

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, November 3, 2022,
New Mexico State University, Goddard Hall
1100 S Horseshoe Street, Room 200,
Las Cruces, NM 88003 & Virtual**

Members Present- Robert Gromatzky, PS, Committee Chair
Maxine McReynolds, Esq., Public Member
John Wayne, PS
Benjamin Aragon, PS

Others Present- Perry Valdez, BLPEPS, Executive Director
Miranda Gonzales, BLPEPS, Administrative Manager
Isaac Maes, BLPEPS, Executive Assistant
Angelica Urioste, BLPEPS, Compliance Officer
Dominique Trujillo, BLPEPS, Licensing Administrator
Valerie Joe, AAG, Legal Counsel
Larry Medrano, PS David
Gonzalez, Esq.

1. Convene, Roll Call and Introduction of Audience

Mr. Gromatzky read the meeting script regarding the virtual meeting protocols. He convened the meeting at 9:15 a.m. Roll call was taken and a quorum was noted. Audience introductions were made at this time.

2. Meeting Notification

Mr. Valdez informed the Committee the meeting was noticed on the Board's website and at the Board Office.

3. Approval of Agenda

MOTION by Mr. Aragon to approve the agenda as presented, **SECONDED** by Mr. Wayne,

Roll Call Vote:

Voting 'Aye': Mr. Gromatzky, Mr. Wayne, Mr. Aragon

The motion **PASSED unanimously**.

4. Approval of Minutes

a. Minutes of August 11, 2022

MOTION by Mr. Wayne to approve the amended Minutes of August 11, 2022 as presented, **SECONDED** by Mr. Aragon **Roll Call Vote:**

Voting 'Aye': Mr. Gromatzky, Mr. Wayne, Mr. Aragon The

motion **PASSED unanimously**.

Ms. McReynolds Joined the meeting at 9:25am

5. Old Business

a. 2022 Datum Ellipsoid and State Plane Coordinates

Mr. Gromatzky informed the Committee that he met with Mrs. Bell from NGS. He said that upon meeting with her, she informed him that the new plane coordinates will not be ready until approximately 2024. Mr. Gromatzky informed the committee that due to this, the state laws will not be able to be updated due to the new state plane coordinates needing updates. However, the US survey foot is still being deprecated by the end of December of this year.

Mr. Gromatzky added that without the State Plane Coordinates being defined by NGS, he didn't believe the Committee could address the issue of the survey foot this year.

Mr. Valdez clarified with Mr. Gromatzky that the State Plane Coordinates would not be ready until 2024.

Mr. Gromatzky concurred this and said he will be meeting again with Ms. Bell later on in the month.

Mr. Valdez asked Mr. Gromatzky if there will be legislative action to change certain statutes.

Mr. Gromatzky said there will be needed changes in other statutes, and laws, to reflect the definition of the new datum.

6. New Business

a. Review of Penalties

Mr. Gromatzky informed the Committee that he had drafted of the Penalties and Fees schedule to observe how the Committee views complaints and the fees associated with them. He requested input from the other Committee members to come to an agreement to what the final conclusion of some of the items are.

Mr. Gromatzky noted that this draft of the Penalties chart was crafted was based off discussions with the Chair of the Professional Engineering Committee Chair to address penalties.

Mr. Aragon thought the document was a good starting point.

Ms. McReynolds and Mr. Wayne had no comments and agreed with Mr. Aragon.

Ms. Joe asked Mr. Gromatzky how the Committee would like to proceed further with this item and if they would like to send it to the Rules and Legal Committee to further review it.

Mr. Gromatzky informed Ms. Joe and the Committee that once this item has gotten further point and years and different steps in the penalties based off the number offensives, they would like to send it to the Rules and Legal Committee.

Mr. Gromatzky asked Ms. Joe how this document would be incorporated into the function of the Board, and if it would become part of the Minimum Standards or if it is just a working ad hoc document that helps guide the Board's decision process.

Ms. Joe informed Mr. Gromatzky and the Committee that as of right now it is it is just a discussion document. Ms. Joe added that it would need to looked at along with the overall penalties schedule as well as take into account if there are any changes the Committee would like to make.

Mr. Gromatzky sated that this draft was intended to work in conjunction with the overall penalties schedule.

Ms. McReynolds added that she will review this draft and return any comments for sub-committee consideration or Mr. Gromatzky's consideration.

7. Application Review – Recommended Approval

a. Recommended for Approval List (Exhibit A)

PS Exam Application(s)

MOTION by Mr. Wayne to approve K. Keller for the PS Exam,
SECONDED by Mr. Aragon

Roll Call Vote:

Voting ‘Aye’: Mr. Gromatzky, Ms. McReynolds, Mr. Wayne, Mr. Aragon

The motion **PASSED unanimously.**

MOTION by Mr. Wayne to approve W. McMarlin for the PS Exam,
SECONDED by Mr. Aragon

Roll Call Vote:

Voting ‘Aye’: Mr. Gromatzky, Ms. McReynolds, Mr. Wayne, Mr. Aragon

The motion **PASSED unanimously.**

PS Endorsement Application(s)

MOTION by Mr. Wayne to approve T. Martin for PS Endorsement,
SECONDED by Mr. Aragon

Roll Call Vote:

Voting ‘Aye’: Mr. Gromatzky, Ms. McReynolds, Mr. Wayne, Mr. Aragon

The motion **PASSED unanimously.**

MOTION by Mr. Wayne to approve R. Snyder for PS Endorsement,
SECONDED by Mr. Aragon

Roll Call Vote:

Voting ‘Aye’: Mr. Gromatzky, Ms. McReynolds, Mr. Wayne, Mr. Aragon

The motion **PASSED unanimously**.

8. Public Comment/Correspondence

a. Case 8-PS-11-01-2018 – Order to Show Cause

****Refer to attached court reporter transcription****

9. Executive Session

MOTION by Mr. Wayne 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. Aragon,

Roll call vote taken, voting ‘Yes’: Mr. Gromatzky, Ms. McReynolds, Mr. Wayne, Mr. Aragon

10. Action on Items Discussed During Executive Session

Mr. Gromatzky 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).

Ms. McReynolds exited the meeting at 10:17 am** **Mr. Valdez exited the meeting at 10:18 am during executive session while Case 8-PS-11-012018 was discussed** **Mr. Valdez returned to the meeting at 10:38 am

a. Disciplinary Cases

1) Case 8-PS-11-01-2018

MOTION by Mr. Gromatzky that it was not proven that Respondent did not comply with the pre-NCA settlement agreement. Respondent provided proof of compliance with the pre-NCA settlement agreement in Exhibits 6 and 7. Therefore, the Executive Director did not prove his case that the Order to Show Cause was established by a preponderance of the evidence, **SECONDED** by Mr. Wayne

Roll Call Vote:

Voting ‘Aye’: Mr. Gromatzky, Mr. Wayne, Mr. Aragon

The motion **PASSED unanimously**.

Mr. Ney joined the Meeting at 12:35 pm

2) Case 1-PS-01-25-2021

MOTION by Mr. Gromatzky to refer for a notice of contemplated action,
SECONDED by Mr. Wayne

Roll Call Vote:

Voting 'Aye': Mr. Gromatzky, Mr. Wayne, Mr. Ney

Abstain: Mr. Aragon

The motion **PASSED**.

3) Case 5-PS-08-03-2021(A)

MOTION by Mr. Gromatzky to dismiss the case and take no further action,
SECONDED by Mr. Aragon

Roll Call Vote:

Voting 'Aye': Mr. Gromatzky, Mr. Wayne, Mr. Aragon

The motion **PASSED unanimously**.

4) Case 5-PS-08-03-2021(B)

MOTION by Mr. Gromatzky to dismiss the case and take no further action,
SECONDED by Mr. Wayne

Roll Call Vote:

Voting 'Aye': Mr. Gromatzky, Mr. Wayne, Mr. Aragon

The motion **PASSED unanimously**.

5) Case 3-PS-02-08-2021

MOTION by Mr. Gromatzky 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,
SECONDED by Mr. Wayne

Roll Call Vote:

Voting 'Aye': Mr. Gromatzky, Mr. Wayne, Mr. Aragon

The motion **PASSED unanimously**.

6) Case 1-PS-01-27-2020

MOTION by Mr. Gromatzky to close the case due to compliance with the default order, **SECONDED** by Mr. Aragon

Roll Call Vote:

Voting 'Aye': Mr. Gromatzky, Mr. Wayne, Mr. Aragon

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) Allahyari, M.

MOTION by Mr. Gromatzky to not approve for the PS Exam,
SECONDED by Mr. Aragon

Roll Call Vote:

Voting 'Aye': Mr. Gromatzky, Mr. Wayne, Mr. Aragon

The motion **PASSED unanimously**.

2) Endorsement

a) **Knieval, A.**

MOTION by Mr. Gromatzky to not approve for PS endorsement,
SECONDED by Mr. Aragon

Roll Call Vote:

Voting 'Aye': Mr. Gromatzky, Mr. Wayne, Mr. Aragon

The motion **PASSED unanimously.**

11. Next Scheduled Meeting Date: January 12, 2023 – Albuquerque /Virtual

12. Adjourn

MOTION by Mr. Gromatzky to adjourn the meeting, **SECONDED** by Mr. Wayne

Roll Call Vote:

Voting 'Aye': Mr. Gromatzky, Mr. Wayne, Mr. Aragon

The motion **PASSED unanimously.**

Meeting adjourned at 12:48 p.m.

Submitted by:

s/Isaac Maes

Isaac Maes, Executive Assistant

Approved by:

s/Robert Gromatzky

Robert Gromatzky, Committee Chair

January 12, 2023 **Approved Date**

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BEFORE THE BOARD OF LICENSURE FOR
PROFESSIONAL ENGINEERS AND PROFESSIONAL SURVEYORS
FOR THE STATE OF NEW MEXICO

IN THE MATTER OF:

Mitchel K. Noonan
License #6998
Case No. 8-PS-11-01-2018

TRANSCRIPT OF PROCEEDINGS
November 3, 2022

TRANSCRIBED BY: ANNE E. DEHON
NM CSR #263
BEAN & ASSOCIATES
PROFESSIONAL COURT REPORTERS
201 Third Street, Northwest
Albuquerque, New Mexico 87102
(505) 843-9494

JOB NO: 7531N

1 P R O C E E D I N G S

2 CHAIRMAN GROMATZKY: Moving on to agenda
3 item number eight, public comment/correspondence in
4 case 8-PS-11-01-2018, order to show cause.

5 I did have a question for counsel and for
6 the staff as to whether this portion of the agenda
7 is going to be, or should be, in closed executive
8 session or if we're having the order to show cause
9 within agenda item eight or if it will be a part of
10 9(a)(1).

11 MS. JOE: So the order to show cause hearing
12 is public. Deliberations about the results of the
13 order to show cause hearing are in closed session
14 under 9(a)(1). So I guess we would more properly
15 say under 8(a), order to show cause hearing.

16 CHAIRMAN GROMATZKY: Okay.

17 MS. URIOSTE: Just a point of clarification.
18 The agenda items that were -- it's public comment
19 or correspondence on this case. I read this as we
20 were inviting public comment on this case before
21 going into executive session, so I guess I
22 misunderstood that.

23 MS. JOE: The respondent received a notice
24 of the order to show cause hearing taking place
25 today. We can amend this agenda item so it says

1 hearing or give it its own agenda item if the
2 committee thinks that clarifies things, but it was
3 on the agenda so it can properly move forward
4 today.

5 CHAIRMAN GROMATZKY: Has your staff received
6 any more documentation or communications from the
7 applicant or the respondent or the respondent's
8 counsel?

9 MR. VALDEZ: So, Mr. Chairman, members of
10 the committee, the staff did not receive -- or,
11 excuse me, the respondent did not have legal
12 counsel for this. They are themselves,
13 representing themselves pro se.

14 CHAIRMAN GROMATZKY: Okay.

15 MR. VALDEZ: We did receive -- in
16 communicating with the respondent regarding this
17 order to show cause, he sent an e-mail, I believe,
18 on Tuesday, and researching my records I did find
19 that he had sent a previous e-mail back in December
20 of 2020 complying with the settlement agreement.
21 Apparently, we missed that, and so that's why we
22 are having the order to show cause for failure to
23 comply with the settlement agreement. (Inaudible).
24 He did send an e-mail that we shared with you that
25 he wished to vacate this order to show cause

1 because he had complied the settlement agreement.

2 CHAIRMAN GROMATZKY: Okay. So is it the
3 board's response --

4 MS. JOE: I think what we should do as a
5 board, since the order to show cause notice was
6 provided to the respondent, he has provided the
7 information. I believe Mr. Valdez has indicated --
8 I know he communicated to me, and I was waiting for
9 the affirmation of the respondent for the
10 stipulated exhibits. I did not see that. So I
11 think, at this point, you just go forward.

12 I believe the board, the committee, has --
13 it's pretty much stated everything it needs to
14 state in its order to show cause document, and I
15 believe the respondent is mounting a defense, and
16 we can take those documents that he's provided and
17 that Mr. Valdez plans to submit during this hearing
18 and just have the hearing.

19 You know, because of the late timing of it,
20 you know, we couldn't have, say, a motion to
21 dismiss hearing, so we'll just have the hearing,
22 let the committee members weigh the evidence, and
23 then there will be an outcome to it. Talking about
24 it further, actually having the hearing makes it
25 more feasible.

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1 Did the respondent show?

2 MR. VALDEZ: No, the respondent is not on
3 Zoom.

4 MS. URIOSTE: Angelica Urioste speaking
5 here. I did speak with him a couple of times, I
6 would say two days ago, and he did mention that he
7 was not going to be present during the meeting
8 today just because he feels that he has complied
9 and he feels he does not need to move forward with
10 anything further. So --

11 MS. JOE: So I think we have information --

12 MS. GONZALES: I think Angelica --

13 MS. JOE: I'm sorry, was there something
14 else?

15 MS. URIOSTE: No, that is it. Thank you.

16 MS. JOE: I think we should just move
17 forward with the information, and the committee
18 will, when they go into closed session, weigh the
19 information and come to a --

20 CHAIRMAN GROMATZKY: Okay. So, without the
21 respondent and without their counsel, this is going
22 to be very one-sided, correct?

23 MS. JOE: I believe Mr. Valdez has been
24 provided with information that shows the
25 respondent's position that he has complied, and he

1 has his e-mail communication from respondent to Mr.
2 Valdez indicating so. I believe the evidence has
3 (inaudible) and the committee can come to a fair
4 conclusion.

5 CHAIRMAN GROMATZKY: Okay. All right.
6 Well, then, moving forward with agenda item number
7 eight, case 8-PS-11-01-2018, order to show cause,
8 this is an order to show cause hearing of the New
9 Mexico Board of Licensure for Professional
10 Engineers and Professional Surveyors. It will now
11 come to order. This hearing will come to order at
12 9:51 a.m. on November 3rd, 2022.

13 The purpose of this hearing is to take
14 evidence related to the amended pre-NCA settlement
15 agreement regarding case number 8-PS-11-01-2018
16 with Mitchel Noonan, license number 6998.

17 This is a hybrid hearing that is being held
18 in person at New Mexico State University, Goddard
19 Hall, at 1100 South Horseshoe Street, Room 200, in
20 Las Cruces, New Mexico, and online with a Zoom
21 webinar platform. Let the record reflect that Zoom
22 includes both audio and video functions such that
23 respondent can be observed both audibly and
24 visually.

25 I am the Professional Surveying Committee

1 Chair Robert Gromatzky and will preside over this
2 order to show cause hearing.

3 Members of the committee present are Maxine
4 McReynolds, John Wayne and Benjamin Aragon. We do
5 have a quorum of the board's committee.

6 I will make all evidentiary and procedural
7 rulings in this matter. Assistant Attorney General
8 Valerie Joe will be advising the committee in this
9 proceeding.

10 This hearing is being recorded and will be
11 transcribed by Bean & Associates. To provide an
12 accurate record, I ask that only one person speak
13 at a time, announce your name, and that you speak
14 clearly since the court reporter will not pick up
15 nods or gestures. If anyone would like a copy of
16 today's hearing, please contact the board after the
17 hearing.

18 Will the executive director please enter
19 your appearance?

20 MR. VALDEZ: Yes. Yes, I am Perry Valdez,
21 the executive director for the New Mexico Board of
22 Engineers and Surveyors, and I am present for this
23 order to show cause.

24 CHAIRMAN GROMATZKY: Thank you, Mr. Valdez.
25 Will the respondent or counsel for the record --

1 will the respondent or counsel for the respondent
2 please enter your appearance?

3 MS. JOE: This is Valerie Joe. I note that
4 the respondent has indicated through communications
5 with Ms. Angelica Urioste that he would not be
6 attending and he has provided information both to
7 Mr. Valdez about this (inaudible) and he was
8 provided the opportunity to appear. The notice was
9 sent to him via (inaudible) as well as through
10 e-mail and phone communications within the past
11 week.

12 CHAIRMAN GROMATZKY: Thank you, Ms. Valerie
13 Joe.

14 Again, I want to advise all participants in
15 this hearing that they must only speak one person
16 at a time. In other words, no person may interrupt
17 another person who is speaking. This is not a
18 suggestion. I will enforce this rule throughout
19 the hearing. So as not to confuse anyone, this
20 rule of only one person speaking at a time applies
21 to the attorneys, the parties, the witnesses and
22 the committee members.

23 Witnesses will wait for the question to be
24 asked in its entirety before they answer.

25 Attorneys will wait for the witnesses to answer the

1 question in its entirety before they ask another
2 question. I will tolerate no exceptions to this
3 rule. If I fail to enforce this rule, the court
4 reporter will do so herself.

5 One more rule: Committee members shall
6 refrain from talking to each other during this
7 hearing.

8 I will continue. The hearing has been set
9 by the board in accordance with the Uniform
10 Licensing Act and Engineering and Surveying
11 Practicing Act. You are hereby advised that you
12 have the right to be represented by an attorney or
13 a licensed member of the profession, and you may
14 examine all opposing witnesses. You have the right
15 to have subpoenas issued to compel discovery of
16 evidence and attendance of witnesses upon written
17 request to the board.

18 In accordance with the Uniform Licensing
19 Act, I am not bound by formal rules of evidence. I
20 will make all evidentiary and procedural rulings,
21 and those rulings are final. I reserve the right
22 to exclude evidence that is incompetent, irrelevant
23 or unduly repetitious.

24 Testimony may be taken under oath, and
25 hearsay evidence may be considered and given its

1 due weight. The board's committee members or
2 hearing officer may utilize their experience,
3 technical competence and specialized knowledge in
4 evaluation of evidence presented, and notice may be
5 taken of judicially recognized facts or technical
6 information within the board or hearing officer's
7 specialized knowledge.

8 The charges against the respondent must be
9 proven by a preponderance of evidence standard
10 which will be ultimately determined by the board's
11 committee when making its final decision.

12 The hearing will be conducted in the
13 following manner: Both parties may present opening
14 statements and closing arguments. The board's
15 executive director will present his case and
16 evidence first, and then the respondent may present
17 his case and evidence and defense of the
18 allegations alleged in the order to show cause.
19 The board's executive director will have the
20 opportunity to present a rebuttal.

21 All testimony presented at this hearing will
22 be under oath, and witnesses will be sworn by the
23 court reporter. Exhibits that are admitted into
24 evidence will be marked into the record by the
25 parties and then given to me for the committee's

1 use during this hearing.

2 Any witnesses offering testimony will be
3 questioned first by the party offering the
4 testimony and then by the opposing party. I will
5 permit direct examination, cross-examination,
6 redirect examination and recross examination of all
7 witnesses. Counsel are instructed to limit their
8 cross-examination of witnesses to only those issues
9 presented in the direct examination.

10 When both parties have finished their
11 examinations, any committee member and the board's
12 attorney may, in their discretion, also question
13 witnesses. No other questioning will be permitted
14 after the board members have ended their
15 questioning.

16 Each party may represent documents -- may
17 present documents or other evidence, and I will
18 rule on the admissibility before any evidence is
19 accepted and entered into the record. As the
20 hearing officer, I also reserve the right to ask
21 questions of the witnesses.

22 Objections may be made during the hearing.
23 If an objection is raised, the objecting party
24 shall be given an opportunity to state the
25 objection for the record. The parties shall not

1 continue until the objection has been ruled on by
2 the hearing officer. Further response or argument
3 by the parties on an objection is permitted only at
4 the discretion of the hearing officer.

5 At the end of the hearing, each party may
6 provide a closing statement.

7 I ask all persons who will be testifying in
8 this matter to please rise and raise your right
9 hand to be sworn in.

10 Do you solemnly swear or affirm that the
11 testimony you're about to give will be the truth,
12 the whole truth, and nothing but the truth?

13 MR. VALDEZ: I do.

14 CHAIRMAN GROMATZKY: Thank you. Let the
15 record that that was Mr. Perry Valdez, the
16 executive director of the (inaudible).

17 Will each person testifying please state and
18 spell his or her name for the court reporter?

19 MS. URIOSTE: I don't believe we need that.

20 CHAIRMAN GROMATZKY: Okay.

21 MS. JOE: Perry, P-E-R-R --

22 CHAIRMAN GROMATZKY: Okay. Before we get
23 started with the presentation of evidence, does
24 either party wish to invoke the rule of sequester?

25 MS. JOE: No.

1 MR. VALDEZ: No.

2 CHAIRMAN GROMATZKY: Are there any other
3 questions before we begin?

4 MR. VALDEZ: Mr. Hearing Officer, since it's
5 only myself and there's not a respondent, is it
6 okay if I just go ahead, instead of doing an
7 opening statement, and get into the case?

8 CHAIRMAN GROMATZKY: I'm fine with that.

9 MS. JOE: You have before, yes.

10 CHAIRMAN GROMATZKY: I'm fine with that if
11 counsel is fine.

12 MS. JOE: Yes. I guess we'll just note
13 after your opening statement that the respondent is
14 not here because normally we would give him
15 space --

16 CHAIRMAN GROMATZKY: Okay.

17 MS. JOE: -- to proceed as if the person was
18 here, but we'll just quickly note it and then move
19 on.

20 CHAIRMAN GROMATZKY: Are there any
21 preliminary matters the parties wish to present for
22 the hearing officer to consider?

23 MR. VALDEZ: No, we do not.

24 CHAIRMAN GROMATZKY: Okay. Are there any
25 exhibits to be received into evidence by agreement

1 or stipulation? If so, please identify each
2 exhibit by number or letter and its date.

3 MR. VALDEZ: Mr. Hearing Officer, I have
4 several exhibits. Exhibit No. 1, case number
5 8-PS-11-01-2018, the pre-NCA settlement agreement
6 which was accepted and approved on November 4, 2019
7 with the certificate of service dated November 7,
8 2019; Exhibit No. 2, professional surveying
9 committee issued an order to show cause on July 27,
10 2020; Exhibit No. 3, professional surveying
11 committee's August 6, 2020, meeting minutes
12 amending the settlement agreement for case number
13 8-PS-11-01-2018; Exhibit 4, board letter to
14 respondent dated on August 20, 2020 by certified
15 mail; Exhibit 5, respondent's letter to the board
16 on September 23rd, 2020; Exhibit 6, respondent's
17 e-mail and attachment to the board on December
18 21st, 2020; and Exhibit 7, respondent's e-mail and
19 attachment to the board on October 31st, 2022.

20 CHAIRMAN GROMATZKY: Mr. Valdez, was this
21 evidence included in the documents contained in
22 this disciplinary -- in item 9(a)-1, disciplinary
23 case 8-PS-11-01-2018?

24 MR. VALDEZ: Mr. Chair, no -- Mr. Hearing
25 Officer, no, it was not.

1 CHAIRMAN GROMATZKY: Are these exhibits
2 records that are held in the regular course of
3 business?

4 MR. VALDEZ: Yes.

5 MS. JOE: So accept them. Because they're
6 held in the regular course of business, you can
7 accept them. And, Mr. Valdez, were these also
8 presented to the respondent?

9 MR. VALDEZ: Yes, they were. They were
10 presented to the respondent and requested if he
11 approved them or he would accept them or not accept
12 them and he had not responded to that request.

13 MS. JOE: Okay. So you have Exhibits 1
14 through 7; is that correct?

15 MR. VALDEZ: Yes.

16 CHAIRMAN GROMATZKY: Accepted.

17 MS. JOE: This is the list.

18 CHAIRMAN GROMATZKY: Okay.

19 MS. JOE: I can e-mail that to all the board
20 members --

21 CHAIRMAN GROMATZKY: Okay.

22 MS. JOE: -- the committee members. I'm
23 sure the board doesn't want them.

24 CHAIRMAN GROMATZKY: I accept items one
25 through seven submitted by executive director, Mr.

1 Perry Valdez, as evidence in the order to show
2 cause hearing.

3 MS. URIOSTE: It's exhibit numbers 1 through
4 7?

5 MR. VALDEZ: Correct.

6 MS. URIOSTE: Okay.

7 CHAIRMAN GROMATZKY: Moving on, are there
8 any opening statements by Executive Director Perry
9 Valdez?

10 MR. VALDEZ: Yes. Mr. Hearing Officer,
11 thank you for allowing me to present this to
12 yourself and to the committee. Based upon the
13 evidence that I provided, the professional
14 surveying committee entered into a pre-NCA
15 settlement agreement with the respondent as noted
16 in the evidence on November 4th, 2019. The
17 respondent did agree to the settlement agreement;
18 however, at that time, he did not comply with this
19 agreement, and therefore they had an order to show
20 cause meeting.

21 During that meeting, the respondent was
22 there and presented himself to the committee and
23 explained his reason for not being able to comply
24 with the settlement, with the terms of the
25 settlement agreement.

1 It was -- based on that discussion, it was
2 later decided by the committee to amend the
3 settlement agreement which 6(b), item 6(b), on the
4 settlement agreement would be changed to the
5 following that it had stated in the minutes of
6 August 6, 2020. It changed with the resolution
7 proposed by Mr. Noonan that within 30 days of
8 notification of this action and subsequently agreed
9 to by the committee that revises, modifies or
10 vacates the recorded boundary plat.

11 And shortly after this was agreed upon, a
12 letter was sent to the respondent dated August 20,
13 2020, by certified mail to let the respondent know
14 that this pre-NCA settlement agreement was amended
15 per those terms.

16 The respondent responded back with a letter
17 agreeing to those terms on September 23rd, 2020.
18 The board lost contact with the respondent. Again,
19 this was during -- this was during the COVID
20 teleworking times in an e-mail to myself, the
21 executive director, on December 21, 2020, which I
22 missed. When we, Angelica Urioste, the compliance
23 officer and myself, were looking back at cases, we
24 noticed that we had received the form from the
25 respondent.

1 We reached out to the respondent a few days
2 ago and said that we were going to have an order to
3 show cause. He provided an e-mail October 31st
4 with that exhibit saying that exhibit had been
5 provided before. I searched my e-mails, and, sure
6 enough, it had been e-mailed on December 21st,
7 2020, a few months after the amended settlement
8 agreement had been approved.

9 The respondent vacated the plat per the new
10 agreement, the amended agreement, so, therefore,
11 it's the -- it's my recommendation that this order
12 to show cause really shouldn't be -- it should
13 conclude that he met the terms of the agreement by
14 vacating the plat, which he did so in December.

15 CHAIRMAN GROMATZKY: Okay.

16 MR. VALDEZ: And, again, that evidence is
17 included in your packet.

18 CHAIRMAN GROMATZKY: Thank you. I'll make
19 notes that the respondent or the respondent's
20 attorney is not present so there is no opening
21 statement to be provided.

22 MS. JOE: And, Mr. Valdez, from what you
23 stated, that's both your opening statement and
24 basically the body of your presentation?

25 MR. VALDEZ: Correct, that is my opening

1 statement and the body of my case.

2 MS. JOE: Okay.

3 CHAIRMAN GROMATZKY: And there are no --
4 there are no witnesses; is that correct?

5 MR. VALDEZ: This is correct. I did not
6 call any witnesses.

7 CHAIRMAN GROMATZKY: Okay.

8 MS. JOE: It's purely based on the records
9 that you provided?

10 MR. VALDEZ: Exactly.

11 CHAIRMAN GROMATZKY: Okay. So --

12 MR. VALDEZ: I can call a witness if you
13 wish, but I think, based on the evidence that was
14 presented, I believe they submitted everything that
15 was (inaudible).

16 CHAIRMAN GROMATZKY: Okay. Since there's no
17 opposition, there will be no witnesses, no direct
18 examination, cross-examination or redirect
19 examination or recross-examination. Are there any
20 board questions?

21 MALE BOARD MEMBER: Mr. Chair, no questions.

22 CHAIRMAN GROMATZKY: Ms. McReynolds?

23 MS. MCREYNOLDS: No, Mr. Chair.

24 CHAIRMAN GROMATZKY: As we have no
25 testimony, item 13, there will be no swearing in of

1 witnesses. Item 14 --

2 (Discussion off the record.)

3 CHAIRMAN GROMATZKY: Oh, okay. Okay. I'm
4 sorry, I missed that. So we can go to -- would the
5 executive director like to present a closing
6 statement?

7 MR. VALDEZ: Mr. Hearing Officer, in
8 closing, I stated, per the amended pre-NCA
9 settlement agreement with the respondent on the
10 term of -- the term that he revises, modifies or
11 vacates the recorded boundary plat, I do believe he
12 has met that term by vacating the plat and
13 providing the documents of said vacate on December
14 2020. So, therefore, I believe that he did -- he
15 did meet the agreement that was amended and agreed
16 to.

17 CHAIRMAN GROMATZKY: Is your recommendation
18 that this matter be resolved and the case closed?

19 MR. VALDEZ: Yes.

20 CHAIRMAN GROMATZKY: And since we had no
21 respondent or respondent's counsel, there will be
22 no closing statement by the --

23 MS. JOE: Right. This would be their
24 opportunity, but since the respondent chose not to
25 appear, that (inaudible).

1 CHAIRMAN GROMATZKY: Yes. The record of
2 this hearing is now closed. We thank both parties,
3 counsel and the witnesses for their time and
4 testimony today. The court reporter will prepare a
5 written transcript of today's hearing that will
6 include all exhibits admitted as evidence in this
7 hearing.

8 The board will make and issue its decision
9 in accordance with the Uniform Licensing Act after
10 the committee has reviewed and considered all the
11 testimony and evidence received at today's hearing.

12 The committee will deliberate this case in
13 its executive session today and will reopen its
14 meeting to formally make and announce its decision
15 in this case. All interested persons may be
16 present for that portion of the committee's meeting
17 today when the committee takes formal action in
18 this case.

19 The hearing is now adjourned. Thank you.

20 MS. JOE: And I'll just note the time is
21 10:14 a.m.

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REPORTER'S CERTIFICATE

I, ANNE DEHON CCR #263, DO HEREBY CERTIFY that I did, in stenographic shorthand, transcribe the audio proceedings set forth herein, and the foregoing pages are a true and correct transcription to the best of my ability.

I FURTHER CERTIFY that I am neither employed by nor related to nor contracted with (unless excepted by the rules) any of the parties or attorneys in this matter, and that I have no interest whatsoever in the final disposition of this matter.


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