

MINUTES

MEETING OF THE PROFESSIONAL SURVEYING  
COMMITTEE of the Board Licensure of Professional  
Engineers and Professional Surveyors held 9:00 a.m.,  
Wednesday, November 6, 2019,  
Conference Room, Substation of the New Mexico State Police  
4615 Hawkins St., NE, Albuquerque, NM

**Members Present-** Cliff Spirock, PS, Committee Chair  
Augusta Meyers, Public Member  
Glen Thurow, PS

**Members Absent-** David Cooper, PS

**Others Present-** Perry Valdez, BLPEPS, Executive Director  
Miranda Gonzales, BLPEPS, Administrative Manager  
Chuck Cala, PS, Board Investigator  
Marah DeMeule, Assistant Attorney General, Legal Counsel  
Robert Watt, PS

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

Mr. Spirock convened the meeting at 9:09 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. Thurow to approve the agenda as presented, **SECOND** by Ms. Meyers, **PASSED** unanimously.

4. **Approval of Minutes**

a. **Minutes of August 8, 2019**

MOTION by Mr. Thurow to approve the Minutes of August 8, 2019 presented, **SECOND** by Ms. Meyers, **PASSED** unanimously.

5. **Old Business**

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

6. **New Business**

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

7. **Application Review – Recommended Approval**

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

**PS Exam Application(s)**

**PS Endorsement Application(s)**

Mr. Thurow had a question regarding applicant Miller, P. for the PS Exam and the additional 18 hours of surveying education required for those with a related science degree. Mr. Thurow was satisfied with staff's response regarding the applicant's educational qualifications.

**MOTION** by Ms. Meyers to approve Exhibit A, the recommended for approval applications, **SECOND** by Mr. Thurow, **PASSED** unanimously.

8. **Public Comment/Correspondence**

Mr. Valdez informed the Committee Mr. Noonan had requested to be placed on the agenda, however, he was unable to attend. Mr. Valdez indicated Mr. Noonan's letter is in the meeting packet and could be discussed during closed session.

a. **Watt, R. – Letter to Board**

Mr. Valdez informed the Committee that Mr. Watt submitted a letter for the Committee's consideration. Mr. Valdez stated the letter is in the meeting packet and is available for discussion during closed session. Mr. Watt introduced himself to the Committee and thanked them for the opportunity to speak before them. He stated it was his hope to bring to closure a complaint he is involved in. Mr. Watt informed the Committee he has fulfilled item two of the Settlement Agreement, which was to prepare a new survey plat, with a claim of exemption subdivision. The plat was submitted along with a letter requesting an extension because the parties involved and the plat are in litigation in District Court, in Taos County. Mr. Watt stated he felt he fulfilled the plat requirements of the Settlement Agreement and took care of the items which were outlined in the Notice of Contemplated Action (NCA). He hoped someone reviewed the plat he submitted and be handled in a manner to close the case. He further stated one of the requirements of the Settlement Agreement was the proper depiction of the division of the property, which he has done. Many hours have been spent on revising the plat in question, re-researching, creating a new plat with a current date, ensuring it meets the Minimum Standards for Surveying, and properly depicting the division of property. Another requirement of the Agreement, was to receive approval from the Taos County Planning Department for the divisions of the property. Mr. Watt was instructed to provide a completed Claim of

Exemption form, the proper deeds, proof of taxes paid, a certified survey plat, and all the requirements for a lot split the survey plat would be approved. The challenge will be to have the parties involved to sign any property deeds. Mr. Watt expressed his desire that the Committee resolve this case today and allow him to file the plat when the litigation is resolved between the parties.

Mr. Spirock asked Mr. Watt if the parties were still in litigation, Mr. Watt responded that they were. Mr. Spirock further questioned Mr. Watt regarding the presented survey if there were only two sheets, Mr. Watt acknowledged that there were only two sheets. Mr. Spirock noted that he is normally accustomed to seeing a deed with a free consent and dedication statement if it is a subdivision, a statement of a claim of exemption, and any particular county provisions if it is a claim of exemption, but these are not apparent. Mr. Watt responded that the plat is not a subdivision, Taos County doesn't require a dedication, on sheet two of the plat there is a place for the County Planning Department to acknowledge and approval of the exemption 13, of the lot split. Mr. Spirock requested clarification of why it was a lot split and not a subdivision. Mr. Watt explained that it falls under exemption 13 as a lot split and therefore not a subdivision. Mr. Spirock further asked, if the plat were recorded how would it be known that this was a lot split in accordance with the property owners? Mr. Watt replied that he suspected Taos County would not approve the plat until the owners signed the deeds based on the plat.

Mr. Thurow asked Mr. Watt if both litigants had an opportunity to review the survey. Mr. Watt answered that neither party had reviewed the new version.

Mr. Spirock asked if the investigator, Mr. Cala, if he reviewed the revised plat to verify if it conformed to the Minimum Standards. Mr. Cala responded he reviewed the plat, he is confused why this is not a platting action of some sort. He further explained, there is an exemption of certain requirements in Taos County's subdivision ordinance, this is still a platting action that is creating properties owned by several parties. Mr. Cala complimented Mr. Watt for the thorough work he did in subdividing the property into separate properties, however there still isn't owner consent demonstrated on the plat by signatures from each owner. He expressed two concerns, first that Mr. Watt is anticipating that the owners will agree to the configurations, and second, there is still confusion regarding tracts A1, B1, and C1 on how they are provided legal access

to a public roadway, or to property they own. There is a suggested roadway granting access to one of the tracts. Mr. Cala is unsure how Mr. Watt is attempting to resolve the complaint. Mr. Spirock inquired from Mr. Watt, if he discussed, with Taos County, the accessibility of the properties. Mr. Watt replied he had discussed this issue with Taos County and they are also concerned with the access.

Mr. Watt responded to Mr. Cala's concerns, around 1996 there were quitclaim deeds signed that dived the property into the three tracts. Taos County informed Mr. Watt that since this was done some years ago, the tracts of land would be grandfathered in. His task was to interpret the division of land from the deeds in a manner to identify the tracts of land. There was an apparent survey or document that clearly and distinctly shows to separate pieces of property with two distinct acreages, it did not show one combined tract. The deeds provided an overall percentage of land each owner was to receive and who the adjoining property owners were. There were no statements about access on the deeds. Mr. Watt stated he spoke with the owners and suggested they to share an easement. He added the deeds were clear, the tracts were parallel, the mother tract was this parcel, this parcel is two distinct pieces of property, it never shows the summed up easement on this plat, of this being one parcel.

Mr. Spirock asked Mr. Watt if the current civil action quiet the title. Mr. Watt replied he is aware of the action but he has not been involved in it directly. Mr. Spirock rephrased his question if it is the intent to quiet the title. Mr. Watt responded it is his understanding, but does not know that for a fact. Mr. Spirock agreed with Mr. Cala that the survey is a very adequate plat from the technical details, however the process and what is presented and how the County conventionally showed a subdivision plat, even if it is a claim of exemption, it is still a subdivision. If something is divided it is a subdivision. Mr. Watt responded the claim of exemption states a subdivision is not anything stated on this list. Mr. Spirock stated he looked at the property law and it is on the line per his interpretation, addressing Mr. Watt, you are exempting part of the process but you're not exempting the fact it is a division of property.

Mr. Spirock requested advise from the Legal Counsel, if the Committee could toll, suspend, the time until after a certain action. Ms. DeMeule responded in many Board's actions, litigation serves a means to toll possible action. Mr.

Thurow requested the Committee provide a response to Mr. Watt after discussion within the closed session.

Mr. Watt further added during his meeting with Taos County Planning Department, they recognize there are three lots. His task is to split the three lots into two lots, according to the interpretation of the deeds. Mr. Watt addressed Mr. Cala's second concern, there would be access to the properties. The three properties, all have access in the northeasterly end to a county road. He admitted he didn't clearly depict that, he added he is aware of the importance of easements and aware of the requirement of the Minimum Standards. He placed the easement on the plat and it was the right thing to do. Mr. Watt stated it was apparently his mistake by not indicating it was a proposed easement and subject to approval of the property owners. He informed the Committee for the revised plat he spoke with Mr. Ray Romero, who is the property owner of tract C1, and he agreed to grant an easement through the gate for the owner of tract A to be able to enter his property.

Mr. Cala inquired how did tract A1 have legal access? Mr. Watt replied that the owner of tract A1 purchased B1 and B2 parcels. Mr. Cala sought further clarification, A1 has access by virtue of tracts B1 and B2, yet neither of those tracts have access. Mr. Watt explained they presumably have access through tracts A2 or B2. Mr. Cala indicated tract A2 and B2 are not continuous with A1 and B1, so they couldn't. Mr. Watt responded he placed an arc easement on the northwesterly corner of C1, as a proposal for the owners to agree to place an easement there. Mr. Cala questioned how the owner of C1 has access. Mr. Watt answered that subsequent to his initial survey, Mr. Ray Romero who owns the southeasterly parcel acquired the adjoining parcel southeast to that. A note was made per the standards. Mr. Cala stated the charge of a planning department in any County is to make sure that any parcel could possibly be legally conveyed has certain rights, one of those rights being legal access; so with the recordation of this plat in its current state six tracts of land will be created, three of which can be conveyed without legal access and all of which will have been created without consent of the property owners. Mr. Watt agreed to what Mr. Cala stated. Mr. Cala inquired of Mr. Watt, as a surveyor and under the New Mexico Practice Act, what do you believe gives the surveyors the authority to interpret matters like this, you have demonstrated your technical abilities. Mr. Watt replied he didn't have a prepared response, however, through his education, continuing

education, classes taken, studying of books, say that's what the quasi-judicial authority of a surveyor. We are the ones to make this interpretation, not sure who else could do that.

Mr. Spirock reiterated he had a problem with the public record, if it was recorded as is, if there was a disposition by the Court, and everyone thought it was okay in 2019 showing a plot on the record showing here is a proposed easement means nothing researching the public record two years from now, it leads to the question was it disposed of, it was proposed but is it there or not. There are some deficiencies, not so much with you but perhaps with the Taos County Planning Department process.

Mr. Thurow asked Mr. Watt if he was under some time line to file the plat. Mr. Watt responded he was not. Mr. Spirock inquired if Taos County is waiting for the civil action to be completed to sign the approval. Mr. Watt replied that the County will accept the plat for the approval of the exemption and the taxes have been paid, the key element the preparation of the deeds. Mr. Thurow asked if presumably the deeds will allow for access to each of these parcels, would Mr. Watt be involved in drafting up the legal descriptions. Mr. Watt answered there are attorneys involved so they would.

**b. Noonan, M. – Request of Extension for Pre-NCA Settlement Agreement**

Mr. Noonan's legal representation submitted a letter for the Committee's consideration for an extension to complete the agreed upon Pre-NCA Settlement Agreement. The reason provided for the extension is that the parties in opposition claim they are unwilling to grant Mr. Noonan access to certain areas of the property, they are opposed to his entry onto the property. They would treat his entry as a trespass. Mr. Valdez also stated there is litigation action in process, the case number is provided in the letter.

Mr. Spirock inquired about the barring of the surveyor from completing his task, if the letter made any reference to the Statute regarding 61-23-30 the right of entry. Mr. Valdez read the Statute. Mr. Spirock asked Mr. Valdez if he ever recalled an instance where the Board provided a letter to either the surveyor or to the Sheriff about the Statute for the right of entry. Mr. Valdez responded the Board has never provided such a letter before. Mr. Spirock reminded Mr. Valdez about a Right of Entry pamphlet initiative which was proposed at a 2018 meeting.

Mr. Thurow expressed his concern about the difficulties of gaining access sometimes, even getting a Sheriff, and even though the Statutes allow for such access. He stated that the reality is that sometimes these are very delicate matters that need discretion.

Mr. Spirock added that is the reason for inquiring if the Board had ever provided a letter, or readily available documents, to offer to the Sheriffs, or whomever, to demonstrate the right of entry per the Statutes.

**9. Executive Session**

**MOTION** by Mr. Thurow 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 Ms. Meyers.

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

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

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).

**a. Disciplinary Cases**

**1) Case 5-PS-09-23-2014 – Corrected Survey Plat**

**MOTION** by Mr. Thurow to hold the Settlement Agreement open until such time that a final plat of survey is prepared by the surveyor addressing the remaining deficiencies concerning access and owner consent, **SECOND** by Ms. Meyers, **PASSED** unanimously.

**2) Case 8-PS-11-01-2018 – Letter to the Board**

**MOTION** by Mr. Thurow to approve a 90-day extension of the Settlement Agreement, beginning from 11/4/2019 to comply with the requirements of the Stipulated Agreement, **SECOND** by Ms. Meyers, **PASSED** unanimously.

**3) Case 2-PS-01-25-2019 – Complaint Manager’s Report**

**MOTION** by Mr. Thurow to refer for an NCA, **SECOND** by Ms. Meyers, **PASSED** unanimously.

**4) Case 6-PS-04-22-2019 – Complaint Manager’s Report**

**MOTION** by Mr. Thurow to issue an educational advisory to the respondent, **SECOND** by Ms. Meyers, **PASSED** unanimously.

**5) Case 8-PS-06-25-2019 – Complaint Manager’s Report**

**MOTION** by Mr. Thurow to issue an educational advisory to the respondent, **SECOND** by Ms. Meyers, **PASSED** unanimously.

**b. Status Review of Complaints and NCAs**

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

**c. Applications for Reconsideration**

**1) PS Endorsement**

**a) Broom, L.**

**MOTION** by Mr. Thurow to approve for PS endorsement, **SECOND** by Ms. Meyers, **PASSED** unanimously.

**b) Fontenot, B.**

**MOTION** by Mr. Thurow to not approve for PS endorsement, **SECOND** by Ms. Meyers, **PASSED** unanimously.

**c) Perez, A.**

**MOTION** by Mr. Thurow to not approve for PS endorsement and have the applicant take the NCEES PS exam, **SECOND** by Ms. Meyers, **PASSED** unanimously.

**d) Taylor, G.**

**MOTION** by Mr. Spirock to approve for PS endorsement, **SECOND** by Ms. Meyers, **PASSED** with one Nay vote from Mr. Thurow.

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

**12. Adjourn**

Meeting adjourned at 12:09 p.m.

Submitted by:

s/Perry Valdez  
Perry Valdez, Executive Director

Approved by:

s/Cliff Spirock  
Cliff Spirock, Committee Chair

January 21, 2020 Approved Date