

Meeting of the Board of Licensure for Professional
Engineers & Professional Surveyors held 8:00 a.m.
November 7, 2008 at New Mexico State University, Jerry
Shaw Conference Room, Las Cruces, NM

Members Present Subhas Shah, PE, Board Chair
Charles Atwell, Public Member, Board Vice Chair
Severiano Sisneros, PE Board Secretary
John T. Romero, Sr., PE, PEC Chair
Salvador Vigil, PS, PSC Chair
Fred Sanchez, PS
Gilbert Chavez, PS
Patricio Guerrerortiz, PE

Members Absent Dr. Rola Idriss, PE
Stevan Schoen, Esq., Public Member

Others Present Edward Ytuarte, Executive Director, BLPEPS
Ericca Lopez, Executive Secretary, BLPES
Perry Valdez, Licensing Specialist, BLPEPS
Mary Smith, Assistant Attorney General, Board Council

Guests Travis Brown, Las Cruces Fire Department

1. **CONVENE/ROLL CALL/INTRODUCTION OF GUESTS**

Mr. Shah convened the meeting at 8:20 a.m. Roll call was taken and it was noted that a quorum of the board was present. Attending guests were also introduced.

2. **APPROVAL OF THE AGENDA**

MOTION was made by Mr. Guerrerortiz, **SECOND** by Mr. Sisneros, and **VOTED:** unanimously to approve the agenda.

3. **APPROVAL OF THE MINUTES**

3.1 **August 1, 2008 Minutes** – **MOTION** by Mr. Sanchez, **SECOND** by Mr. Chavez, and **VOTED:** unanimously to approve the minutes as presented.

4. CORRESPONDENCE/ COMMUNICATIONS

- 4.1 Petition for Accretion- AFSCME-** Mr. Ytuarte explained to the Board that AFSCME had petitioned to accrete some staff members of the Board of Licensure into the union. A hearing was held before the Public Employees Labor Relations Board and a decision would be tendered later as to the outcome.

Mr. Ytuarte explained that he had received a call from a union representative that stated that one of the employees from the office had requested that the union come in and make a presentation. Mr. Ytuarte explained that for now this was for informational purposes.

- 4.2 Governor's Plan to Cut State Spending-** Mr. Ytuarte informed the Board that the Governor had issued a directive to all state agencies to cut spending in light of revenue shortfalls.

Mr. Guerrerortiz states that there are exceptions to this and mainly pertains to the agencies that come under the general fund.

Mr. Ytuarte explained that Sandra Perez, Director of State Personnel implied that the Board's position upgrades that had been proposed by the Board may not be affected. He also stated that the Board's budget analyst has indicated that our agency will not be affected by this situation since we are antonymous. More information will be available as it later materializes.

5. COMMITTEE REPORTS

- 5.1 Professional Engineering Committee-** Mr. Romero reported that no cases were considered at this time. He stated that in the Armstrong NCA case, a request was made by Mr. Armstrong to backdate the suspension of his license and provided the committee with an affidavit stating that he had not practiced engineering in the time that this appeal has been going on. Mr. Romero states that the committee voted to reject his request and that Mr. Armstrong's license suspension would still be enforced.

Mr. Romero also stated that the committee had received a letter from Ms. Torres from the Attorney General's Office that stated the statute of limitations had run on a case that was in their office and the case would have to be dismissed. The committee decided that they were going to write a letter to the AG's office expressing their discontentment.

Mr. Romero stated that the committee also reviewed the two items that are on the full board's agenda for fire alarms and fire suppression and these would be discussed further at that time. He reported that the Construction Industries Division is rejecting plans from engineers that do not have a specific discipline listed for licensure. He reported that the committee decided to write a letter to CID informing them that they have no right to do what they are doing and a copy of the letter will also be sent to the governor's office. He reported that the committee reviewed several applications for endorsement.

5.2 Professional Surveying Committee- Mr. Vigil reported that the PSC received information that a state senator was trying to make it mandatory that all surveyors carry errors and omissions insurance instead of it being voluntary. Mr. Chavez also noted that it is a possibility that if the legislature imposed this requirement on surveyors that they may also impose it on the engineers.

Mr. Vigil reported that Mr. Allen Grace came to speak to the committee regarding the Rio Arriba County Land Use Departments electronic file requirement. He reported that Rio Arriba is sending out a letter to all surveyors stating that any plat that they submit for approval will not be approved until the surveyor submits an electronic copy to their office. The board's attorney advised that they meet with them and try to find out what statute mandates that they require this and try to find out why it is necessary for them to have an electronic version.

Mr. Sanchez adds that the committee is not opposing the submission of an electronic copy as long as it is a non-editable version.

Mr. Vigil reported that the PSC also discussed the real property electronic rule and mentions that this rule, at least for right now is just on a voluntary basis for the counties to request or not request.

Mr. Vigil reported that the committee then went into closed session and reviewed four cases: Case number 07-06-18, the stipulated agreement was reviewed and approved; case number 08-08-44, was tabled; case number 07-60-20, was closed due to the death of the surveyor and case number 07-06-23, Mr. Smith was given an extension to complete the ethics requirement part of his disciplinary action. Mr. Vigil also states that the committee had one application to review and one application for retired status.

5.3 Rules and Regulations Committee- Mr. Ytuarte reported that the committee at its last meeting had discussed the fire alarm and fire suppression systems. He reported that the committee had several visitors that made presentations to the committee members. He reported that the rules and regulations committee was making a recommendation to the full board.

5.4 Joint Practice Committee- Mr. Sanchez reported that the committee did not have much on its agenda to discuss. Mr. Sanchez reported that a discussion was brought up regarding how each board knew or if they knew what was going on with cases or anything else in their offices other than what is presented at meetings. Mr. Sisneros reported that use of credit cards and online renewals was also discussed.

6. NEW BUSINESS

- 6.1 Open Meetings Act-** Ms. Smith, legal counsel to the Board made a presentation to the board on conducting meetings under the Open Meetings Act. Several topics covered by Ms. Smith included some of the following:
1. No vote can be taken in a closed session.
 2. The board must allow anyone who wishes to attend a meeting to be able to sit in.
 3. Ms. Smith emphasized that none of the members as an individual have any authority, they are all appointed as an entity and the only time they can act is as a board sitting together at an open meeting and conducting business as a public process.
 4. The Open Meetings Act prohibits email polls and letters being circulated for everyone's signature. Being sent emails from the office that are reading materials are fine.
 5. Ms. Smith stated that there is a rule that allows for members to participate by phone. Mr. Shah asks if a member can be present at an executive session via telephone. Ms. Smith responded that they can do that but the threshold for having a person participate by telephone is pretty high.
 6. Ms. Smith reminded the board that the first thing that needs to be remembered is that each meeting has to be noticed within a reasonable amount of time, the second is there has to be an agenda, the official agenda has to be available to the public at least twenty four hours before the meeting and that action can only be taken on items that are posted to the agenda twenty four hours prior to the meeting.
 7. Items may be added to the agenda the day of the meeting but these items will be added only for discussion purposes.
 8. Ms. Smith noted that in the past there had been an issue with the board thinking that they could not take action on an item if there was no asterisk next to it. She states that they can take action on any item listed on the agenda as long as it was on there twenty four hours prior to the meeting. The only exception to that rule is in an emergency situation such as one that will cause a significant financial loss for the public body.
 9. The last of the procedures is that you have to keep written minutes. The law requires that a draft be prepared by ten working days after the meeting; not having one is a violation of the open meetings act.
 10. If the open meetings act is violated, any actions taken will be null and void but can be brought up at the next meeting, but a fine of up to \$5000 can be imposed by the Attorney General..
 11. Mr. Shah asked Ms. Smith about a rolling quorum and Ms. Smith stated that a rolling quorum is a violation of the open meetings act.

- 6.2 Recommended Amendments to the NM Code of Conduct, 16.39.8-** After some discussion, a **MOTION** was made by Mr. Chavez, and **SECONDED** by Mr. Sanchez, and **VOTED**: unanimously to pursue a public hearing with the opportunity to discuss the comments brought forth then review a final document.

Ms. Smith suggested that they number the lines so that it is easier for them to find when someone makes a comment about a specific line.

6.3 Rules in Design of Fire Alarm Systems and Fire Suppression Systems- the full board discussed the proposed rules which had been reviewed by the PEC and the Rules and Regulations Committee.

A **MOTION** was made by Mr. Sisneros, and **SECONDED** by Mr. Sanchez, and the following **VOTE**: 7 voting yes, 1 voting no. To send the rules for design of fire alarm and fire suppression systems to a public hearing sometime in March or April.

7. OLD BUSINESS

7.1 Pending / Past Rules before the Rules and Regulations Committee- The Rules and Regulations committee made recommendations for ten items to be sent back to the full board or the PEC or PSC committees to be reviewed for more information on whether or not opinions needed to be changed into rules. A **MOTION** was made by Mr. Guerrerortiz, and **SECONDED** by Mr. Sanchez, and **VOTED** unanimously that the Rules and Regulations committee present recommendations of all the things that they think need to be addressed for revisions.

8. DIRECTORS REPORT

8.1 Staff Activities Report- Mr. Ytuarte reported to the board that staff had been working on renewals and all renewals were mailed out by October 16th. He also mentioned that staff had only received one complaint regarding the fee increase. There were nine people who took the New Mexico two hour surveying exam, eight that passed and one that failed. We had two hundred and nine applicants for the PE, PS, FE and FS exams. Mr. Ytuarte also mentioned that he and staff had been working on articles to put together for a Board Room Newsletter to be available online in December. The website has been worked on to make updates. An update on online renewals was also presented.

9. OTHER BUSINESS

Mr. Chavez stated that he very deeply regretted having to bring this item to the board's attention. He referred them to the Act on page four, section 61-23-9, item E. He stated that this has been problematic and that it is an issue that needs to be taken care of. He stated that there have been many meetings that have had to be cancelled for a lack of a quorum and this time he feels it is a problem that needs to be dealt with. No action taken.

During this time of the meeting a **MOTION** was made by Mr. Guerrerortiz to convene the board for an executive session pursuant to NMSA 1978, Section 10.15.1 (H)(2), to discuss a personnel matter that was brought to Mr. Guerrerortiz' attention via a complaint from an employee. The motion was seconded and **PASSED** unanimously to go into closed executive session.

10. ADJOURNMENT

The Board came out of executive session and Mr. Shah adjourned the meeting at 12:00 p.m.

Submitted by:

s/ Edward Ytuarte

Mr. Edward Ytuarte, Executive Director

Approved by:

s/ Subhas Shah, PE

Mr. Subhas Shah, PE, Board Chair

January 9, 2009

Approved Date