

State Board of Professional Engineers and Land Surveyors

Minutes of November 2, 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 Faraldi at 9:15 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 (departed 3:00 pm)
Robert Bogart Theodore Cassera
Robert Marshall Richard Frantz
Louis Raimondi Pravin Patel
Edward Vernick

BM absent: Rishi Raj

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

APPROVAL OF MINUTES

September 21, 2000

On a motion by BM Bogart, seconded by BM Patel, the Board unanimously voted to approve the minutes of September 21, 2000 as amended.

COMMITTEE REPORTS

Legislation

BM Vernick submitted a legislation report outlining the following:

A1712/S842 - Authorizes assessment of development impact fees by municipalities - On January 11,

2000 this bill was introduced and referred to the Assembly Housing Committee. It appears similar to A494 from the 1998/99 session which was supported by the League of Municipalities but opposed by the Builders Association.

A2336/S789 - Capital and Educational Facility Financing Act (Impact Fees) - On May 1, 2000 this bill was introduced and referred to the Assembly Local Government Committee. It appears to be the Builders Association response to A1712 (above).

A755 - Changes the duration of contracts for professional services under the "Local Public Contracts Law" from 12 months to 24 months - On January 11, 2000 this bill was introduced and referred to the Assembly Local Government Committee.

A1142 - Establishes the Professional, Occupational and Trades Licensing Review Commission - On January 11, 2000 this bill was introduced and referred to the Assembly Consumer Affairs and Regulated Professions Committee.

A1180/S1557 - Broadens the education requirement for professional planning licensure - Passed the Assembly on March 27, 2000 and referred to the Senate Commerce Committee. The Board at its April 6, 2000 meeting, initially opposed this bill. After a later discussion, however, it voted to take "no position". Its position on A1180 has been communicated to the Director's office.

S16 - Congestion Relief and Transportation Trust Fund Renewal Act of 2000 - This bill conforming to the Governor's recommendations passed the Senate on June 29, 2000 and the Assembly on July 13, 2000. It was signed by the Governor on July 20, 2000. Authorization to fund the Trust Fund is on the November 7, 2000 ballot.

A1673/S813 - Funding for the 1999 Statewide Transportation and Local Bridge Bond Act (\$251 million) - This bill passed the Assembly on February 24, 2000, the Senate on March 23, 2000, and was signed by the Governor on April 6, 2000.

S200 - Educational Facilities Construction and Financing Act (Gormely/Lynch) includes Abbott Districts - A bill conforming with the Governor's recommendations passed the Senate on June 29, 2000, and the Assembly July 13, 2000. It was signed by the Governor on July 18, 2000.

A426/S496/S601 - Authorizes the Adoption of Municipal Time Growth Ordinance - On January 11, 2000 each bill was introduced and referred to the Assembly, Local Government Committee or Senate Community and Urban Affairs Committee.

S1079/A2448 - Establishes ten year limitation on surveyor's liability with an exception for adverse possession cases - On March 16, 2000 each bill was introduced and referred to the Senate Judiciary Committee. On May 22, 2000 each bill was introduced and referred to the Assembly Judiciary Committee. S1079 passed the Senate on October 2, 2000, with amendments. A2448 is still with the Assembly Judiciary Committee. The Board, at its September 7, 2000 meeting, voted to support both bills.

A2567/S1408 - Provides broader investigative and enforcement authority to professional licensing boards and other amendments to the statute - On June 1, 2000 each bill was introduced and referred to the Assembly Consumer Affairs and Regulated Professions Committee. On June 15, 2000 each bill was introduced and referred to the Senate Commerce Committee.

A2768 - Interior Designers Certification Act - On September 25, 2000 this bill was introduced and referred to Assembly Consumer Affairs and Regulated Professions Committee.

The Board had previously reviewed the provisions of this bill along with comments from the Board of Architects. It generally agrees with the concerns and position that the Board of Architects has expressed in

its writing to the Director of Consumer Affairs.

The Board, at its October 19, 2000 meeting, voted to support the concerns raised and the positions taken by the Board of Architects.

Wetland Legislation - Watershed Management Rules (D.E.P. rules & regulations) - Comments period ended on October 2, 2000. The D.E.P. will be reviewing comments in the next 30 days.

Residential Site Improvement Standards - A public hearing on the proposed revisions was held on September 21, 2000. D.C.A. to publish response to public comments in the forthcoming edition of the New Jersey Register.

Administration

BM Frantz reported that he, BM Raimondi, and ED Russo visited the northern examination site at the Crystal Springs Golf and Spa in Vernon, NJ on Friday, April 27. They observed that even with the addition of several floodlights erected in the less illuminated areas, there continues to be non-uniform lighting distribution conditions present in the examination rooms. Later that day, the floodlights were repositioned with better results. ED Russo spoke with the facilities manager to correct this ongoing problem for the next examination.

BM Marshall visited the southern examination site at the Volunteer Fire Company, West Trenton, NJ on the same day and indicated that everything ran well.

Examination

It was noted that the civil engineering examination structure changed to the breath and depth format for the first time.

Education

No report.

Regulations

BM Cassera reported that he will prepare a compilation of the additional proposed changes and additions to the regulations not already included in the sunseting process. BP Faraldi assured BM Cassera that this was already done. The Board directed ED Russo to contact regulatory analyst Stacy Mola for an update in this matter.

Finance

BM Kelly reported that he reviewed the September 2000 monthly financial report and all appears to be in order.

Special Committee Reports

Newsletter

BM Raimondi reported that he is close to completing the draft of the third newsletter.

Applications: Revisions- Design Experience

BM Bogart reported that his committee is near completing the revisions to the engineering design experience format. In an effort to move this matter forward, he suggested combining his committee's

efforts with BM Cassera's committee, which is involved with application revisions. The committee urged ED Russo to supply the Board with previously requested information from the various engineering colleges regarding design experience for their respective disciplines. It was requested that this information be assembled into packets to be utilized by Board members as an operating/instructional manual and guide in the review of applications. The quick reference chart/grid of licensing requirements for PEs and LSs dating back to June 1, 1939 (already prepared) will also be enclosed. This application review process will be placed on a future agenda for discussion purposes.

Joint Committee

No report.

Website

BM Vernick reported that the PE/LS Website (www.state.nj.us/lps/ca/nonmed.htm) has been updated and now includes the following menu items:

An online Licensee Directory (Roster Book) with last name search capability, along with license number, disciplinary history (yes/none) and licensure status (active, expired or suspended) indicators

Complaint and review process

Applications (PE, PE-Comity, EIT, PLS, LSIT, & C/A) and information (Note: Currently directions for the C/A are not posted)

Certificate of Authorization Report Listing - Updated monthly

Board Public Meeting minutes

Year 2000 meeting dates for both PE/LS and HIAC

Directions to the Newark Office

Newsletter, 1999 and 2000 editions

Hyper-link to the NCEES Website

BM Vernick requested all board members to consider what other enhancements and/or additions they would like to see on the Website.

Certificate of Authorization

Committee Chair Richard Frantz presented the Committee's recommendations for publicizing the Board's regulatory requirements that incorporated businesses offering or providing engineering and/or land surveying services in New Jersey require a Certificate of Authorization (C/A) issued by this Board. To do so he suggested the following to improve the process currently being used: 1) revise the title block to include the C/A number; 2) request assistance from State Treasurer Roland M. Machold in identifying corporations offering or performing engineering and/or land surveying services; and 3) increase the maximum fine to \$10,000.00 for noncompliance with the C/A requirements. In this regard DAG Bradford suggested that instead of issuing a stated penalty amount for violators of the regulation, to analyze each case separately and issue an appropriate fine after addressing all mitigating factors.

A general discussion ensued on these recommendations and other methods of publicizing the regulatory requirements for compliance. VP Kelly suggested a legislative change to require Professional Corporations (PCs) and Professional Associations (PAs) to comply with the C/A statute. He also suggested initiating a legislative change to eliminate the annual Roster Book (since this information is currently available on the Board's Website), and to include and report

those PCs and PAs without a C/A onto the C/A list which would be updated monthly.

VP Kelly recommended having all PCs and PAs included in the C/A list and to have this noted in the third newsletter, and to refer this matter to the Sub-Committee for further deliberation. The Board discussed this matter and on a motion by VP Kelly, seconded by BM Patel, the Board unanimously voted to accept VP Kelly's recommendations.

Brokering Land Surveying Services

President Faraldi spoke briefly about his observations of the Website listing of International Land, Inc., a land surveying brokerage company offering land surveying services in New Jersey without a Certificate of Authorization.

President Faraldi appointed a Sub-Committee to address this issue of out of state firms contracting with New Jersey licensees and firms to perform surveys and whether this conduct violates any of the statutes and regulations governing the practice of surveying. The Sub-Committee is comprised of President Faraldi, BMs Marshall and Raimondi.

Annual Meeting

The Board's annual meeting is scheduled for May 18, 2001. BM Patel is responsible for making the necessary arrangements. The proposed meeting site is in the Liberty Science Center, Jersey City, NJ. Tentatively scheduled is a dinner cruise around lower Manhattan, NY after the meeting. The alternate site location remains the Lobster House Restaurant in Cape May, NJ.

REPORT OF THE EXECUTIVE DIRECTOR

Incoming Correspondence

D.L. Stegemoller, Southern NJ Light Rail Group, LLC (August 30, 2000)

Re: Signing and Sealing of multiple plans

The Board reviewed Mr. Stegemoller's correspondence, in which he asked if a company can distribute copies of unsigned and unsealed plans for the Southern New Jersey Light Rail Transit System to multiple locations, while maintaining the original signed and sealed set in their main headquarters.

BM Cassera will draft a response to Mr. Stegemoller's correspondence, on behalf of the Board, indicating that based upon the fact that the application of the impression type seal represents the only means of distinguishing a document issued by the responsible licensee and based on the related administrative code citations, it has, and continues to be the Board's practice to require all maps, plans, specifications and similar documents to be signed and sealed.

Robert Kirkpatrick, PE, PLS, PP, Keller & Kirkpatrick, Inc.

(September 6, 2000)

Re: Review of site plans and/or subdivision applications as a municipal engineer

Mr. Kirkpatrick expressed his concerns with the practices of certified land surveying firms routinely placing disclaimers on surveys they produce which state, in whole or in part, that the survey is not to be relied upon by anyone not named on the certificate or used for any purpose other than for the purpose for which it was produced. Since the current regulations don't address this issue, BM's Raimondi and Cassera will discuss this matter at the next meeting before preparing a draft response to Mr. Kirkpatrick on behalf of the Board.

Scott L. Schurwan, PE, Alpine Engineering Products, Inc.

(September 22, 2000)

Re: The use of the embossed seal

Mr. Schurwan is requesting a change in the type of seal to be used in stamping drawings.

The Board discussed this correspondence and directed ED Russo to respond with the following: "Pursuant to N.J.A.C.

13:40-1.1(a) all sealing of documents shall be done with an impression type seal and a rubber stamp facsimile of the seal shall not be used. In addition, the current regulations affecting both the engineering and land surveying professions provide a safe guard for the consumer, and the Board doesn't warrant making any changes at this time."

Gary Baumann (September 26, 2000)
Re: Statute of Limitation

Mr. Baumann is requesting a copy of the Statute of Limitations that would apply to his project.

The Board reviewed Mr. Baumann's request and was unsure of his concerns. It directed ED Russo to advise Gary Baumann that the Board's regulations do not contain any provision for a statute of limitations, and to provide him with a copy of the Board's regulations.

Joseph Donato, PLS, PP (October 5, 2000)
Re: NJDOT mandatory "title block" format

Mr. Donato is asking if the NJDOT mandatory "title block" format is in compliance with the Board's statutes and regulations.

The Board reviewed the information submitted by Mr. Donato in which several issues are raised that the Board is concerned with. Since the NJDOT is not bound by the Board's regulations, further communications between the Board and the NJDOT are necessary to address these issues before responding. The Board will send a letter to the Assistant Commissioner of Capital Program Management of the NJDOT addressing their concerns in this matter. BMs Patel, Marshall and Bogart will research these issues further and draft the correspondence to the Assistant Commissioner.

Joseph Donato, PLS, PP, Garden State Land Surveyor Alliance
(October 5, 2000)
Re: Land Surveyor Continuing Competency Seminar Approval

In his writing, Mr. Donato extended his thanks and appreciation to ED Russo and Board and staff members for the prompt attention given to the review of his course/seminar application package.

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

Nicholas J. Wunner, PE, PLS, Wunner Engineering Associates
(October 11, 2000)
Re: Four year degree requirement for Land Surveyors

Mr. Wunner's correspondence sent to Assemblyman George F. Geist, addresses statements made by Keith M. Ludwig regarding the land surveyor educational requirement of a four-year degree.

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

J. Richard Cottingham, PE, PLS, NCEES President
(October 10, 2000)
Re: 2001 Board Presidents/Member Board Administrators Assembly

The Presidents/Member Board Administrator Assembly will be held February 1-3, 2001, in Phoenix, AZ. ED Russo and President Faraldi volunteered to represent the Board at this conference. Accompanying Mr. Cottingham's letter was an NCEES survey which the Board will complete and return.

On a motion by BM Patel, seconded by BM Vernick, the Board unanimously voted to have ED Russo and President Faraldi represent the Board at this assembly.

Louis L. Zuegner, IV, PE, Environmental Liability Management, Inc.

(October 16, 2000)

Re: Land Surveyor licensure requirements

Mr. Zuegner is asking the Board to revise its regulations pertaining to its education requirements for becoming a licensed land surveyor in this state.

The Board reviewed Mr. Zuegner's correspondence and directed ED Russo to respond by indicating that his proposed changes require a statutory change which can only be implemented by the legislature.

R. Thomas Hugg, PLS, Maser Consulting, Inc.

(October 20, 2000)

**Re: Renaissance Planned Retirement Community, Section I,
Township of Manchester, Ocean County, New Jersey**

This correspondence from Mr. Hugg is in response to the Board's request for more information regarding the setting of monuments and their permanency at the referenced location. The Board is seeking to determine if there were any unique circumstances surrounding the setting of monuments which should have been planned for at the inception of this project, and whether there were any provisions which should have been made for their setting under reasonable normal conditions.

In his response, Mr. Hugg, who works for Maser Consulting, P.A., indicates that the "Renaissance" project was originally designed by another firm and another developer prior to Stavola, Inc. taking over the project. In addition, Maser Consulting is no longer working on this project and noted that his firm was never awarded the contract to set the monuments.

ED Russo relayed to the Board a conversation he had with Mr. William Farrell who is the municipal engineer for Manchester Township and an employee of T & M Associates.

At this point, the Board directed ED Russo to draft another letter to Mr. Farrell, asking him to document in writing his opinion as to why the original design plan failed to address issues concerning the monuments.

Mark Florentino (October 24, 2000)

Re: Request for Clarification

Mr. Florentino's letter raises the question of the legality of a second engineer signing and sealing a set of subdivision plans prepared by the original engineer who is deceased. In addition, in this case, the first engineer's former firm has discontinued providing professional engineering services and now offers land surveying services only.

BM Cassera, following direction from the full Board, drafted a response to Mr. Florentino which stated that the second engineer can sign and seal a set of subdivision plans for the subject property providing that: (1): The plans are redesigned by that engineer, (2): In addition to redesigning the drainage, the new engineer must revisit all aspects of the subdivision design process, and he must prepare his own calculations for each aspect of that design, and must then make changes to various aspects of the design as dictated by his professional judgement, and (3): With respect to the lot layout and metes and bounds description, same can be signed off by the surveyor from the original engineer's company, if that surveyor was the party in responsible charge of the initial lot layout.

General Report

ED Russo reported that the Board office will be moving to the 3rd floor, a move tentatively scheduled for February 2001.

Rowan University, ABET Visit

BM Vernick represented the Board at Rowan University's ABET visit. He stated that the visit was very interesting and informative.

Rutgers University, ABET Visit

BM Patel represented the Board of Rutgers University ABET Visit. He indicated that the experience was very productive and worthwhile.

PE/LS Statistical Report

The Board noted the statistical report for the record.

Certificate of Authorization Report - September 2000

The Board noted the C/A report for the record.

Applications Received/Verifications Processed - September 2000

The Board noted the applications received/verifications processed report for the record.

REPORT OF THE DAG

Continuing Competency

Alex N. Diachishin, PE, PLS - #8767

DAG Bradford stated that the Board previously directed the issuance of a Provisional Order of Discipline ("POD") in this matter following its determination that Alex N. Diachishin, PE, PLS, failed to comply with the continuing competency requirements for the 2000-2002 licensure period. The POD was issued to Mr. Diachishin on or about September 5, 2000 to which he responded on October 5, 2000.

DAG Bradford reported that Mr. Diachishin stated that since he no longer uses his land surveyor license, he is requesting that his land surveyor license be retired and that his engineering license remain active. DAG Bradford recommended that the Board grant Mr. Diachishin's request to retire his land surveyor license.

The Board discussed and reviewed Mr. Diachishin's response to the POD and on a motion by BM Bogart, seconded by BM Patel, it unanimously voted to modify the POD to permit Mr. Diachishin to retire his surveying license and retain his engineering license.

Harry J. Duckinfield, PLS - #22711

DAG Bradford stated that the Board previously directed the issuance of a Provisional Order of Discipline ("POD") in this matter following its determination that Mr. Duckinfield failed to cooperate and respond to the Board's written request on June 30, 2000 to provide proof of the completion of the course and programs of the mandatory credits for the 2000-2002 licensure period. The POD was issued to Mr. Duckinfield on or about October 6, 2000 to which he responded on October 23, 2000.

DAG Bradford reported that he submitted proof of the completion of the course and programs of the mandatory 24 PDHs but failed to submit any mitigation evidence as to his failure to respond timely to the Board's requests. Therefore, she recommends that the Board finalize the POD as drafted which included a \$1,000.00 fine for his failure to cooperate with the Board's request in a timely manner.

The Board discussed and reviewed Mr. Duckinfield response to the POD and on a motion by BM Bogart, seconded by BM Marshall, the Board unanimously voted to finalize the Provisional Order of Discipline without modification.

Thomas J. Frawley, Jr. - #41074

DAG Bradford stated that the Board previously directed the issuance of a Provisional Order of Discipline ("POD") in

this matter to Thomas Frawley, Jr. following its determination that Mr. Frawley, Jr. failed to cooperate and respond to the Board's written request on June 30, 2000 to provide proof of the completion of the course and programs of the mandatory credits for the 2000-2002 licensure period. The POD however was erroneously issued to Mr. Frawley, Sr. on or about October 6, 2000 to which he responded later that month.

In this case the POD was mistakenly sent to Thomas Frawley, Sr., whereas it should have been sent to Thomas J. Frawley, Jr. Mr. Frawley, Jr. responded to the POD by submitting copies of his land surveying certificates of continuing education applicable to the 2000-2002 licensing period.

After reviewing the submitted documents, DAG Bradford suggested that the Board rescind the POD mistakenly sent to Mr. Frawley Sr. and to send a letter to Mr. Frawley, Jr. clarifying the matter.

The Board discussed and reviewed Mr. Frawley, Jr.'s response to the POD and on a motion by BM Bogart, seconded by BM Patel, the Board unanimously voted to accept DAG Bradford's recommendations.

Charles A. Atkinson, PLS - #33994

DAG Bradford stated that the Board previously directed the issuance of a Provisional Order of Discipline ("POD") in this matter following its determination that Mr. Atkinson failed to cooperate and respond to the Board's written request on June 30, 2000 to provide proof of the completion of the course and programs of the mandatory credits for the 2000-2002 licensure period. The POD was issued to Mr. Atkinson on or about October 6, 2000 to which he responded on October 23, 2000.

DAG Bradford reported that he submitted the proof of the completion of the course and programs of the mandatory 24 PDHs but failed to submit any mitigation evidence as to his failure to respond timely to the Board's requests. Therefore, she recommends that the Board finalize the POD which imposed a civil penalty for failure to cooperate with the Board's request in a timely manner.

The Board discussed and reviewed Mr. Atkinson response to the POD and on a motion by BM Frantz, seconded by BM Marshall, the Board unanimously voted to finalize the Provisional Order of Discipline without modification.

ARTICLES OF INTEREST

_ NSPE State Bulletin "New Law Curtails Illegal Practice" and "Interior Design Bill Vetoed" (attachment)
ABET News Release (attachment)

APPROVAL / DENIAL OF APPLICATIONS FOR LICENSURE

The Board reviewed the October 19, 2000 Examination/Comity Applications Report and voted to approve 7 exam and 24 comity applications, and to deny 3 exam applications. (list attached).

On a motion by BM Vernick, seconded by BM Frantz, the Board unanimously voted to accept the October 19, 2000 list of approved/denied applications for licensure.

MOVE TO EXECUTIVE SESSION

On a motion by BM Vernick, seconded by BM Bogart, the Board unanimously voted to move into Executive Session for the purpose of completing the Executive Session agenda.

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 adjournment.

ADJOURNMENT

On a motion by 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