

Meeting Minutes

**SPECIAL MEETING OF THE PROFESSIONAL SURVEYING
COMMITTEE of the Board Licensure of Professional
Engineers and Professional Surveyors held at
9:00 a.m., Friday, May 14, 2021,
Virtual/Telephonic Meeting**

Members Present- Augusta Meyers, Public Member, Committee Chair
Clifford Spirock, PS
David Cooper, PS

Others Present- Perry Valdez, BLPEPS, Executive Director
Miranda Gonzales, Administrative Manager
Valerie Joe, Legal Counsel
Chuck Cala, PS, Board Investigator
Darryl Coster, PS, NMPS President
Earl Burkholder, PEPS

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 9:11 a.m. Roll call was taken and a quorum noted.

Audience introductions made at this time. Mr. Burkholder and Mr. Coster 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. Spirock to approve the agenda as presented, **SECONDED** by Mr. Cooper,

Roll call vote taken:

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

PASSED unanimously.

4. Approval of Minutes

Mr. Valdez noted there were no minutes for approval.

5. Requested Public Comment

Ms. Meyers asked if there was any public comment, there was none. Ms. Meyers proceeded to the next agenda item.

6. **Old Business**

Mr. Spirock noted for the public in attendance, the Rules Committee would meet to discuss any other proposed rules changes to present to the Full Board. He said any other proposed changes would be added to the other changes already approved by the Full Board.

Mr. Valdez informed the public of the upcoming special Full Board meeting where the proposed changes will be discussed and voted on. He also informed the public a rules hearing would be scheduled at the Full Board meeting.

7. **New Business**

Mr. Valdez informed the Committee that there was no new business.

8. **Application Review – Recommended Approval**

Mr. Valdez informed the Committee that there were no applications for approval.

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. **SECONDED** by Mr. Cooper,

Roll call vote taken, voting ‘Yes’: Ms. Meyers, Mr. Spirock, Mr. Cooper

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**

MOTION by Mr. Spirock to adopt the substance of the attached document in the Committee’s Decision and Order for case 2-PS-01-25-2019, **SECONDED** by Mr. Cooper,

Roll call vote taken:

Voting ‘Aye’: Ms. Meyers, Mr. Spirock, Mr. Cooper

PASSED unanimously.

2) **Case 3-PS-03-04-2020 – Complaint Manager’s Report**

MOTION by Mr. Cooper to table to the next meeting for further investigation,
SECONDED by Mr. Spirock,

Roll call vote taken:

Voting ‘Aye’: Ms. Meyers, Mr. Spirock, Mr. Cooper

PASSED unanimously.

3) **Case 4-PS-05-29-2020 – Complaint Manager’s Report**

MOTION by Mr. Cooper to dismiss the case, **SECONDED** by Mr. Spirock,

Roll call vote taken:

Voting ‘Aye’: Ms. Meyers, Mr. Spirock, Mr. Cooper

PASSED unanimously.

b. Status Review of Complaints and NCA Referrals

Ms. Meyers reported that while in closed session Ms. Gonzales provided a report to the Committee on the status of pending cases and referrals for Notice of Contemplated Actions.

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

12. Adjourn

Meeting adjourned at 12:06 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**

Case 2- PS-01-25-2019: Motion

Having given full consideration to the testimony and evidence presented, having reviewed and become familiar with the entire record on review, the Hearing Officer's Report and Proposed Findings of Fact dated April 9, 2021 is hereby rejected.

[The Committee is denying Respondent's Motion to Dismiss for Statute of Limitations for 2 reasons listed on the screen]

Respondent's two motions to dismiss Case 2-PS-01-25-2019 are denied for the reasons listed below:

- (1) Board acted within the statute of limitations: Complaint brought 1-25-2019 and Notice of Contemplated Action issued on December 20, 2020.
- (2) Respondent stated that his 2017 survey was based off his 1996 survey, the 2017 survey is the subject of the alleged violations and within the requirements of 61-23-27.11(D) NMSA 1978.

[List of Exhibits and Witnesses]

Summary of the Proceedings

The Administrative Prosecutor introduced the following exhibits:

- Exhibit 1: Boundary Survey
- Exhibit 2: Amended Boundary Survey
- Exhibit 3: Amended Plat of Lot Split
- Exhibit 4: Rincon Montoso Estates
- Exhibit 5: Special Warranty Deed
- Exhibit 6: Quitclaim Deed
- Exhibit 7: Worksheet

Exhibit 8: Complaint Manager's Report

Respondent introduced the following exhibits:

Exhibit A: Plat of Survey, Five-Year Exemption Division of TractB-1A for Susanne Hayes

Exhibit B: Complaint Form

Witnesses and Testimony

The Administrative Prosecutor called the following witnesses to testify:

1. Jacob Jude Regensberg
2. Charles G. Cala, Jr.

Respondent called the following witnesses to testify:

1. Mitchel Noonan, Respondent

[adopting the List of Findings of Fact currently Paragraphs 1-23, additional paragraphs to support the violations are not yet listed but summarized after the list.]

Findings of Fact

1. Respondent was, at all relevant times, licensed by the Board to practice as a Professional Surveyor, License No. 6998, pursuant to the Engineering and Surveying Practice Act, Sections 61-23-1 through 61-23-36 NMSA 1978, and subject to the jurisdiction of the Board.
2. The Administrative Prosecutor and Respondent agreed to stipulate to the State's Exhibits 1 through 9 and Respondent's Exhibits A and B.
3. A complaint was filed by the Complainant with the Board on January 25, 2019 outlining the allegations described above (Exhibit 9 & Exhibit B).

4. Jacob Jude Regensberg, a New Mexico licensed surveyor since July 1, 2013, testified under oath at the hearing regarding his review of Respondent's plat, which had his name on it and after reviewing the plat he filed a complaint with the Board. (Hearing Transcript, p.16)
5. Mr. Regensberg testified that basis of bearing, as shown in Exhibit 1, is what the survey should be based on and current minimum standards have four basis of bearings to choose from. (Hearing Transcript, p.17-18)
6. According to Mr. Regensberg, the minimum standards are defined and "this is for the most part, the retracement of the survey, how someone else can follow in the footsteps when they review your work." (Hearing Transcript, p.18 Ln. 10-12)
7. Mr. Regensberg testified that on the bottom of Exhibit 1 on a yellow dot labeled A2 near the bottom left of the page, there is not a sufficient basis of bearings. Specifically, "the statement where it reads 'any two monuments can be used as a basis of bearings,' ... there is no definition for that in current minimum standards. (Hearing Transcript, p.17-19; p. 19 Ln. 6-9)
8. According to Mr. Regensberg, when encountering disputes between landowners, he does not let these disputes affect the thoroughness or quality of his work as a surveyor and if there is a persistent client or neighbor who is persistent, he will walk away. (Hearing Transcript, p.19)
9. Charles G. Cala, Jr., a New Mexico licensed professional surveyor, who is a private sector investigator for the Board, serving the Professional Surveyor Committee, testified under oath at the hearing that he conducted an investigation

and prepared a case report that was presented to the Professional Surveying Committee, which resulted in this action. (Hearing Transcript, p.21)

10. Mr. Cala, Jr. testified that his report (Exhibit 8) that in relation to Rule 12.8.2.9(J)(6), “[t]here are four very specific requirements for basis of bearings contained within the minimum standards, and the Respondent did not specifically address any of the four.” (Hearing Transcript, p.22 Ln. 20-23 & Exhibit 8, p.2)
11. Further, Mr. Cala, Jr. testified that his supplemental findings identifies “the fact that the survey does not clearly demonstrate corner monumentation or other pertinent information relating to the property boundaries and the relevant site conditions.” (Hearing Transcript, p.23 Ln. 2-6 & Exhibit 8, p.3)
12. In addition, Mr. Cala Jr. testified “the survey indicates that any two points on the survey can serve as the basis of bearings... [and] that specific criteria is not contained within the four acceptable methods of establishing the basis of bearings.” (Hearing Transcript, p.23 Ln. 7-11 & Exhibit 8, p.3)
13. Mr. Cala, Jr. also testified “the monumentation on the survey is very inadequately described, and so for the Respondent to indicate that any two monuments can establish basis of bearings without providing a complete description of each monument, including its size, its type, the characteristics, is then a misstatement by the Respondent with respect to the bearing base and [their] related monumentation.” (Hearing Transcript, p.23 Ln. 12-20 & Exhibit 8, p.3)
14. According to Mr. Cala, Jr., Respondent’s survey (Exhibit 1) contained items labeled in yellow and designated A3 that identify a few of the locations where the survey did not disclose records bearings and distances for the same courses on

the boundaries, which is a violation of Rule 12.8.2.9(J)(8). (Hearing Transcript, p.23-24 & Exhibit 1)

15. Mr. Cala, Jr. testified that the Noonan 2017 survey (Exhibit 1) does not adequately demonstrate and annotate the location of easements, specifically a water line easement and an ingress and egress easement, which are created by a separate document and not identified on the plat, nor their relationship of those easements to the surveyed boundaries. (Hearing Transcript, p.24-25 & Exhibit 1)
16. According to Mr. Cala, Jr., “the minimum standards are written in the interest of protecting the public, in informing the public of all conditions that are contained within a particular piece of property that’s being surveyed, That’s why the standards have been developed, and they are an absolute minimum requirement. They can be exceeded, and they should be exceeded, especially in cases such as this where you have significant conflict amongst two different property owners and you have come very, very conflicting common boundaries... And so regardless of the situation that a surveyor has encountered, he is required to follow at least those standards and clearly identify compliance with those standards.” (Hearing Transcript, p.31, Ln. 10-20, 25 & p.32, Ln. 1-4)
17. Respondent testified under oath at the hearing and addressed two issues in his defense: (1) the statute of limitations due to more than two years passing since the initial discovery of the alleged violation by the Board according to the 2019 New Mexico Engineering and Surveying Practices Act; and (2) the same statute prohibits the Board from taking action based on any complaint brought more than

ten years since the completion of the conduct that constitutes the basis for the action. (Hearing Transcript, p.33)

18. Respondent testified stating “part of the complaint was a 1996 plat, 25 years ago I did that, so I think that would clearly be under the statute of limitations.”

(Hearing Transcript, p.33, Ln. 24-25)

19. Respondent also testified that “this complaint was submitted to the [B]oard with a time stamp of January 25, 2019, which is more than two years ago, and I believe this case would fall, also, under the statute of limitations.” (Hearing Transcript, p.34, Ln. 2-5)

20. According to the Respondent, “that the 2017 plat I did four years ago, it was a resurvey of a 1996 map, and at the time I felt like I did not need to repeat a lot of the data that Mr. Cala has pointed out is missing on the 2017 plat, but it is in – on the 1996 plat, specific bearings and distances of the course of easements, for example.” (Hearing Transcript, p.34, Ln. 6-12)

21. Respondent testified, “I agree and I admit that I’ve become a little set in my ways as the surveying standards have evolved around me. Since the complaints have been made, I have reviewed and changed my methods to meet and comply with the standards. And if this whole process is aimed at protecting the public, enforcing the standards, increasing the professionalism of surveyors of the state, and educating the surveyors in the state, then this process has succeeded in my case. An example of my willingness to fully meet and comply with these standards is Exhibit A, which I have submitted.” (Hearing Transcript, p.34, Ln. 13-25)

COMPLAINT - BASIS OF BEARINGS: Respondent violated the Minimum Standards for Surveying NMAC Sec 12.8.2.9.J (6) contained in the 2017 Plat. However, taken as a whole for the public record, including the referenced 2016 Plat and 1996 Plat, this infraction is mitigated by the respondent's acknowledgment in his testimony before the Case Hearing officer that he violated the minimum standards inadvertently and attempted to remedy in the public records. The Board determined that NMAC Sec. 12.8.2.9 (J)(a) through (d) were not complied with.

Respondent violated the Minimum Standards for Surveying NMAC Sec 12.8.2.9.J (6) **IMPOSITION OF FINES OR SANCTIONS:** In accordance with guidelines adopted by the Board, for mitigated Violation of Boundary Surveying - failure to comply with Sec. 12.8.2.9.J (6) a mitigated fine of \$500.00 plus the proration of costs of the Board's administrative expenses is imposed, in addition to other violations herein.

COMPLAINT - MONUMENTATION AND FORMAT OF BOUNDARY CALLS REFERENCING RECORD BEARINGS AND DISTANCES: The respondent Noonan did violate the Minimum Standards for Surveying NMAC Sec 12.8.2.9 (J) (8) contained in the 2017 Plat. However, taken as a whole for the public record, including the referenced and the 2016 Plat and the 1996 Plat, this infraction is mitigated by the respondent's acknowledgment in his testimony before the Case Hearing officer that he violated the minimum standards inadvertently and attempted to remedy in the public records. Also, the depiction on the Plat(s) for corners found, set by respondent or missing is inadequate only by the symbols used in the keyed notes.

IMPOSITION OF FINES OR SANCTIONS: In accordance with guidelines adopted by the Board, for mitigated Violation of Boundary Surveying - failure to comply with Sec. 12.8.2.9 (8) a mitigated fine of \$500.00 plus the proration of costs of the Board's administrative expenses is imposed, in addition to other violations herein.

COMPLAINT - LOCATION OF GAPS OR OVERLAPS The respondent Noonan did violate the Minimum Standards for Surveying NMAC Sec 12.8.2.9.J (11) contained in the 2017 Plat. This infraction is aggravated by the complainant's testimony before the Case Hearing officer that they suffered consequential damages regarding the depiction of areas of overlap of adjoiners and fences on the 1996 Plat. This conclusion is mitigated by the respondent Noonan's attempts to clarify this overlap on the 2016 and 2017 Plats, but not sufficiently so to satisfy the complainant.

IMPOSITION OF FINES OR SANCTIONS: In accordance with guidelines adopted by the Board, for Violation of Boundary Surveying - failure to comply with Sec. 12.8.2.9 (11) an aggravated fine of \$1,000.00 plus the proration of costs of the Board's administrative expenses is imposed, in addition to other violations herein.

COMPLAINT - FAILURE TO COMPLY WITH SUBSECTIONS 12.8.2.9 (J)(14):

Not adequately defining the gap. Depiction but no annotation about the overlap of the boundary location in the 2017 Plat.

IMPOSITION OF FINES OR SANCTIONS:

In accordance with guidelines adopted by the Board, for Violation of Boundary Surveying - failure to comply with Sec. 12.8.2.9 (J) (14) a mitigated fine of \$800.00 plus the proration of costs of the Board's administrative expenses is imposed, in addition to other violations herein. This infraction is mitigated by the imposition of other penalties and sanctions.

The total of the fines are \$2,800, along with administrative costs from the disciplinary hearing. This amount is due within 6 months of the date of this signed Order.