

Meeting Minutes

**MEETING OF THE PROFESSIONAL SURVEYING
COMMITTEE of the Board Licensure for Professional
Engineers and Professional Surveyors held at
9:00 a.m., Thursday, April 11, 2024,
San Juan College, Classroom 1217
4601 College Boulevard, Farmington, NM 87402
& Virtual**

Members Present- John Wayne, PS, Committee Chair
Benjamin Aragon, PS
Robert Gromatzky, PS

Members Absent- Maxine McReynolds, Esq., Public Member, Vice Chair

Others Present- Perry Valdez, BLPEPS, Executive Director
Miranda Gonzales, BLPEPS, Administrative Manager
Jessie James, BLPEPS, Compliance Officer
Kristen Hovie, NM DOJ, AAG, Legal Counsel
Chuck Cala, PS Investigator
Earl Burkholder, PEPS
Glen Thurow, PS
John Legere
Larry Medrano, PS
Richard Morris
Robert Baxter Pattillo
Rosemary Pagliaro

1. Convene, Roll Call and Introduction of Audience

Mr. Valdez read the meeting script regarding the hybrid meeting protocols. Mr. Wayne convened the meeting at 9:20 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. Gromatzky to approve the agenda as amended, creating agenda item 5. b. NMSU Surveying Program Data, **SECONDED** by Mr. Aragon,

Roll Call Vote:

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

The motion **PASSED unanimously.**

4. **Approval of Minutes**

a. **Minutes of January 11, 2024**

MOTION by Mr. Aragon to approve the Minutes of January 11, 2024, as presented, **SECONDED** by Mr. Gromatzky,

Roll Call Vote:

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

The motion **PASSED unanimously**.

b. **Minutes of February 19, 2024**

MOTION by Mr. Gromatzky to approve the Minutes of February 19, 2024, as presented, **SECONDED** by Mr. Aragon,

Roll Call Vote:

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

The motion **PASSED unanimously**.

5. **Public Comment/Correspondence**

a. **G. Thurow – Statute of Repose for Surveyors**

Mr. Thurow introduced himself to the Committee. He provided a brief history of the item. It introduced into legislation in 2013 and was unsuccessful. Mr. Thurow informed the members that he brought the issue of repose to the New Mexico Society of Professional Surveyors (NMPS) to solicit support from them to be the primary carrier of the bill. He was bringing this to the attention of the Board seeking support and endorsement. He indicated that he was not asking the Board to carry this legislation in 2025 nor for a vote at this meeting, however, he was requesting the Board's endorsement for the bill. Mr. Thurow explained the statute of repose is basically after 10 years a filed survey plats remain unchallengeable, with the exception of fraud or gross negligence. The Statute of Repose would be in line with the Board's Act, not hearing a complaint after 10 years.

Mr. Wayne thanked Mr. Thurow for the information.

Mr. Gromatzky was in support of the idea of this initiative.

Mr. Thurow stated this would fall under Title 37 Limitations of Actions, NMSA, 1978.

b. R. Gromatzky – NMSU Surveying Program Data

Mr. Gromatzky presented the NMSU surveying program data. He attended the Geomatics Advisory Committee where NMSU made a presentation of the enrollment numbers over the years. The number of students is increasing and there are more continuing students. He explained that the number of graduating students hasn't increased as much as the enrollment or continuation of students in the program. The anticipation is that there will be more students in the future sitting for the fundamentals of surveying (FS) exam and the principles and practices of surveying (PS) exam. The University is anticipating a substantial growth in students.

6. Old Business

a. SPCS 2022 Update

Mr. Gromatzky noted that there hadn't been any updates since the last meeting. He mentioned attending the Western Regional Conference, where a representative from NGS presented ellipsoid and the North American terrestrial referenced frame for 2022 information. There was no information regarding the State Plane Coordination System. He was able to confirm that at least with New Mexico zones, it appears that they will have ground grid scale factors less than one and greater than one, and those will need to be considered when determining ground distances.

Mr. Gromatzky reported that the ellipsoid for 2022 is going to be the GRS 80 ellipsoid. The North American terrestrial reference frame in 2022 is going to make it geocentric. The GRS 80 ellipsoid was never concentric before that.

Mr. Aragon informed the Committee that the update will be coming out in early mid-2025.

7. New Business

a. NMSU University Support Application – New Request

Ms. Gonzales said the Board office received a new request from Doctor Gabe Garcia. NMSU is requesting \$50,000 in addition to their earlier request this fiscal year.

Mr. Valdez explained that NMSU submitted their request prior to the new fiscal year for the Board's consideration. They are aware that the funds would be from the new fiscal year, 2025.

Mr. Gromatzky asked if there was additional unspent money this fiscal year. He is cognizant of the fact they were approved for an initial \$50K earlier this year. This would probably be a Board vote to approve the funding request for an additional \$50,000.

Mr. Valdez guided the Committee stating that they could either vote or simply state they would recommend the approval to the Full Board.

Mr. Aragon questioned if there was unspent money for this fiscal year.

Mr. Valdez reported to the Committee there was an additional \$50,493 of unspent money within the fund, for this fiscal year. Therefore, if the Board wished to approve the funding, it could be awarded this fiscal year instead of next fiscal year.

Mr. Gromatzky stated that NMSU was already approved for and received \$50,000 funding this fiscal year, if there are other applications that the Board received requesting funding they need to be considered.

Mr. Gromatzky asked if another university submitted a request by the June 2024 meeting would they be considered for funding in fiscal year 2024 or fiscal year 2025?

Mr. Valdez responded that if NMSU's second request was granted there would be \$493 left in the fund, therefore any requests that came in would be for funding in fiscal year 2025.

b. Advisory Opinion For the day-to-day right of way easements, are we going to have those surveyed?

Mr. Gromatzky presented the advisory opinion he drafted. He explained that the advisory opinion was in response to the questions of the Industrial Exemption FAQs.

Mr. Gromatzky explained that the draft advisory opinion is to address any understanding of when an easement needed to be prepared by a professional licensed surveyor and in which cases the easements may be prepared by other unlicensed individuals. The intent of the advisory opinion is to match what prior boards have always advised and directed.

He further explained that essentially anything that is a meets and bounds or is not parallel to an existing boundary would need to be prepared by a professional licensed surveyor, whether you're in the public right of way or on people's personal property or private property. However, those working within the industrial exemption this would not apply. This is also to say those within the industrial exemption would not need an easement on their own property.

Included in the draft advisory opinion was a statement about divisions of land, whether they followed the exemption or the subdivision act and also the applicability of municipal subdivision laws that'll also be equally applicable to those represented through the industrial exemption.

Mr. Aragon commented that proposed easements that are parallel to an existing boundary do not require a professional surveyor to complete. It is required to complete, but there have been instances that easements that are parallel to existing boundaries may not need to be monumented. Also, easements that have meets and bounds, every easement has to be surveyed one way or the other. However, as far as the monumentation meets and bounds, easements that are not parallel to boundaries would have to be monumented, but easements that are parallel to a boundary would not need to be monumented, according to his understanding and referencing the New Mexico Minimum Standards for Surveying.

Mr. Aragon referenced 12.8.2.12 D. Easement Surveying NMAC (*The NM Minimum Standards for Surveying*). He said Mr. Gromatzky brought a good point about existing features, easement descriptions that describe easements being only centered upon, otherwise related to the physical location of utilities. So, it's identifying the power poles then setting your easement, the physical location, whether it's five feet left, five feet right of a certain power pole, not necessarily tying to boundary corners or a tract of land.

Mr. Gromatzky responded that sometimes utilities are buried and then it requires either an excavation or some other means of identifying the location of that utility that the easement is then centered upon or related to. As far as easements that are parallel and existing boundary. It was his understanding from past Boards was that a licensed surveyor was not required to make a legal description that it said "easterly by P of a lot" that as far as making a legal description either for conveyance or for an easement legal description, he didn't believe that that was necessarily the practice of surveying itself, so he wanted to make that clear.

Mr. Medrano asked to be recognized. He expressed his concern with the draft advisory opinion by providing an example. A right of way agent went out and made an easement agreement, said it was the E 5 feet of MRGCD tracks, so and so. But if that track had never been surveyed, coming in and retracing it made it difficult because again, the intent is there that it's the E 5 feet of that track. But if it had never been located by survey, then it just made it difficult to locate it.

His concern with the proposed advisory opinion is because he does a lot of easements and retraces a lot of easements. A similar situation if it was the W 50 feet of Section 1, Township 5, N, Range 3 E. If the property had never been recently surveyed, it may be an 1800 survey. Therefore, he was just wondering how or concerned how that would affect everything.

Mr. Gromatzky said that Mr. Medrano's concerns could be addressed and had not been considered when drafting the advisory opinion. He acknowledged that there are lots of parcels in the State of New Mexico that remain un-surveyed.

Mr. Burkholder asked what was the objection to describing an easement as being the 'X' feet on either side of center line of construction facility? He could not find that clarification in the reference section of the Minimum Standards 12.8.2.12.

Mr. Gromatzky answered Mr. Burkholder's question saying that the proposed advisory opinion was to provide clarification to some of the comments that were received from the public regarding the Industrial Exemption and who have not read section 12.8.2.12 of the Minimum Standards.

The objection to describing an easement that is centered upon a physical feature is that that physical feature is not always observable such as a buried electric line. Mr. Gromatzky commented that in his personal experience is that when I've been required to go back out and locate an easement, the utility companies were reluctant to do any sort of excavations to expose the utility, which also involves a cost. The advisory opinion stems from these easements that are being written that are only described as being centered upon a buried utility line, they're easy to write and record. However, when you have to actually locate them, they become really expensive and cumbersome to locate. At least upfront that cost is not incurred by the utility company because they're not actually locating where the easement is going to be. However, on the back end, when it has to be located and you have to do any sort of subsurface utility excavation, that is a really expensive cost, and that cost is actually incurred by the user of the utility itself being the landowner. This becomes a difficult situation for the surveyor to navigate. He also noted, where we want to go with the direction of easements and the industrial exemption, we need to make the individuals that are describing easements accountable for following the New Mexico Minimum Standards for Surveying.

Mr. Gromatzky appreciated the comments received from Mr. Medrano and Mr. Burkholder.

Mr. Wayne tabled the item for the June meeting pending the amendments to the advisory opinion.

c. Request for Endorsement of a Mapping Science option to the NCEES PS Exam

Mr. Gromatzky informed the Committee a request was received to support another exam option for the NCEES PS exam. The option would be for a mapping science exam as a pathway for licensure. Mr. Gromatzky said the exam option does not meet current education requirements for the State of New Mexico. It appears to be more of a geodetic, photogrammetry, topography, and hydrographic specialty exam.

Mr. Aragon agreed with Mr. Gromatzky, this exam does not meet the educational requirements in New Mexico.

Mr. Gromatzky would respond to Mr. Thompson, who initiated the conversation, and relay the Board's concerns regarding the proposed exam option.

d. Surveyor Intern certification for Professional Surveyor endorsement applicants

Mr. Valdez informed the Committee that he and the staff were seeking clarification. He explained there are some applicants who apply for endorsement, that have passed the FS exam but are not a certified Surveyor Intern. The issue stems from some states that no longer issue an intern certification, or the applicant never pursued certification. According to section 61-23-27.4. A. (2) of the New Mexico Engineering and Surveying Act, one of the requirements for licensure is to be certified as a Surveyor Intern.

Mr. Valdez asked the Committee if this is a requirement staff should be enforcing or as long as the applicant shows proof of having passed the FS exam, he and the staff can proceed with the licensure process?

Mr. Wayne asked if this was the national test that they passed?

Mr. Valdez responded that was correct.

Mr. Wayne continued, and the applicant never received the intern certification for it?

Mr. Valdez responded that was correct.

Mr. Wayne asked Mr. Valdez if the applicant's documentation showed they passed the FS exam.

Mr. Valdez responded that was correct and the clarification was only for endorsement applications.

Mr. Gromatzky noted that he would not like to make the determination if someone has an Intern certification number or not.

Mr. Valdez stated that it is his and the staff's opinion, what is more important is the passing of the FS exam.

Mr. Gromatzky agreed with this.

Mr. Wayne also agreed.

Mr. Aragon agreed having passed the examination is important. He asked Mr. Valdez for the Intern certification process.

Mr. Valdez outlined the process. After having passed the exam, submit an application, an application fee, official transcripts, and three references. Two of those references being from a licensed professional surveyor.

Mr. Aragon is of the opinion that someone who passed the FS exam should get the intern certification.

Mr. Wayne suggested that staff point this out to the Committee when they are reviewing the applications.

Ms. Gonzales noted that once an applicant receives licensure, the intern certification is superseded by the license number.

Mr. Wayne tabled this item for further consideration at the June 2024 Full Board meeting.

e. NM Handbook for Building Officials

Mr. Aragon informed the Committee members that the Joint Practice Committee met on February 8, 2024, where it was decided to update the New Mexico Handbook for Building Officials. The current version of the Handbook is from 2016. He requested for the PSC members make comments or edits to the Handbook. The JPC will gather the edits and review them at their June meeting.

Mr. Aragon requested Mr. Valdez send out the Word document version to the members so they can make their edits.

8. Application Review – Recommended Approval

a. Recommended for Approval List

MOTION by Mr. Gromatzky to move Torres, O., Wiegler, M., McDonald, M., and Scrivens, C. to closed session for further discussion, **SECONDED** by Mr. Aragon,

Roll Call Vote:

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

The motion **PASSED unanimously**.

MOTION by Mr. Gromatzky to approve Heft, W., Key, B., Morris, R., and Shaw, J., **SECONDED** Mr. Aragon,

Roll Call Vote:

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

The motion **PASSED unanimously**.

b. Confirmation of Staff Reviewed Applications

The Committee acknowledged the confirmation of staff reviewed applications.

9. Closed Session

MOTION by Mr. Wayne that the Committee enter into closed Session at 10:44 a.m. 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. Gromatzky.

Roll call vote taken, voting 'Yes': Mr. Wayne, Mr. Aragon, Mr. Gromatzky

10. Action on Items Discussed During Executive Session

Mr. Wayne brought the Committee back into open session at 11:48 a.m. 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 4-PS-2023 Investigator's Report

MOTION by Mr. Gromatzky to dismiss the case with no action taken, **SECONDED** by Mr. Aragon,

Roll Call Vote:

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

The motion **PASSED unanimously**.

b. Self-Reporting

1) LW-12-27-2022

MOTION by Mr. Gromatzky to close the case due to fulfillment of the pre-NCA settlement agreement, **SECOND** by Mr. Aragon,

Roll Call Vote:

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

The motion **PASSED unanimously**.

c. Status Review of Complaints and NCAs

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

d. Applications for Review

1) PS Endorsement

a) Dee, T.

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

Roll Call Vote:

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

The motion **PASSED unanimously**.

b) Legere, J.

c) Rinfret, R.

MOTION by Mr. Gromatzky to approve Legere, J. and Rinfret, R. for PS endorsement, **SECOND** by Mr. Aragon,

Roll Call Vote:

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

The motion **PASSED unanimously**.

d) Torres, O.

e) Wiegler, M.

MOTION by Mr. Gromatzky to approve Torres, O. and Wiegler, M. for the PS exam, **SECONDED** by Mr. Aragon,

Roll Call Vote:

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

The motion **PASSED unanimously.**

f) **McDonald, M.**

g) **Scrivens, C.**

MOTION by Mr. Gromatzky to approve McDonald, M. and Scrivens, C. for PS endorsement, **SECONDED** by Mr. Aragon,

Roll Call Vote:

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

The motion **PASSED unanimously.**

11. Next Scheduled Meeting Date(s): June 6, 2024 – Santa Fe/Virtual

12. Adjourn

The meeting adjourned at 11:53 a.m.

Submitted by:

s/Perry Valdez
Perry Valdez, Executive Director

Approved by:

s/John Wayne
John Wayne, Committee Chair

June 6, 2024 **Approved Date**