

State Board of Professional Engineers and Land Surveyors

Minutes of June 15, 2000

PUBLIC SESSION

CALL TO ORDER

The meeting of the State Board of Professional Engineers and Land Surveyors was called to order by the Board President Albert N. Faraldi at 9:00 am in the Hudson Conference Room, Sixth Floor, 124 Halsey Street, Newark, New Jersey. All parties were duly notified of the time, date and place, with all pertinent material being provided.

SUNSHINE LAW ANNOUNCEMENT

President Faraldi read the statement required by Chapter 231, Laws of 1975 known as the Open Public Meeting Act, and announced that notice of this meeting was prepared in the office of the Board and mailed to the Secretary of State, the Star-Ledger, the Courier Post and the Bergen Record.

ROLL CALL

BMs present:

Albert Faraldi James Kelly
Robert Marshall Theodore Cassera (arrived 9:30 AM)
Pravin Patel Louis Raimondi
Rishi Raj Edward Vernick

BMs absent: Robert Bogart and Richard Frantz

Others present: Arthur Russo, Executive Director, William Mandeville, Management Assistant, Joseph Grabowy, Management Assistant, Sadiqa Smith, Recording Secretary, Deputy Attorney General Olga E. Bradford and Yolanda Winston, Board Staff.

REPORT OF THE EXECUTIVE DIRECTOR

April 2000 Examinations

ED Russo reported that he has received bills from PCS and NCEES for the April 2000 examinations. He requested the Board's authorization for payment of these bills.

The Board reviewed and discussed the matter and on a motion by BM Raimondi, seconded by BM Marshall, the Board unanimously voted to authorize payment for the bills.

Home Inspection Advisory Committee

ED Russo reported that he has spoken to the HIAC, regarding the Board's position that home inspectors perform septic system inspections, as part of home inspections. The Committee, he advised the Board, unanimously objected to this assignment of responsibility. It is the Committee's position that home inspectors are not properly trained and/or qualified to inspect septic systems as required. In addition, the Committee contends that a septic system is not considered part of a house's plumbing system. There are home inspectors, however, with the necessary education,

requisite training and experience, who can inspect septic systems. Committee President Michael Fitzpatrick will meet with the Board at its July 6, 2000 Public Session meeting to address the concerns of the HIAC on this issue.

REPORT OF JOSEPH GRABOWY

A2440- Proscribing the liability of architects in certain circumstances.

Mr. Grabowy pointed out that there appears to be a mistake in the printing of the bill. The Board reviewed bill and determined that it seems to be incorrect as written, in that the word "engineer" is used instead of the word "architect" on two occasions. ED Vernick will contact the necessary legislative individuals to correct this matter.

REPORT OF THE EXECUTIVE DIRECTOR (Continued)

H. Clay McEldowney, Studer and McEldowney, P.A. (5/31/00)

Re: Conflict of Interest

BM Cassera drafted a response to Mr. McEldowney's correspondence for the Board's review which stated the following:

Relative to Mr. McEldowney's first question, N.J.A.C. 13:40-3.1 (a)4.ii, "When in public service as a member, advisor or employee of a government agency, a licensee shall not participate in the deliberations or actions of such agency with respect to services rendered or to be rendered by the licensee or any firm or organization with which he is associated in public practice."

With respect to Mr. McEldowney's question regarding the Board's policy on the other Conflict of Interest issues that you raised, the Board policy is summarized as follows based on N.J.A.C. 13:40-3.1(a)4i.:

Prior to becoming involved in the review of an application before a public body on behalf of that public body, a licensee shall disclose, in writing, to that public body any business connection, interest or circumstance which might be deemed as influencing his judgement or the quality of his services to that public body, including any business connection the licensee's firm may have with the applicant.

In the event that public body and the applicant, upon being made aware of the details of the licensee's disclosure, have no objection to the licensee proceeding with the review, and if the public body concludes that the licensee can function effectively on behalf of the public body to review the subject application, then a conflict of interest shall be deemed not to exist and the licensee may proceed with the review.

The Board discussed and reviewed BM Cassera's response. BM Cassera recommended that the Board accept paragraphs (a) and (b) above, as its policy regarding specific conflict of interest issues.

On a motion by VP Kelly, seconded by BM Patel, the Board unanimously voted to accept BM Cassera's response to Mr. McEldowney, and to accept it as Board Policy.

Robert L. Schreiber, New Jersey Society of Municipal Engineers (5/15/00)

Re: Accuracy and validity of digital engineering or architectural plans/specifications used for bidding purposes, offered by F.W. Dodge.

BM Cassera drafted a response to Mr. Schreiber's correspondence for the Board's review in which he asked if:

It is legal for anyone besides the person who prepared the plans and specifications to copy and distribute them without their permission; regardless of whether or not the plans/specifications are copyrighted?

The Board response was that while there are no regulations prohibiting Dodge from copying plans and specifications, per N.J.A.C. 13:40-1.1 (b) and (c), absent the required signatures and impression seals, such documents cannot be

confirmed as being official documents prepared under the supervision of a licensed professional. Also one cannot confirm the origin, accuracy or validity of data shown on unsealed or unsigned plans.

Whether it is legal for those other than the preparer to copy and distribute plans and specifications, and relative to the question of liability with respect to incomplete plans produced by a service like Dodge, such issues are subject to legal opinion relating to regulations and/or statutes not under purview of this Board.

How is the engineer/owner to know who to send addenda to if the plans/specifications are purchased through this service"

The Board's response is that it agrees that use of a service like Dodge can create problems relating to communication of addenda to interested parties. However, the control of same is not affected by the current Board regulations and is, therefore, subject only to rules established by the owner/engineer.

On a motion by BM Patel, seconded by BM Raimondi, the Board unanimously voted to accept BM Cassera's response to Mr. Schreiber.

Mike Shannon, PE, NCEES (6/5/00)

Re: Grading of the Fundamentals of Engineering Exam

Mr. Shannon supplied the Board with additional information on how the FE exam is graded.

The Board noted Mr. Shannon's correspondence for the record.

DAG REPORT

Henry J. Mc Guigan, PE, PLS - #23192

DAG Bradford reported that the Board had issued Mr. Mc Guigan a Provisional Order of Discipline (POD) on May 18, 2000 in which he was assessed a civil penalty of \$500.00 for failure to comply with the provisions of N.J.S.A. 45:8-35.2 and N.J.A.C. 13:40-11.1 (continuing competency). He was also required to complete the delinquent twenty-four (24) professional development hours for the 1998-2000 renewal period no later than November 1, 2000. Mr. Mc Guigan submitted a response to the POD on June 1, 2000 in which he requested that the Board consider reducing the civil penalty since he completed 16 hours of the 24 professional development hours required.

The Board, following its review and discussion of the submitted documentation agreed to reduce Mr. Mc Guigan's civil penalty to \$250.00, but still required him to complete the delinquent eight (8) professional development hours for the renewal period 1998-2000 by November 1, 2000.

On a motion by VP Kelly, seconded by BM Vernick, the Board unanimously voted to modify the Provisional Order of Discipline to include the preceding conditions.

Andrew Fowler, PLS - #36726

DAG Bradford reported that Mr. Fowler indicated on his renewal form that he did not complete the required twenty-four (24) professional development hours for the 2000-20002 renewal period.

The Board reviewed and discussed this matter and directed DAG Bradford to issue Mr. Fowler a Provisional Order of Discipline for violation of N.J.S.A. 45:8-35.2 and N.J.A.C. 13:40-11.1. He will be preliminarily assessed a civil penalty of \$500.00 and will be required to complete the delinquent twenty-four (24) professional development hours for the 1998-2000 renewal period by January 1, 2001.

On a motion by VP Kelly, seconded by BM Patel, the Board unanimously voted to approve the above stated terms.

Andrew Drysdale - #16186

DAG Bradford reported that Mr. Drysdale indicated on his renewal form that he did not complete the required twenty-four (24) professional development hours for the 1998-2000 renewal period.

The Board reviewed and discussed this matter and directed DAG Bradford to issue Mr. Drysdale a Provisional Order of Discipline for violation of N.J.S.A. 45:8-35.2 and N.J.A.C. 13:40-11.1. He will be preliminarily assessed a civil penalty of \$500.00 and be required to complete the delinquent twenty-four (24) professional development hours for the 1998-2000 renewal period by January 1, 2001.

On a motion by VP Kelly, seconded by BM Patel, the Board unanimously voted to approve the above stated terms.

APPROVAL/ DENIAL OF APPLICATIONS FOR LICENSURE REPORT

The Board reviewed the June 1, 2000 Examination/Comity Applications Report and unanimously voted to approve 33 exam and 13 comity applications and deny 4 exam and 5 comity applications. On a motion by BM Vernick, seconded by BM Marshall, the Board unanimously voted to approved the June 1, 2000 approved/denied list. The list of approved/denied applicants is attached.

MOVE TO EXECUTIVE SESSION

On a motion by BM Patel, seconded by BM Marshall, the Board unanimously voted to move into Executive Session for the purpose of reviewing complaints.

RETURN TO PUBLIC SESSION

In accordance with a motion contained in Executive Session minutes, the Board unanimously voted to return to Public Session for the purpose of completing the Public Session agenda.

APPEARANCE BY ANTHONY MIRAGLIOTTA

Discussion on Sunsetting Regulations

Anthony Miragliotta, Deputy Director and Stacy Mola, Regulatory Analyst, appeared before the Board to discuss the sunseting of the Board's regulations. Mr. Miragliotta stated that the proposed regulations were published in the June 5, 2000 edition of the New Jersey Register and that the comment period for the regulations ends July 5, 2000. The Board will be required to respond to all comments and vote to adopt the proposed regulations by July 6, 2000.

Deputy Director Miragliotta will be meeting with the Board at its July 6, 2000 Public Session meeting to complete the sunseting process.

APPLICATION FULL BOARD REVIEW

Norman Mills - #50695

BM Patel reported that he had previously reviewed this application and indicated that Mr. Mills has no design experience and no record of work performed under the supervision of a licensed professional engineer. He had requested that Mr. Mills complete another Detailed Statement of Experience form which he also reviewed and found that he still lacks engineering experience. BM Raj will review this application and report back to the Board.

ADJOURNMENT

On a motion by BM Patel, seconded by BM Vernick, the Board unanimously voted to adjourn at 3:30 pm.

Approved by:

Albert N. Faraldi, PLS
President

Arthur Russo
Executive Director

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Modified March 2002