

**Meeting Minutes**

**MEETING OF THE PROFESSIONAL SURVEYING  
COMMITTEE of the Board Licensure of Professional  
Engineers and Professional Surveyors held at  
9:00 a.m., Thursday, April 15, 2021,  
Virtual/Telephonic Meeting**

**Members Present-** Augusta Meyers, Public Member, Committee Chair  
Clifford Spirock, PS  
David Cooper, PS  
Paul Brasher, PE

**Others Present-** Perry Valdez, BLPEPS, Executive Director  
Miranda Gonzales, Administrative Manager  
Valerie Joe, Legal Counsel  
Governor Joseph Herrera, Cochiti Pueblo  
Gene Ka-hee  
Phoce Swina  
Jayson Romero  
Earl Burkholder, PEPS  
Eric Rollston, PS

**1. Convene, Roll Call and Introduction of Audience**

Ms. Meyers read the meeting script regarding the virtual meeting protocols. Ms. Meyers convened the meeting at 9:10 a.m. Roll call was taken and a quorum noted. Audience introductions made at this time.

**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. Spirock to approve the agenda as presented, **SECOND** by Mr. Cooper,

**Roll call vote taken:**

**Voting 'Aye':** Ms. Meyers, Mr. Spirock, Mr. Cooper

**PASSED** unanimously.

**4. Approval of Minutes**

**a. Minutes January 14, 2021**

**MOTION** by Mr. Spirock to approve the minutes of January 14, 2021 as presented, **SECOND** by Mr. Cooper,

**Roll call vote taken:**

**Voting 'Aye':** Ms. Meyers, Mr. Spirock, Mr. Cooper

**PASSED** unanimously.

**5. Requested Public Comment**

Ms. Meyers asked about the 'Requested Public Comment' item. Mr. Valdez indicated the letter from Mr. Crysler was on the agenda. He noted there were individuals in the audience who may wish to speak. Mr. Valdez advised Ms. Meyers if she wished for them to make a comment it was in her purview to do so. Ms. Meyers asked what the pleasure of the members were, Mr. Spirock and Mr. Cooper agreed to allow the audience to make a comment.

**a. B. Crysler – Clarification if GPS Machine Control Models are Considered Engineering and/or Surveying Services**

Mr. Valdez presented Mr. Crysler's letter to the Committee. Mr. Valdez shared his screen placing the letter on the screen. He informed the Committee members this item was placed on the agenda for this Committee, Engineering Committee, and the Full Board for discussion and a decision. Mr. Valdez provided a synopsis of the letter that Mr. Crysler is requesting clarification if GPS machine control models are considered engineering and/or surveying services. He added Mr. Crysler stated North Carolina allows an engineer to do so.

Mr. Spirock noted he reviewed the New Mexico Minimum Standards for Surveying and the New Mexico Administrative Code (NMAC). He reported that the 2017 NMAC lists activities which are included and are excluded from the practice of surveying. Mr. Spirock cited the NMAC 16.39.5.10. F. (1) (a) and the Minimum Standards about the creation of the maps and georeferenced databases. He said these fall under the responsibility of a licensed surveyor. Mr. Spirock mentioned the Minimum Standards and the different classifications of surveys listed in the Standards. Mr. Spirock stated under 'Control Surveying' it includes the extraction of digital or geospatial data in engineering design projects, construction staking, surveys to lay out horizontal and vertical alignments, etc.

Mr. Spirock concluded that it was the practice of surveying and it was also the practice of engineering. He said, it is engineering for the person who created the digital model and under control surveying it is the responsibility of the licensed surveyor to implement that control for a construction project. Mr. Spirock said those who load that data into the equipment or control network are exempt. He stated there is an answer in the NMAC or the Minimum Standards, however, it is

not very clear. Mr. Spirock recommended one of the Committee members or staff to research North Carolina. Mr. Spirock added that if the answer is still unclear then possibly for the Committee, or Board, to draft an advisory opinion. He finished by suggesting drafting a letter as direct response to Mr. Crysler.

Mr. Cooper recommended deferring this item to the Full Board for discussion at that meeting. He agreed with Mr. Spirock that a response letter should be sent to Mr. Crysler. Mr. Cooper did not think there was a need to draft a advisory opinion.

After the discussion was concluded on this item, Ms. Meyers recognized those in the audience to provide public comment.

Governor Herrera deferred to Mr. Ka-hee to speak on his behalf. Mr. Valdez informed the Committee the Governor and those in attendance were there for Case 1-PS-01-17-2019, which was on the agenda. Mr. Spirock disclosed a conflict with the case and abstained from the vote when the case was first heard. He advised the Committee that he would need to recuse himself from the discussion when the case is discussed later in the agenda.

*\*\*Mr. Brasher joined the meeting at 9:28 am\*\**

Mr. Valdez advised Ms. Meyers and the members that Mr. Brasher joined the meeting to continue the quorum when Mr. Spirock recuses himself. Ms. Meyers asked if Mr. Spirock was able to listen to this testimony. Mr. Valdez deferred to Ms. Joe for guidance.

Ms. Joe responded that it was Mr. Spirock's decision to remain to listen to the testimony since he would not be providing input to the Committee during the discussion of the case later on the agenda. Mr. Spirock chose to stay to listen to the testimony and allow Mr. Brasher to discuss and vote on the matter.

Mr. Ka-hee presented himself and provided a brief background of his surveying experience while working with surveyors. He explained that Bohannon Huston performed a survey three different times, only the titles were changed during those times for different organizations, for University of New Mexico (UNM) and the State, the State and Cochiti Pueblo, and finally the State and Cochiti Pueblo. Mr. Ka-hee indicated there were errors in the UNM and the State survey, he said it was not until the third survey that the Bureau of Land Management (BLM) and himself caught the error. Mr. Ka-hee informed the Committee that he and BLM red-lined the survey plat, with the numerous errors.

Mr. Ka-hee said that during the initial investigation by Mr. Gilbert Chavez, on behalf of the Board, he reported minor errors and the Board stated there were no

violations, but there were. Mr. Ka-hee provided examples of the surveyor's errors. He also provided letters as to other errors on the plat. Mr. Ka-hee informed the Committee that the Pueblo has not been able to place the land into trust. He further noted that at a meeting with the surveyor and others, the surveyor admitted to errors on the surveyor. Mr. Ka-hee stated the Cochiti Pueblo is willing to work with the surveyor on this issue.

Mr. Ka-hee provided additional information. Ms. Meyers thanked Mr. Ka-hee, and others in attendance, for the information and the Committee would discuss their case in closed session. Mr. Romero added the Pueblo has not been able to add the land into trust due to the surveyor's errors. Mr. Brasher thanked Governor Herrera and those in attendance for bringing this to the Board's attention and for attending the meeting.

## **6. Old Business**

### **a. PS Investigator Contract Status**

Mr. Valdez reported a new contract was submitted in advance for Mr. Cala. He said we are waiting on final approval from the State General Service Division Contract Bureau. Mr. Valdez informed the Committee a contract was in process for next fiscal year as well.

Mr. Valdez noted Mr. Cala was in attendance due to some cases on the agenda.

## **7. New Business**

### **a. Special Session Senate Bill 2 – Updates to the Uniform Licensing Act**

Mr. Valdez introduced Senate Bill 2 and the changes to the Uniform Licensing Act (ULA). He informed the Committee that in 2019 a change was made which stated a veteran or military member should not be charged a fee for the first three years of licensure. Mr. Valdez indicated the 2021 Special Legislative Session updated the ULA that a veteran or military member application should be processed within 30 days. He added there were changes to the Criminal Offenders Act which eliminates the terms "moral turpitude" and "of good character" from each Act.

Ms. Joe provided more detail on the matter of the elimination of terms. She informed the Committee about the update to the ULA because of the update to the Criminal Offenders Act. Ms. Joe explained the current Engineering and Surveying Practice Act should be read as if the terms "moral turpitude" and "of good character" were not there. She stated the Board and Committees are required to promulgate what types of criminal offenses or offenses in general would be considered in determining the obtaining of a license. Ms. Joe said the rule making process must be completed by December 31, 2021.

Mr. Spirock reported the Rules Committee has been preparing proposed rules for a rule hearing. He asked Ms. Joe what the application affidavit language would be changed to. Ms. Joe responded there was time to draft up new language for the applications. Mr. Spirock thanked Ms. Joe and requested she come up with new language for the Rules Committee to consider for changes to the Administrative Code.

Mr. Brasher asked Ms. Joe if all offenses are required to be listed. Ms. Joe explained each offense must be listed that would be considered when the Board is reviewing applications for licensure. She stated other Boards, and those in other jurisdictions, have language which could be used instead of starting from scratch.

**b. Unlicensed Practice – Notification to Clients**

Mr. Brasher introduced this item. He informed the Committee this was about when a license is expired or lapsed, and the licensee continued to practice and seal work. Mr. Brasher explained that once discovered that the license was expired or lapsed, the licensee would be required to inform their client, when they signed and stamped a drawing, their license was expired or lapsed. He said in the past the Board has required an offender have their work peer reviewed. Mr. Brasher requested the Committees and the Board adopt a rule to this affect, requiring a licensee to notify their clients that they signed and stamped work for them while their license was expired or lapsed.

Ms. Meyers stated as a public member this is very concerning. She asked if peer review of the work provided some type of protection to the client. Mr. Brasher responded that it does not mean the licensee did a bad job, design, or survey. He said technically the licensee was not licensed, therefore the peer review would protect the client to know the work was sound and not deficient.

Mr. Brasher said another item would be to require the expiration date to be included with the seal so a licensee would not forget when their license expiration date. Ms. Meyers noted similar to a notary or a driver's license. She liked the idea of requiring the expiration date as a reminder to a licensee.

Mr. Spirock noted the Rules Committee discussed proposed language for addition to the rules. He said it would be proposed to the Full Board. Mr. Brasher thanked Mr. Spirock and asked what Mr. Spirock and Mr. Cooper thought about the idea.

Mr. Cooper provided an example of a case which the Committee dealt with. He explained there was a surveyor who had numerous jobs and it would have been very problematic to contact all those clients. Mr. Cooper said it would be better

to look at each individual case, on a case-by-case situation. He explained when a surveyor is not licensed the survey is not a valid survey, and once the surveyor has an active license again the survey would need to be refile it. Mr. Cooper explained it would be necessary to look at how important and egregious the violation is and who would need to be notified.

Mr. Spirock expressed his concern over this type of violation, as well as other violations. He is in support of the idea of adding the expiration date to the stamp.

Ms. Meyers suggested it could be communicated in the newsletter. She said to remind the licensees.

Mr. Cooper acknowledged that if the Board required the expiration date, then the problem would go away.

**MOTION** by Mr. Spirock to present the language adopted by the Rules Committee to the Full Board as a recommendation of the PSC to adopt, **SECOND** by Mr. Brasher,

**Roll call vote taken:**

**Voting 'Aye':** Ms. Meyers, Mr. Spirock, Mr. Cooper, Mr. Brasher

**PASSED** unanimously.

**8. Application Review – Recommended Approval**

**a. Recommended for Approval List (Exhibit A)**

**MOTION** by Mr. Spirock to approve Exhibit A, dated April 15, 2021, the recommended for approval applications, **SECOND** by Mr. Cooper,

**Roll call vote taken:**

**Voting 'Aye':** Ms. Meyers, Mr. Spirock, Mr. Cooper, Mr. Brasher

**PASSED** unanimously.

**b. Retired Application(s)**

**MOTION** by Mr. Spirock to approve the retired applications, **SECOND** by Mr. Cooper,

**Roll call vote taken:**

**Voting 'Aye':** Ms. Meyers, Mr. Spirock, Mr. Cooper, Mr. Brasher

**PASSED** unanimously.

**9. Executive Session**

**MOTION** by Mr. Spirock that the Committee enter 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. Cooper,

**Roll call vote taken, voting 'Yes':** Ms. Meyers, Mr. Spirock, Mr. Cooper, Mr. Brasher

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

Ms. Meyers 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) and (3).

**a. Disciplinary Cases**

**1) Case 2-PS-01-25-2019 – Hearing Officer's Report**

Ms. Meyers stated the case was deferred until a special meeting before the June meeting.

**2) Case 1-PS-01-17-2019**

**MOTION** by Mr. Brasher to re-open the case having received supplemental information for reconsideration, **SECOND** by Mr. Cooper,

**Roll call vote taken:**

**Voting 'Aye':** Ms. Meyers, Mr. Cooper, Mr. Brasher

**PASSED.**

*\*\*Mr. Spirock recused himself from the discussion and vote.\*\**

**3) Case 5-PS-09-23-2014**

**MOTION** by Mr. Cooper to issue an Order to Show Cause against the respondent for non-compliance with the settlement agreement, **SECOND** by Mr. Spirock,

**Roll call vote taken:**

**Voting 'Aye':** Ms. Meyers, Mr. Spirock, Mr. Cooper, Mr. Brasher

**PASSED** unanimously.

**b. Status Review of Complaints and NCA Referrals**

A status review of complaints and NCA referrals was tabled to the special meeting.

*\*\*Ms. Meyers left the meeting at 12:03 pm, she advised Mr. Spirock will chair the meeting in her absence. \*\**

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

**Roll call vote taken, voting 'Yes':** Mr. Spirock, Mr. Cooper, Mr. Brasher

Mr. Spirock 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).

**c. Applications for Review**

**1) PS Endorsement**

**a) Bergherr, S.**

**MOTION** by Mr. Cooper to not approve for licensure, **SECOND** by Mr. Brasher,

**Discussion:** Mr. Spirock noted with other applicants with deficiencies in higher mathematics the Committee sends a letter as to the reason. He continued saying the Committee provided the opportunity for the applicant to make up the deficiencies. Mr. Cooper amended the motion.

**MOTION** by Mr. Cooper to not approve for licensure for a lack of higher mathematics and allow the applicant to make up the mathematic deficiency, **SECOND** by Mr. Brasher,



**Roll call vote taken:**

**Voting 'Aye':** Mr. Spirock, Mr. Cooper, Mr. Brasher

**PASSED** unanimously.

- b) **Davis, R.**
- c) **Eischens, K.**
- d) **Sampson, A.**

**MOTION** by Mr. Cooper to approve Davis, R., Eischens, K., and Sampson, A. for licensure, **SECOND** by Mr. Brasher,

**Roll call vote taken:**

**Voting 'Aye':** Mr. Spirock, Mr. Cooper, Mr. Brasher

**PASSED** unanimously.

**2) PS Reinstatement**

- a) **Benson, C.**

**MOTION** by Mr. Cooper to approve for reinstatement of licensure, **SECOND** by Mr. Brasher,

**Roll call vote taken:**

**Voting 'Aye':** Mr. Spirock, Mr. Cooper, Mr. Brasher

**PASSED** unanimously.

**11. Next Scheduled Meeting Date:** June 10, 2021 – Santa Fe or Virtual

**12. Adjourn**

Meeting adjourned at 12:31 p.m.

**Submitted by:**

s/Perry Valdez  
\_\_\_\_\_  
Perry Valdez, Executive Director

**Approved by:**

s/Augusta Meyers  
\_\_\_\_\_  
Augusta Meyers, Committee Chair

June 25, 2021 **Approved Date**