's area of competence.

Mr. Burkholder indicated Mr. Valdez responded to his first question. He said Mr. Valdez told him the Board has revisions to the Minimum Standards and was waiting to hold an in-person public rule hearing because it was best to hold it in this format and not virtually. Mr. Burkholder thanked Mr. Valdez for his response.

Mr. Burkholder addressed his second question. He briefed the Board on the history of how he pointed out that the basis-of-bearing language was inherently in conflict the way it was written, and he did so before they adopted the language at the last rule hearing in 2016. Mr. Burkholder has repeatedly requested a change to the language; he thought a change would have been done in a timely manner.

Mr. Burkholder noted he had two negative comments. He first mentioned the Flint, Michigan water incident, then how the Michigan Governor and other officials are facing charges related to failure to protect the public. Mr. Burkholder also noted the Board's legal counsel was not present at the meeting. He was wondering if this had any significance.

Mr. Valdez responded that Ms. Joe was the legal counsel to other boards, besides this board, and she was not able to attend today's meeting due to a conflict of meetings.

Mr. Spirock asked Mr. Burkholder if he had attended a rule hearing. Mr. Burkholder responded he had. Mr. Spirock outlined the process of holding a rule hearing. He noted they are lengthy and complicated meetings. Mr. Spirock agreed the basis-of-bearing language needed updating and would be changed when a rule hearing could be held. He was unsure of what Mr. Burkholder's concern was.

Mr. Burkholder responded that he supports the mission of the Board and the member's dedication. He said his concern was for the protection of the public. Mr. Burkholder stated he was happy knowing there is a change to the language coming. He added that he felt the Board was using the Covid crisis as a means of procrastination.

Mr. Brasher asked Mr. Burkholder what he was asking the Board to do. Mr. Burkholder replied to answer the question, 'yes or no'. Mr. Brasher requested Mr. Burkholder rephrase his question. Mr. Burkholder asked if the Board was immune to the Professional Cannon of Ethics concerning practice outside one's area of competence.

Mr. Spirock responded that the question was not an action item and a non-sequitur for this meeting.

Mr. Bohannon asked Mr. Burkholder, to which Professional Cannon of Ethics was he referring. Mr. Burkholder responded ASCE and the NSPS. Mr. Bohannon suggested Mr. Burkholder summarize the Cannon. He stated the Engineering and Surveying Practice Act binds the Board, which the definition of ethics was in the Act. He requested Mr. Burkholder articulate this for a response at the next meeting.

6. Director's Report

a. Financial Report

Ms. Thompson-Martinez informed the Board the legislative budget hearing was scheduled for January 26, 2021. She reported that Mr. Valdez and she would be attending to present the budget appropriation request.

Ms. Thompson-Martinez reported that Mr. Valdez and she received the recommendations; the Legislative Finance Committee (LFC) recommended the requested budget, and the Department of Finance and Administration (DFA) recommended a cut of \$15,100 in the requested budget. She reported it was unclear from which budget category DFA was recommending to cut the amount, but it was manageable. Mr. Valdez noted that Ms. Thompson-Martinez and he requested a meeting with the DFA budget analyst to find out about their recommendation.

Mr. Spirock asked if an annual report was prepared for the Legislature. Mr. Valdez responded he did not have one prepared as of yet, but he would. Mr. Spirock stated it could be used to educate the legislators of who we are.

Ms. Thompson-Martinez presented the budget projections. She reported on the budget categories individually, of the projected balances which may be at the end of the fiscal year. Ms. Thompson-Martinez began with the personnel category, she reported this category would have the most balance remaining, a total of \$92,988.85. She informed the Board of the professional services category, that there could be approximately \$11,144.81 left in the category at the end of the fiscal year. Ms. Thompson-Martinez noted if there were unused monies, which are encumbered, for the investigative services they would be disencumbered and revert to the fund balance. She continued with reporting the balance of the other costs category which could have an ending balance of \$79,061.15.

Ms. Thompson-Martinez informed the Board that the total balance at the end of the fiscal year could be \$180,194.81. She was conservative in her projections in hopes there would be further spending on office needs and a new licensing system.

Ms. Thompson-Martinez reported on the fund balance. She said revenue received to date was \$776,268.14 and the compensated absences and deferred compensation amount was \$23,757.12. Ms. Thompson-Martinez showed the expenditures which were \$29,9081.91. She projected revenue received for the remaining year based off last year's numbers and projected expenditures. She projected a balance of \$143,292.08 reverting to the fund balance.

Mr. Spirock asked if the Board were to contract out hearing officers or an investigator on a case-by-case basis, would those costs be included in the projection. Ms. Thompson-Martinez responded that based on the length of time contracts take to finalize and the number of months remaining in the fiscal year, for the surveyor investigator to finish the year is three months. She did not anticipate a need for extra money in the professional services category, if necessary, there was money in the budget to move.

Mr. Bohannon asked, if the Board office were fully staffed with personnel, how much of the hundred thousand reverting would have been spent. Ms. Thompson-Martinez answered that most of that would be spent. She reported the budget projection includes the salary increases which Mr. Valdez and she have been working to be approved. Mr. Brasher noted a salary savings existed due to vacancies.

Ms. Thompson-Martinez informed the Board the 2020 fiscal year audit resulted in no findings and a good financial audit. She reported the Agency will need to find a new auditing firm because the current auditor was leaving New Mexico.

Licensing Report

Mr. Valdez reported as of January 11, 2021 there were 745 expired licenses pending renewal. He provided a breakdown of the number of expired licenses, three in-state dual licenses PEPS, 30 Professional Surveyors (14 out-of-state and 16 in-state), 712 Professional Engineers (589 out-of-state and 123 in-state). Mr. Valdez stated there were 74 requests for retired and inactive status for Committee approval yesterday, which leaves 671 expired licenses pending renewal.

Mr. Brasher requested a total count of active licenses. Mr. Valdez responded with 8,953. Mr. Bohannon stated half of the number renew. Mr. Valdez stated 4,962 license renewals were generated on October 20, 2020.

Mr. Bohannon asked if another email renewal reminder would be sent. Mr. Valdez answered yes another would be sent at the beginning of February. Mr. Bohannon praised Mr. Valdez and Board staff for the work of reminding the licensees.

7. Old Business

a. Lohr, C. – Additional Information Regarding the Request for Endorsement of the Plumbing option to the NCEES PE Mechanical Exam.

Mr. Bohannon reported the Professional Engineering Committee unanimously approved to support the plumbing option for the NCEES Mechanical exam. He informed the Board a letter of support would be sent to NCEES.

Mr. Brasher stated that no further action was required.

Mr. Dexter thanked the Board for their support.

b. Second Response to the State Fire Marshal's Proposed Rule Change

Mr. Valdez reported a second response was provided to the State Fire Marshal's Office regarding their proposed rule change.

Mr. Tonander asked Mr. Valdez if he knew why the State Fire Marshal had not taken into consideration the Board's response to the proposed rules. Mr. Valdez responded he did not know why they were not taking the Board's recommendations.

Mr. Bohannon stated the Board response made it very clear the design still falls under the purview of a licensed engineer.

c. Scholarship Program

1) Scholarship Information Request from Institutions

Ms. Thompson-Martinez presented a draft email to the Board members. She requested their input on the draft email she would send to each institution which received the scholarship funding. Mr. Valdez placed the draft email message on the screen. Ms. Thompson-Martinez said the email was requesting information, from the institutions, which the Board wished to know regarding awarding the scholarship disbursements.

She asked Mr. Spirock for his input in regard to the alternative pathway for surveying. Mr. Spirock responded the alternative path includes higher institutions and community colleges. His recommendation was to include questions about what type of outreach may have been done to reach those student candidates. Mr. Spirock clarified he wanted to know how much the institutions made their students aware of the scholarship opportunity.

Ms. Thompson-Martinez reminded the Board she was presenting the email to obtain the necessary information, which the Board would need to make any decisions when reviewing the scholarship awarding. Mr. Valdez added that the information being requested in the email would be provided to the Board so during the annual review of the scholarship program they could make any changes necessary to the awarding process for the scholarship funds and scholarship program.

Dr. Gerstle suggested the recipients provide a paragraph of how the scholarship helped them.

Mr. Tonander noted he was not in favor of the last paragraph of the draft email message. He stated we are asking the institutions to explain to the Board why the Board did what it did creating a scholarship. Mr. Tonander also responded to Dr. Gerstle's suggestion; he felt the paragraph from the recipients would be more platititude than actual useful information. Dr. Gerstle agreed with Mr. Tonander.

Mr. Spirock stated the Board is supposed to annually revisit two formulae, the division of the disbursements of the scholarship money for engineering versus surveying and then division between institutions. He stated the information we are requesting was meant to assist the Board in accomplishing that review.

Mr. Brasher said the Board was trying to determine the effectiveness of the scholarship program.

Mr. Bohannon added what Ms. Thompson-Martinez proposed would help, through feedback, to determine the amount of scholarship funding distributed to each institution.

Mr. Spirock was in favor of adding Mr. Bohannon's proposed questions shown on the draft.

Ms. Thompson-Martinez asked Mr. Valdez to remove the last paragraph on the draft message.

d. Proposed Rule Changes - 16.39.3.7 NMAC– Definitions

Dr. Gerstle introduced the proposed change. He explained the proposed language was meant to answer the question of what counted as engineering experience in terms of what professors and instructors are doing in teaching.

Dr. Gerstle said the proposed language followed closely to the NCEES Model Law. He said engineering design teaching could be accepted as engineering experience. Dr. Gerstle reported this was discussed at a Rules Committee meeting and during the Professional Engineering Committee meeting.

Mr. Valdez placed the proposed language on the screen. Dr. Gerstle read a portion of the language.

Mr. Spirock stated similar language was being drafted for surveying.

MOTION by Mr. Spirock to approve the definition, which the Professional Engineering Committee approved, **SECOND** by Mr. Bohannon,

Roll Call Vote:

Voting 'Aye': Mr. Brasher, Mr. Spirock, Ms. Meyers, Mr. Bohannon, Dr. Gerstle, Mr. Tonander, Mr. Cooper, Ms. Samora

PASSED unanimously.

8. New Business

a. Proposed Rule Changes

1) Additional Seal and Signature Requirements – Expiration Date

Mr. Brasher introduced the item of additional seal and signature requirements. He explained a situation which came to light at the New Mexico Department of Transportation. Mr. Brasher said at times an engineer or surveyor signed and sealed a document when their license was expired.

He was proposing a requirement to include the expiration date with sealing, signing, and dating a document. Mr. Brasher requested comments from the Board members.

Ms. Samora agreed with the idea but expressed her concerns. She asked what the implications would be once it was done.

Mr. Brasher replied he foresaw this as a safeguard and protection to the client and as a reminder to the licensee, not so much as an enforcement. He said the Board would not be overseeing that the licensee placed the expiration date.

Mr. Spirock supported the proposal and would recommend it be sent to the Rules Committee to propose draft language.

Mr. Tonander was not in support of requiring a new stamp which included a place for the expiration date. He added newly licensed individuals could be required to have that on their stamp but not existing licensees.

Mr. Brasher directed Mr. Valdez to send the proposed language to the Rules Committee.

2) Unlicensed Practice – Notification to Clients

Mr. Brasher informed the Board this item was in conjunction with the item just discussed. He stated he would like to require individuals who practiced with an expired or lapsed license to report that to their clients.

Mr. Spirock provided some background of an incident which occurred with his company. He advised having caution because some business could be sued for an employee having to report the issue to their clients.

Mr. Cooper stated if a survey plat is sealed and signed by someone whose license is not active, then the document is not valid, nor legal. He said it caused legal issues.

Mr. Spirock commented this could be added to the penalties and fines table which the Board used as a reference tool when deciding on cases.

Mr. Brasher suggested the Professional Surveying and Professional Engineering Committees discuss this topic and decide what to do. He stated then it could be discussed at the next Full Board meeting.

Mr. Brasher requested to take a short break.

MOTION by Mr. Spirock to take a break until 11:10 am, **SECOND** by Mr. Bohannan,

The meeting paused for a break at 10:57 am

****Ms. Meyers left the meeting at 11:03 am****

The meeting resumed at 11:14 am

b. Emeritus Status Requests

1) Glen Thurow, PS

2) Gilbert Chavez, PS – Reconsideration

MOTION by Mr. Spirock to approve Glen Thurow and Gilbert Chavez for emeritus status, **SECOND** by Mr. Tonander,

Roll Call Vote:

Voting ‘Aye’: Mr. Brasher, Mr. Spirock, Mr. Bohannan, Dr. Gerstle, Mr. Tonander, Mr. Cooper, Ms. Samora

PASSED unanimously.

3) Salvador Vigil, PS – Reconsideration

This item was removed during the approval of the agenda.

9. Committee Reports

a. PS Committee

Mr. Spirock reported there were two individuals in attendance of the meeting, Mr. Burkholder and Mr. Watt. He mentioned Mr. Watt requested the Committee’s assistance with a Toas County court case. Mr. Spirock stated Mr. Watt was informed the Committee could not assist with his request.

Mr. Spirock indicated Mr. Valdez provided a report on the surveyor investigator’s contract. He said Mr. Valdez is trying to get a one-year contract together and finalized.

Mr. Spirock informed the Board about the outcomes of complaints they discussed and voted on. He said there were two applications for review, one application for inactive status, and four applications for retired status.

Mr. Spirock detailed a case of an individual practicing without a license and advertising as a professional surveyor and professional engineer.

b. PE Committee

Mr. Bohannon reported he began the meeting but had to leave, that Dr. Gerstle took over. He reported there was a case the Attorney General's Office declined to prosecute because upon further investigation the respondent did not violate the rules.

Dr. Gerstle informed the Board of the discussion with Mr. Lohr and the request for the Plumbing option on the Mechanical exam. He reported on the number of applications reviewed, approved, not approved, and tabled for additional information.

Dr. Gerstle mentioned there was a discussion regarding the years of practice requirements for retired status. He explained he was wondering the reason for the requirement. Mr. Spirock said he added the item to the Rules Committee.

c. Executive Committee

Mr. Valdez informed the Board; the Committee had not met and therefore no report was provided.

d. Joint Practice Committee

Mr. Bohannon reported the Committee met on December 3, 2020. He said that it was this Board's turn to host the Joint Practice Committee meetings. Mr. Bohannon apprised the Board about the meeting. He indicated he was elected as Chair of the Committee; there was a brief overview of the rules and regulations and history of the Committee, and there was an item regarding the interior designers. Mr. Bohannon said the Committee planned on meeting on a quarterly basis.

e. Public Information, Exam and Licensure Promotion Committee

1) Newsletter

2) Presentations

Ms. Thompson-Martinez explained during the renewal period she was unable to draft a newsletter. She said she would begin focusing on drafting one and requested articles from the Board members. Ms. Thompson-Martinez asked the Board who should be on the profile article, she asked if it should be Mr. Brasher.

Mr. Brasher said he would provide some ideas for the newsletter.

Mr. Valdez reported on the ethics course Mr. Tonander presented. Mr. Valdez stated there were around 2,000 attendees during one of the sessions.

Mr. Tonander reported he created a LinkedIn page for the Board. He said notices and information could be posted on the site.

f. Rules and Regulations Committee

Mr. Spirock reported the Committee is working in conjunction with the Policies, Advisories, and Legal Enforcement Committee. He stated it has been working well and accomplishing the list of items assigned to the committees.

g. Policies, Advisories, and Legal Enforcement Committee

Dr. Gerstle informed the Board it is a learning process. He reported he was learning about the process for rule changes.

h. NCEES Committee Members

Mr. Valdez reported he was selected to be on the Western Zone Site Selection Committee. He noted NCEES scheduled New Mexico as host of the NCEES Western Zone meeting in 2025. Mr. Valdez reported NCEES will hold virtual meetings until it is safe to have in-person meetings.

Mr. Spirock suggested finding a large venue, because the meeting will coincide with the NGS/NOAA change to the international foot and anticipated a large meeting regarding the change and explanation of the change.

Mr. Tonander indicated he was selected to serve on the NCEES Western Zone Service Award Committee.

Mr. Cooper brought up an item which was discussed earlier. He asked Mr. Brasher if he would like for the Rules Committee to refer to other sources, for example Black’s Law Dictionary, to define violations which are not in the Board’s rules or statutes. Mr. Brasher responded that would be a good idea.

Mr. Spirock responded Mr. Cooper’s suggestion is well taken. He indicated he is working on updating the fines and penalties reference table and requested additional input from others to assist him.

Ms. Samora left the meeting at 12:12 p.m.

There was further discussion on the subject, as well as, a discussion that additional definitions need to be in the rules to have standing in the courts.

10. Next Scheduled Meeting Date: April 16, 2021 – Ruidoso or Virtual

11. Adjourn

Meeting adjourned at 12:20 p.m.

Submitted by:

s/Perry Valdez

Perry Valdez, Executive Director

Approved by:

s/Paul Brasher

Paul Brasher, Board Chair

April 16, 2021

Approved Date