

**MEETING OF THE PROFESSIONAL SURVEYING
COMMITTEE of the Board Licensure of Professional
Engineers and Professional Surveyors held at
9:00 a.m., Thursday, November 4, 2021,
Virtual/Telephonic Meeting**

Members Present- David Cooper, PS, Committee Chair
Clifford Spirock, PS
Maxine McReynolds, Esq., Public Member

Others Present- Perry Valdez, BLPEPS, Executive Director
Miranda Gonzales, Administrative Manager
Dominique Trujillo, Licensing Administrator
Angelica Urioste, Compliance Officer
Isaac Maes, Executive Assistant
Valerie Joe, Legal Counsel
Chuck Cala, PS, Board Investigator
Earl Burkholder, PEPS
Robert Watt, PS
Allen Grace, PS
Nick Cova
Greg Smithkier, AAG

1. Convene, Roll Call and Introduction of Audience

Mr. Cooper read the meeting script regarding the virtual meeting protocols. the meeting at 9:12 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 on the Board's website as well as outside the doors of the Agency's office.

3. Approval of Agenda

MOTION by Mr. Spirock to approve the agenda as presented, **SECONDED** by Ms. McReynolds,

Roll Call Vote

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

The motion **PASSED unanimously.**

4. Approval of Minutes

a. Minutes August 26, 2021

MOTION by Mr. Spirock to approve the Minutes of August 26, 2021 as presented, **SECONDED** by Ms. McReynolds,

Roll Call Vote

Voting Aye: Mr. Cooper, Mr. Spirock, Ms. McReynolds

The motion **Passed unanimously**.

5. Requested Public Comment

a. 5-PS-09-23-2014 Order to Show Cause

The Order to Show Cause, dated September 24, 2021 provided notice of the scheduled November 4, 2021 Order to Show Cause Hearing. On November 4, 2021, at the Order to Show Cause Hearing, Mr. Watt requested the hearing be held at a later date as he requested the presence of his attorney, and due to his receipt of documents from the Administrative Prosecutor on the morning of the hearing. It is noted the copy of the Order to Show Cause, dated September 24, 2021. The Hearing Officer granted Mr. Watt's request for a continuance of the Order to Show Cause hearing on January 13, 2021 at 9:00 a.m.

6. Old Business

Mr. Spirock asked Mr. Valdez if a new committee member had been selected. Mr. Valdez informed Mr. Spirock and members of the Committee that the Governor has not appointed anyone as of yet. He said this matter is a priority for the Governor's office. Mr. Valdez stated that he would follow up with the Governor's office to get a status update on this matter. Mr. Valdez then informed the Committee that he will have a full report at the December 3, 2021 meeting.

7. New Business

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

Mr. Cooper asked Mr. Burkholder a question regarding college courses if a course could be taken for audit purposes only. Mr. Burkholder responded yes a course could be taken for audit purposes.

Mr. Cooper requested to place this item on the next agenda for discussion. He said this was in regard to the CFEDS certification as a qualified PDH and having to pass the examination. Mr. Cooper added the FAA Drone Part 107 as another example. He commented that these are probably the only ones where you have to take an exam and pass to earn the PDHs.

The Committee decided to add this item to the next meeting.

8. Application Review – Recommended Approval

a. Recommended for Approval List (Exhibit A)

MOTION by Mr. Spirock to approve Exhibit A, dated August 26, 2021, the recommended for approval applications, **SECONDED** by Ms. McReynolds,

Roll Call Vote

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

The motion **PASSED unanimously**

b. Retired Request(s)

Dennis VanRyckeghem, PS and Eric Yahoudy, PS

MOTION by Mr. Spirock to approve the requests for retired status, **SECONDED** by Ms. McReynolds,

Roll Call Vote

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

The motion **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, **SECONDED** by Ms. McReynolds,

Roll call vote taken, voting 'Yes': Mr. Cooper, Mr. Spirock, Ms. McReynolds

10. Action on Items Discussed During Executive Session

Mr. Cooper 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 5-PS-09-23-2014 – Order to Show Cause

This item was not discussed due to the order of continuation.

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

Mr. Cooper decided to table this item until more information is obtained.

3) Case 6-PS-09-08-2020 – Complaint Manager’s Report

MOTION by Mr. Spirock to move that we attempt to negotiate a pre-NCA settlement agreement, and if no agreement is executed by February 1, 2022, the matter will be automatically referred to the Attorney General’s Office for the Issuance of a Notice of Contemplated Action (NCA) for violations of the minimum standards of surveying in New Mexico. (1) for Boundary Surveying in Section 12.8.9(J)(5) NMAC; (2) for failing to satisfy the basis of hearing requirements in Section 12.8.9(J)(6) NMAC; and (3) for failing to satisfy the Easement Surveying requirements in Section 12.8.2.12 NMAC., **SECONDED** by Ms. McReynolds,

Roll Call Vote

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

The motion **PASSED unanimously**

4) Case 7-PS-10-05-2020 – Complaint Manager’s Report

MOTION by Ms. McReynolds to send a Cease and Decease letter for practicing without a license, **SECONDED** by Mr. Spirock,

Roll Call Vote

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

The motion **PASSED unanimously**

5) Case 7-PS-02-27-2020 – Complaint Manager’s Report

MOTION by Mr. Spirock to move that we attempt to negotiate a pre-NCA settlement agreement, and if no agreement is executed by December 6, 2022, the matter will be automatically referred to the Attorney General’s Office for the Issuance of a Notice of Contemplated Action (NCA) for a violation of NMSA 1978, Section 61-23-27.11(A)(5), **SECONDED** by Ms. McReynolds,

Roll Call Vote

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

The motion **PASSED unanimously**

6) Case 2-PS-01-25-2021 – Complaint Manager’s Report

MOTION by Mr. Spirock to move that we attempt to negotiate a pre-NCA settlement agreement, and if no agreement is executed by December 6, 2022,

the matter will be automatically referred to the Attorney General's Office for the Issuance of a Notice of Contemplated Action (NCA) for a violation of NMSA 1978, Section 61-23-27.11(A)(5). **SECONDED** by Ms. McReynolds,

Roll Call Vote

Voting 'Aye': Mr. Cooper. Mr. Spirock Ms. McReynolds

The motion **PASSED unanimously**

b. Status Review of Complaints and NCA Referrals

A report was reviewed on the status of pending cases and referrals for Notice of Contemplated Actions.

c. Applications for Review

1) PS Exam

a) Nolan, P.

MOTION by Ms. McReynolds to not accept application and to require the enrolment of core courses for application acceptance, **SECONDED** by Mr. Spirock,

Roll Call Vote

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

The motion **PASSED unanimously**

2) PS Endorsement

a) Araujo-Cruz, R.

MOTION by Mr. Spirock to approve for PS Endorsement and accept application for New Mexico Specific PS Exam, **SECONDED** by Ms. McReynolds,

Roll Call Vote

Voting 'Aye': Mr. Cooper. Mr. Spirock Ms. McReynolds

The motion **PASSED unanimously**

b) Whitaker, A.

MOTION by Ms. McReynolds to not accept the application and request the applicant to complete the required core classes. Upon doing so application will be reconsidered, **SECONDED** by Mr. Spirock,

Roll Call Vote

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

The motion **PASSED unanimously**

11. Next Scheduled Meeting Date: January 13, 2021 – Albuquerque/Virtual

12. Adjourn

Meeting adjourned at 12:44 p.m.

**Order to Show Cause Transcription
For Case Number: 5-PS-09-23-2014**

Mr. Cooper: This is an Order to Show Cause Hearing of the New Mexico Board of Licensure for Professional Engineers and Professional Surveyors. This hearing will come to order at 9:27 am on November 4, 2021. The purpose of this hearing is to take evidence related to the non-compliance of the agreed upon February 1, 2019 settlement agreement by the Respondent, Robert Watt, PS, License No. 11770, case number 5-PS-09-23-2014.

Due to the COVID-19 public health state of emergency, this hearing is being held online via the Zoom platform. Let the record reflect that Zoom includes both audio and video functions such that all participants can be observed audibly and visually.

I am the Committee Chair David Cooper and will preside over this Order to Show Cause hearing. Members of the Board present are:

Mr. Valdez: David Cooper, Clifford Spirock, Maxine McReynolds

Mr. Cooper: Present

Mr. Valdez: Clifford Spirock

Mr. Spirock: Present

Mr. Valdez: Maxine McReynolds

Ms. McReynolds: Present

Mr. Cooper: There are no Board members absent from this meeting. We have a quorum of the Board.

I will make all evidentiary and procedural rulings in this matter. Assistant Attorney General Greg Smithkier will be advising the Board in this proceeding.

This hearing is conducted under the authority vested by the Engineering and Surveying Practice Act, NMSA 1978, Sections 61-23-1 through 61-23-36 and the Board's regulations.

This hearing is being transcribed by, Mr. Valdez?

Mr. Valdez: This meeting will be transcribed by us.

Mr. Cooper: This hearing is being transcribed by the Board of Licensure

If anyone would like a transcript of today's hearing, please contact the Court Reporter, Mr. Valdez after the hearing.

Will the parties please enter their appearances for the record?

Ms. Joe: Yes, my name is Valerie Joe and I am the Assistant Attorney General,

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acting as the Administrative Prosecutor in this case.

Mr. Watt: This is Robert Watt. Robert Watt, New Mexico Professional Surveyor, 11770, the Respondent in this case.

Mr. Cooper: To begin, I want to advise all participants in this hearing that they must only speak one person at a time. In other words, no person may interrupt another person who is speaking. This is not a suggestion, and I will enforce this rule throughout the hearing.

So as not to confuse anyone, this rule of only one person speaking at a time applies to: the attorneys, the parties, the witnesses, and the Board members.

Witnesses will wait for the question to be asked in its entirety before they answer. Attorneys will wait for the witnesses to answer the question in its entirety before they ask another question.

I will tolerate no exceptions to this rule. If I fail to enforce this rule, the court reporter will do so herself.

Again, NO EXCEPTIONS: only one person may speak at a time.

One more rule: Board members shall refrain from talking to each other during this hearing and, particularly, when a witness is testifying, or an attorney is speaking.

Now I will continue.

Mr. Smithkier: Mr. Chair?

Mr. Cooper: Yes

Mr. Smithkier: May I advise that the Respondent turn his camera on just for the record, so we have video and audio.

Mr. Cooper: Yes, please. Let me know when you are ready.

Mr. Watt: Confirming video, confirming audio.

Mr. Cooper: Perfect. Sorry I don't have a video, I got three computer screens upon on my desk. None of the videos seem to be working today. My apologies on that.

This hearing will be conducted in accordance with the Uniform Licensing Act, NMSA 1978, Sections 61-1-1 through 61-1-36.

Hearings before this Board do not follow the Rules of Evidence and, as Presiding Officer, I may admit any evidence I deem relevant. I may limit testimony that is

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incompetent, irrelevant, immaterial or unduly repetitious; the decision to exclude or limit such evidence will be made by me as Presiding Officer.

The rules of privilege apply in this hearing to the same extent as in proceedings before New Mexico courts.

This Board may take notice both of judicially cognizable facts and of general, technical or scientific facts within our specialized knowledge.

Both parties may present Opening Statements and Closing Arguments. The attorney for the Board will present her case and evidence first, and then the Respondent may present his/her case and evidence in defense of the allegations alleged in the Order to Show Cause. The attorney for the Board will have an opportunity to present a rebuttal.

All testimony presented at this hearing will be under oath, and witnesses will be sworn by the Court Reporter.

Exhibits that are admitted into evidence will be marked into the record by the parties or the Court Reporter and then given to me for the Board's use during this hearing.

Any witness offering testimony will be questioned first by the party offering the testimony and then by the opposing party. I will permit direct examination, cross-examination, redirect examination, and re-cross examination of all witnesses. Counsel is instructed to limit their cross-examination of any witness to only those issues presented in the direct examination.

When both parties have finished their examinations, any Board member and the Board attorney may, in their discretion, also question witnesses. No other questioning will be permitted after the Board members have ended their questioning.

Unless the parties have anything further, we are ready to begin.

Mr. Spirock: Mr. Chair?

Mr. Cooper: Yes sir?

Mr. Spirock: This is Cliff. Could somebody, one of the attorneys present, explain judicially cognizable facts.

Ms. Joe: It means something that everyone basically knows to be true, common knowledge, things of that nature. So, like what a plat is, what a survey plat. I don't think if I were putting evidence on, with respect to that, I wouldn't have to explain it to everyone unless, of course, someone asked.

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Mr. Spirock: Thank you.

Mr. Cooper: Anything else? Anything from the other parties? Any questions?

Mr. Watt: Yeah this is respondent uh Robert Watt and I have a couple of question.

Mr. Cooper: Uh yes Robert please go ahead.

Mr. Watt: So my understanding was today was going to be um today's meeting was going to be an order to show cause I didn't find anything that said this was going to be an actually hearing. And um so I am not really prepared for a complete hearing and secondly, I did receive multiple materials from Valerie Jo that were just arrived to me at the start of business today within the last hour. I have not a chance to review any of those materials.

Mr. Cooper: Counsel is this a problem?

Mr. Smithkier: Um so I can explain what an order to show cause hearing is. The hearing today is with respect to the settlement agreement and um you could make a request for continuance if you would like. The respondent could. If he needs more time to review the materials.

Mr. Cooper: Mr. Watt?

Mr. Watt: Yeah in all fairness I'd like to have more than an hour to prepare for a hearing uh and possibly seek legal counsel to assist me with that. So I would like to request a continuance for this hearing.

Mr. Cooper: Counsel?

Mr. Smithkier: That's up to you Mr. Chair. That's within your discretion.

Ms. Joe: And presiding officer, Chair Cooper, I would have no objection I do understand the lateness of my materials being sent and in all fairness to the respondent I was planning to go over it line by line today to make sure that he would understand the material that I did put in so I would have no objection to a continuance if the court is willing to do that.

Mr. Cooper: Umm. Well in all fairness to Mr. Watt I concur with him um just a couple of hours is really not enough time to go over the material and come up with anything for in his defense. So I would recommend a delay.

Ms. Joe: And um presiding officer, Chair Cooper, would that be likely at the next professional surveying committee meeting? I believe that was mentioned to be sometime in January just so everyone has fair notice to see if they are available at that date and time.

Mr. Cooper: Um unless we need to have a special meeting, were not under a time limitation are we?

Ms. Joe: No your honor, we're not. And it is holidays coming up and stuff like that, so I believe January would be a good time if Mr. Watt is meet-able to that date.

Mr. Cooper: Mr. Watt?

Mr. Watt: Yes, I am agreeable to the date in January I will be available.

Mr. Cooper: Okay well then lets uh do this continence to the January meeting then.

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Ms. Joe: Thank you

Mr. Smithkier: Thank you

Mr. Cooper: It doesn't require any type of vote or anything does it Ms. Joe?

Ms. Joe: It's usually at the discretion of the chair since you are the presiding officer over this proceeding and I believe Mr. Smithkier here can help you draft such a document to sign it and so everyone knows the date of the next hearing and Mr. Watt has full knowledge of that date so that he can prepare in the way he needs to and now he has all the materials I am planning to submit so hopefully all should go smoothly at the next date. Thank you.

Mr. Cooper: Perfect, so we have a continuance going if Greg can get those drafted for us and I'll get it signed.

Mr. Smithkier: Will do it Mr. Chair thank you.

Mr. Cooper: Thank you Sir.

Mr. Watt requested a continuance as he received paperwork pertaining to his case an hour before his meeting from Ms. Joe and felt that he didn't have enough time to prepare a defensive strategy. The board approved Mr. Watt's request for continuance. Mr. Cooper stated the continuance of Mr. Watt's case will take place at the Professional Surveyors Committee Meeting on January 13, 2022. The committee then officially closed order to show cause until January 13, 2022.