

Minutes

**MEETING OF THE PROFESSIONAL ENGINEERING
COMMITTEE of the Board Licensure for Professional
Engineers and Professional Surveyors held 1:00 p.m.,
Wednesday, November 6, 2019,
Conference Room, Substation of the New Mexico State Police
4615 Hawkins St., NE, Albuquerque, NM**

Members Present- Dr. Walter Gerstle, PE
Julie Samora, PE
Karl Tonander, PE
Paul Brasher, PE

Members Absent- Ron Bohannon, PE, Committee Chair

Others Present- Perry Valdez, BLPEPS, Executive Director
Miranda Gonzales, BLPEPS, Compliance Officer
Miguel Lozano, Legal Counsel

1. Convene, Roll Call and Introduction of Audience

Dr. Gerstle convened the meeting at 1:07 p.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. Tonander to approve the agenda, **SECOND** by Mrs. Samora, **PASSED** unanimously.

4. Approval of Minutes

a. Minutes of August 8, 2019

MOTION by Mr. Tonander to approve the Minutes of August 8, 2019, **SECOND** by Mr. Brasher, **PASSED** unanimously.

5. Public Comment/Correspondence

a. J. Murtagh – Special Prosecutor Request

Mr. Valdez introduced Mr. Murtagh to make a special request of the Board. Mr. Murtagh asked if the Members received his written correspondence. Mr. Valdez informed the Committee the document was provided in the meeting packet and on their tablets.

Mr. Murtagh provided a brief summary, as of 2015 he filed a complaint with the Board and with the Office of the Attorney General. The complaint was regarding numerous alleged violations of the Professional Engineering State Statutes by numerous professional engineers. According to Mr. Murtaugh, in early 2017, the Board decided to go to the Office of the Attorney General for investigation of five of these engineers. Mr. Murtaugh began his own lawsuit in 2016 and 2017, gained a hundred plus exhibits, thousands of pages of depositions which Mr. Barela and the Office of the Attorney General have, allegedly showing more than just the PE violations, fraud, extortion, kickbacks, bribery, and securities fraud, it's all in there. Mr. Murtaugh went back to the Attorney General in late 2017 requesting to amend his complaint, that it was more than before. He presented more information gained from the civil investigation through discovery, and did not hear a response from the Office of the Attorney General again. Mr. Murtaugh retold how he was at the meeting last August informing the Committee that's it's been almost four years and the Attorney General has ignored his requests for a criminal investigation. The Attorney General allegedly turned down the Board's request to start the Board's own investigation. Mr. Murtagh said maybe it is time to look at a special prosecutor, which the State Statute allows the Board to do. The following month of September of last year he was advised by the Office of the Attorney General they didn't have the money to hire a special prosecutor. In the meantime, the clock is ticking, He stated the civil and criminal statute of limitations have different timing so unfortunately most, if not all, of the criminal prosecutions are all gone because of the lack of initiation of investigation. Mr. Murtaugh pointed out the State Statutes give the Board the option of up to 7,500 dollars fine per violation and/or up to one year in jail per violation. Mr. Murtaugh observed that the lack of the Attorney General starting an investigation has taken the penalty away from the Board, so the Board can no longer recommend a criminal prosecution, so it is back to only civil. Mr. Murtagh indicated there are tens of thousands of dollars of damages, and that the penalty of 7,500 dollar per violation amounts to a rounding error. Mr. Murtaugh stated that he is not an attorney, but if you can prove racketeering, that would address fraud, conspiracy, securities fraud, kickbacks, and bribery. Mr. Murtaugh suggested that the Board has the opportunity to pick a special prosecutor, to use a tool given to the Board, the RICO laws to actually go against them [the numerous engineers] and then force them to actually reimburse the Board and reimburse the special prosecutor, in addition to make all the victims whole by penalizing them and taking back what they stole from others. He said it could be that last year there was no money in the budget, but there is more money in the budget this year so he requested to go back and see if the Board can make whole the allegedly affected landowners. Mr. Murtaugh alleged that the perpetrators include a consulting engineering firm, an engineering department to local city, an engineering department of a state agency, the attorneys plotting with the engineers to get it done; it goes well beyond just 5 or 7 engineers. Mr. Murtaugh alleged that by not reacting to it the Board basically is enabling them to continue the same

process as in the past. Mr. Murtaugh suggested that the challenge is that the Attorney General, for whatever reason, basically has decided not to investigate it and it comes down to the Board Mr. Murtaugh suggested that it's one thing if you have a seal, but it's something else if the engineers are involved in multimillion-dollar extortion and fraud, at the city level, the state level, and at the municipal level. Mr. Murtaugh alleged that Mr. Barela can testify that he has hundreds of exhibits and thousands of pages of testimony where the alleged perpetrators admit what they did. Mr. Murtaugh requested that the Board look at it again, maybe ask Mr. Valdez and Mr. Barela again, given the new information he has provided to show what they allegedly did and they should have been thrown in jail more than five years ago for what they did. Mr. Murtaugh noted that he lost his company, all his property, over five million dollars as well as direct losses, a mortgage, and most of my employees, all while the alleged perpetrators benefitted financially. By not prosecuting it, Mr. Murtaugh alleged, the Board is enabling what they are doing, making it the culture of Albuquerque, which is awful.

Dr. Gerstle asked Mr. Lozano what the Board could do. Mr. Lozano replied there is a memo to the Board regarding the use of a special prosecutor. The Board does have the authority to use a special prosecutor; however, Mr. Murtagh has expanded that authority to a point not feasible for this Board. Mr. Lozano said he will advise the Board further in closed session, essentially racketeering is not a criminal provision that this Board can enforce criminally.

Mr. Murtagh asked what is left out there; if the Attorney General knows that there isn't a criminal prosecution happening, what else, and if you depend on the Attorney General's office to prosecute and they don't do it? Mr. Murtaugh then questioned what is the use of the Board and if they could ask the Attorney General if you can't prosecute, why can't you do it. Mr. Murtaugh concluded that in the last four years he had received either nothing or negative comments from the Attorney General, no you can't do this or no you can't do that.

Dr. Gerstle thanked Mr. Murtagh for speaking before the Committee and advised him this matter would be discussed.

Mr. Valdez indicated the cases are listed on the agenda for discussion in closed session.

6. Old Business

Mr. Valdez informed the Committee that there were no items for discussion.

7. New Business

Mr. Valdez informed the Committee that there were no items for discussion.

8. **Application Review**

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

PE Exam Application(s) - 7

PE Endorsement Application(s) -160

PE Reinstatement Application(s) - 20

MOTION by Mrs. Samora to approve Exhibit A, dated November 6, 2019, the recommended for approval applications, **SECOND** by Mr. Tonander, **PASSED** unanimously.

b. **PE Retired Status Request(s)**

MOTION by Mrs. Samora to approve the requests for retired status, **SECOND** by Mr. Brasher, **PASSED** unanimously.

c. **PE Inactive Status Request(s)**

MOTION by Mrs. Samora to approve the requests for inactive status, **SECOND** by Mr. Tonander, **PASSED** unanimously.

9. **Executive Session**

MOTION by Mr. Tonander 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 Mrs. Samora,

Roll call vote taken, voting 'Yes': Mr. Brasher, Dr. Gerstle, Mr. Tonander, Mrs. Samora

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

Dr. Gerstle 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).

11. **Action on Items**

a. **Disciplinary Cases**

1) **Case 6-PE-08-30-2018 – Complaint Manager’s Report**

MOTION by Mr. Brasher to close the case and take no further action, **SECOND** by Mr. Tonander, **PASSED** unanimously.

2) **Case 7-PE-11-07-2018 – Complaint Manager’s Report**

MOTION by Mr. Tonander to attempt to enter into a pre-NCA settlement agreement and that if no agreement is executed within 30 days, the matter will be automatically referred to the Attorney General’s Office for the issuance of an NCA, **SECOND** by Mr. Brasher, **PASSED**

unanimously.

3) Case 1-PE-02-20-2018

MOTION by Mr. Tonander to close the case and take no further action, **SECOND** by Mr. Brasher, **PASSED** unanimously.

4) Case 2-PE-03-13-2015(A)

5) Case 2-PE-03-13-2015(B)

MOTION by Mr. Brasher, to note for the record the Board does not have authority to engage in a special prosecutor in response to the request from Mr. Murtagh in his public comments before this Committee earlier today. Staff is directed to prepare a written response to Mr. Murtagh's request, **SECOND** by Mr. Tonander, **PASSED** unanimously.

b. Licensee Self-Reporting Issues

1) AA-11-26-2018

MOTION by Mrs. Samora to attempt to enter into a pre-NCA settlement agreement and that if no agreement is executed within 30 days, the matter will be automatically referred to the Attorney General's Office for the issuance of an NCA, **SECOND** by Mr. Tonander, **PASSED** unanimously.

2) AA-06-21-2019

MOTION by Mrs. Samora to acknowledge receipt and take no action, **SECOND** by Mr. Tonander, **PASSED** unanimously.

3) ARM-05-20-2019

MOTION by Mrs. Samora to acknowledge receipt and take no action, **SECOND** by Mr. Tonander, **PASSED** unanimously.

4) DMK-06-07-2019

MOTION by Mr. Tonander to acknowledge receipt and take no action, **SECOND** by Mr. Brasher, **PASSED** unanimously.

5) EBS-08-26-2019

MOTION by Mrs. Samora to attempt to enter into a pre-NCA settlement agreement and that if no agreement is executed within 30 days, the matter will be automatically referred to the Attorney General's Office for the issuance of an NCA, **SECOND** by Mr. Brasher, **PASSED** unanimously.

6) JES-04-29-2019

MOTION by Mr. Brasher to take no action pending further investigation into the status of the California license, **SECOND** by Mr. Tonander, **PASSED** unanimously.

7) JNM-12-15-2018

MOTION by Mr. Tonander to direct staff to request additional details on the disciplinary action, **SECOND** by Mr. Brasher, **PASSED** unanimously.

8) SPM-12-05-2017

MOTION by Mr. Tonander that based on the statute of limitations no further action be taken, **SECOND** by Mr. Brasher, **PASSED** unanimously.

9) RLB-08-05-2019

MOTION by Mr. Tonander to acknowledge receipt and take no action, **SECOND** by Mrs. Samora, **PASSED** unanimously.

10) RW-12-06-2018

MOTION by Mr. Tonander to acknowledge receipt and take no action, **SECOND** by Mrs. Samora, **PASSED** unanimously.

c. Status Review of Complaints and NCA Referrals

Mr. Brasher reported that Mrs. Gonzales, in closed session, provided a report to the Committee on the Status of pending cases and referrals for Notice of Contemplated Actions.

d. Applications for Review

1) PE Exams

a) Edwards, B.

MOTION by Mr. Tonander to approve a waiver for the FE Exam, **SECOND** by Mrs. Samora, **PASSED** unanimously

2) PE Endorsement

a) Adiyaman, I.

MOTION by Mrs. Samora to approve for Civil discipline, **SECOND** by Mr. Brasher, **PASSED** unanimously.

b) Belonger, S.

MOTION by Mrs. Samora to approve for Civil discipline, **SECOND** by Mr. Brasher, **PASSED** unanimously.

- c) **Bogaty, D.**
MOTION by Mr. Brasher to approve for Structural discipline,
SECOND by Mr. Tonander, **PASSED** unanimously.
- d) **Coronel, A.**
MOTION by Mr. Brasher to approve for Civil discipline,
SECOND by Mrs. Samora, **PASSED** unanimously.
- e) **Ebmeier, R.**
MOTION by Mr. Brasher to approve for Structural discipline,
SECOND by Mrs. Samora, **PASSED** unanimously.
- f) **Edwards, R.**
MOTION by Mr. Brasher to approve for Mechanical discipline,
SECOND by Mr. Tonander, **PASSED** unanimously.
- g) **Ganta, R.**
MOTION by Mr. Brasher to approve for Mechanical discipline,
SECOND by Mr. Tonander, **PASSED** unanimously.
- h) **Gerboth, L.**
MOTION by Mr. Tonander to approve for Electrical discipline,
SECOND by Mrs. Samora, **PASSED** unanimously.
- i) **Granson, V.**
MOTION by Mrs. Samora to not approve for licensure due to a
lack of experience, SECOND by Mr. Tonander, **PASSED**
unanimously.
- j) **Iwu, H.**
MOTION by Mrs. Samora to approve for Control Systems
discipline, SECOND by Mr. Brasher, **PASSED**.
- ***Mr. Tonander abstained from the vote.****
- k) **Makar, M.**
MOTION by Mrs. Samora to approve for Electrical discipline,
SECOND by Mr. Tonander, **PASSED** unanimously.
- l) **Martonovich, M.**
MOTION by Mr. Brasher to approve for Mechanical discipline,
and request further documentation for the Civil discipline,
SECOND by Mr. Tonander, **PASSED** unanimously.

m) Mertz, C.

MOTION by Mr. Brasher to approve for Structural discipline,
SECOND by Mr. Tonander, **PASSED** unanimously.

n) Nealon, K.

MOTION by Mr. Brasher to approve for Mechanical discipline,
SECOND by Mrs. Samora, **PASSED** unanimously.

o) Schofield, A.

MOTION by Mr. Brasher to approve for Electrical discipline,
SECOND by Mrs. Samora, **PASSED** with one Nay vote from Mr.
Tonander.

p) Turner, K.

MOTION by Mr. Brasher to not approve for licensure due to a
lack of meeting the educational requirement, **SECOND** by Mr.
Tonander, **PASSED** unanimously.

3) PE Reinstatement

a) Klien, C.

MOTION by Mr. Brasher to not approve for reinstatement,
pending the applicant provide additional details as to his work
experience during the period his license was lapsed, **SECOND** by
Mr. Tonander, **PASSED** unanimously.

12. **Next Scheduled Meeting Date:** January 16, 2020 – Santa Fe, NM

13. **Adjourn**

Meeting adjourned at 4:45 p.m.

Submitted by:

s/Perry Valdez

Perry Valdez, Executive Director

Approved by:

s/ Ron R. Bohannon

Ron R. Bohannon, Committee Chair

January 21, 2020 **Approved Date**