

BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

Minutes of the Regular Board Meeting

held in Reno, Nevada, Thursday, November 9, 2017

Chairman Robert O. LaRiviere, PLS, declaring a quorum present, called the meeting to order at 8:36 a.m., in the Ed and Mary Alice Pine Board Room at 1755 East Plumb Lane, Suite 130, Reno, Nevada. Board members present were Vice Chairman Karen D. Purcell, PE; Michael G. Kidd, PLS; Bud A. Cranor, Public; Amy Y. Cheng, PE, Gregory P. DeSart, PE; L. Brent Wright, PE/SE; and Tracy Larkin-Thomason, PE. Also present were Patty Mamola, PE, Executive Director; Murray Blaney, Compliance Officer; Sarah Wiley, Administrative Assistant; Kay Smith, Administrative Assistant, and Chris MacKenzie, Board Legal Counsel. Board member Kent B. Anderson, PE, was excused. The following person attended as a guest of the Board:

Joshua D. Larkin, PE (Control Systems) # 023775
Automated Temperature Controls, Reno

1. Call to Order and Roll Call of Board Members

Kent B. Anderson, PE is excused.

2. Pledge of Allegiance

3. Public Comment Period

There were no public comments.

4. Introductions and Guest Orientation

Those present introduced themselves.

5. Approval of September 7, Regular Board Meeting Minutes

The Board considered the minutes. Chairman LaRiviere noted a mistake on Raymond Heber's license number. Ms Mamola advised of a small change from Mr Wright.

17-86 Motion was made by Ms Purcell, seconded by Mr Cranor, to approve the minutes as corrected.
The motion passed unanimously.

6. Financial Statements

a. August 2017 Financial Statements

Ms Smith reviewed the financial statements.

b. September 2017 Financial Statements

Ms Smith reviewed the financial statements noting the chart tracking trends for the previous three years. Chairman LaRiviere noted that revenue would increase after renewals in December.

17-87 Motion was made by Mr Cranor, seconded by Ms Purcell, to approve the financial statements.
The motion passed unanimously.

7. **Open Meeting Law Presentation by Board Counsel**

Mr MacKenzie conducted a presentation for the Board.

8. **Compliance Reports by Compliance Officer and Board Counsel**

a. **Compliance officer report on complaints being investigated**

1. **20140003 – Railroad Right-of-Way Issue**

Mr Blaney said the post-order stipulated agreement will be presented to the Board for approval today.

2. **20160027 – Criminal Charges**

Mr Blaney said a stipulated agreement will be presented to the Board for approval today.

3. **20170002 – Fire Damaged House**

Mr Blaney explained that this case was reviewed by the advisory committee and no substantial evidence of violations was found, and recommended the case to be dismissed. The advisory committee's recommendation was reviewed by Chairman LaRiviere and Ms Mamola who agreed with the advisory committee's findings to dismiss the case.

4. **20170005 – Contract Stamping**

Mr Blaney said the complaint involves cursory stamping of documents submitted to a public entity. The case has been reviewed by the Board Liaison who recommends moving forward with a stipulated agreement. Board Legal Council is currently working on the terms of that agreement.

5. **20170006 – Modifications to Original Plans**

Mr Blaney said the complaint alleges that changes were made to plans by a firm without permission. He said that upon investigation and review by a Board liaison, it was determined that the respondent firm had not violated any laws or regulations. He said the recommendation was to dismiss the case. As such, Mr Blaney has sent letters to the complainant and the respondent advising them of the dismissal.

6. **20170008 – Improper Submittal**

Mr Blaney stated that the investigation was completed and a Board Liaison reviewed the case. The Board Liaison found no violations to laws or regulations. Mr Blaney has sent letters to both the complainant and respondent advising them of the dismissal.

b. **Consideration of probation reports**

Jason E Caster, PLS #19338 Larry J Sanchez, PE #15752
Michael Keegan, PE #8821 Dirk Slooten, PLS #8808
Michael Regan, PE #11081 Mohan B Upasani, PE #11760

Mr Blaney said that an addendum to the probation reports was added as some of Mr Sanchez' reports required revisions based on previous staff direction. There is also a question as to the contractual relationship for the drafting services offered in a number of the listed projects, and we are seeking some clarification and

to make sure there is no violation of the stipulated agreement. Any questions will be tabled until the 10 o'clock item. Mr Blaney stated that Mr Slooten has withdrawn his Nevada license as he is retiring at the end of this year.

Caster, Keegan, Regan and Upasani did not report any work for this period.

c. Board Counsel Report

Mr. MacKenzie said that he prepared two proposed stipulated agreements, which will be acted on by the Board today since they were accepted and signed by the respondents.

9. Consideration of stipulated agreements-- Raymond Hebert, PLS #6630, and Robert Coache, PE #11505

Raymond Hebert, PLS #6630

Mr Mackenzie stated that he received a request from Mr Heber regarding the stipulated agreement that he would withdraw his Nevada license and if he ever wanted to reinstate his Nevada license he would then be required to pay the administrative fine. Mr Mackenzie prepared a proposed stipulated agreement for the Board's consideration.

17-88 Motion was made by Mr Kidd, seconded by Ms Larkin, to approve the proposed stipulated agreement with surrender of Mr Heber's Nevada license. The motion passed unanimously.

Robert Coache, PE #11505

Mr Mackenzie stated that he received the signed stipulated agreement from Mr Coache with an agreement to surrender his Nevada license. There was debate if the stipulated agreement details should be made public after Mr Coache withdrew his Nevada license. Ms Mamola stated that because of the stipulated agreement, the Board is able to report the terms within the national database NCEES.

17-89 Motion was made by Ms Purcell, seconded by Mr Cranor, to approve the proposed stipulated agreement. The motion passed unanimously.

10. Larry Sanchez Petition to the Board

Mr Sanchez stated he has been practicing civil engineering for structural design the past twelve years and was here today to see if he could be reinstated to practice structural design as a licensed civil engineer with the understanding of the limitations of civil engineering.

Mr Mackenzie read the stipulated agreement which says, 'Mr Sanchez shall not perform any structural engineering services until he provides sufficient evidence to the State Board by petition to the State Board that he has received adequate training to perform structural engineering services. The determination of when Mr Sanchez has again commenced or may again commence providing such structural engineering services is exclusively at the discretion of the State Board.'

Mr Sanchez was asked for proof showing that he had obtained training since the stipulated agreement was signed in August of this year. Mr Sanchez advised that he has not obtained any form of training since the signing of the stipulated agreement.

Mr Wright asked Mr Sanchez if he was doing structural design or drafting while working with L.R. Nelson and Mark Williams Mr Sanchez stated that he is employed with L.R. Nelson working under the Structural Engineer who is in Responsible Charge. He further explained that his contract with L.R. Nelson and with Mark Williams is for drafting only.

It was clarified to Mr Sanchez that he needs to demonstrate to the Board that he has taken action to improve his skills and abilities in the area of Structural Engineering. Mr DeSart suggested that Mr Sanchez contact Mr Blaney with a proposed training plan, then after completing what you have proposed to do, petition the Board again to provide proof of the additional training he had obtained.

17-92 Motion made by Mr DeSart, seconded by Ms Cheng, to deny petition with a recommendation to work practicing structural engineering under the responsible charge and supervision of a licensed engineer for a period of time until Mr Sanchez can demonstrate conclusively that he has obtained the required additional training.

11. Administrative Report - Executive Director

a. Approved licensees report

Ms Mamola referred to a chart showing the number of licensees who have been approved by the Board for each month beginning with July 2016. The numbers are for initial and comity licensure.

Chairman LaRiviere noted that the application process for Comity licensure has reduced from little over two months to approximately seven days with approximately one hundred sixty applicants.

b. Action items related to 2017-2021 Strategic Plan

Ms Mamola said that staff is currently working on drafting a business plan and working with APOC to bring to the Board for review in early 2018. A meeting has been scheduled for the Nevada Economic Development Office for November 15th to be attended by Ms Mamola, Mr Kidd, Mr Mackenzie and Susan Fisher.

Ms Mamola suggested having a one or two day meeting alternating between Reno and Las Vegas to provide PDH hours to attendees, provide lunch with a keynote speaker. Coordinate with the PAL Council and the professional associations to participate in it as well with an awards dinner as a way to celebrate the profession. Attendees would be able to receive recognition and interface with the Board members.

Mr DeSart stated that there could be an option of having a two to three hour legislative presentation as part of the meeting. He agreed with the idea of a certificate ceremony and said that it would raise awareness of the importance of licensure.

Ms Mamola explained that attendees would pay a fee to attend the meeting because of the ability to obtain PDH's which would offset the costs for the meeting.

Chairman LaRiviere agreed with the importance of the Board members attendance and outreach to the public to further the public's knowledge of what the Board's activities are, such as the Strategic Planning, SB69, among other items

It was further discussed that Mr DeSart and Mr Larkin would work together to coordinate a meeting within six months to provide PDH's as well as providing information about the Board and its activities. This meeting would be located within the new Las Vegas office. Ms Mamola suggested putting together a presentation that could be shown at posted workshops to include laws, regulations, legislative changes etc.

c. Items related to National Council of Examiners for Engineering & Surveying (NCEES)

Ms Mamola said there was nothing to report this time concerning the National Council of Examiners for Engineering & Surveying. Please reference item 22 of the agenda for future meeting date.

12. Board Committee Reports

a. Administrative Procedures Oversight Committee, Chair Karen Purcell

Ms Purcell stated that the APOC Committee met on October 13th and discussed the new office space in Las Vegas. The committee recommends moving forward with the lease of the new space.

The renovations within the office space was discussed as well as concerns of two mechanical units located above the open office space. Ms Mamola stated that she would like to continue working through the APOC Committee for acceptance of any changes needed.

17-90 Motion was made by Ms Purcell, seconded by Ms Larkin, to approve authorization to sign a lease for the new office space located in Las Vegas. The motion passed unanimously.

Ms Cheng stated her worry of signing a contract and the costs of breaking the contract if an issue arises with the two mechanical units being too loud. This was discussed and the decision was made that the units would not interfere with meetings.

Ms Purcell said that the APOC Committee also discussed the amendment to the McDonald Carano contract for legislative support services with the changes of \$3,500 a month during the off season and \$5,000 a month during the Legislative session. The APOC Committee recommended moving forward with the contract.

Ms Mamola stated that this would increase the Board's budgeted amount currently budgeted of \$500 per month during off season and \$1,000 a month during Legislative session. Ms Mamola said that with the higher than anticipated revenues, those increases would cover that additional budget costs.

17-91 Motion was made by Ms Larkin, seconded by Mr Kidd, to approve the amended contract for McDonald Carano for Legislative Services. The motion passed unanimously.

b. Legislative Committee, Chair Michael Kidd

Mr Kidd said the committee met on October 16th with several teleconferencing in from the South. He said the committee plans to contact Board lobbyist, Susan Fisher, to request a proposal for services to assist with an outreach to the state legislators. He said the committee has established an October 2018 deadline to finalize proposed changes to NRS 625 for the 2019 legislative session.

i. Proposed changes to NRS/NAC 625

Ms Mamola stated that the committee is working on the language of the NRS/NAC 625 and the changes needed which will be submitted for Board review once completed.

c. Professional Association Liaison (PAL) Council, Chair Greg DeSart

Mr DeSart reported that the PAL Council met the previous day. He said that was good attendance and participation in the meeting – the American Council of Engineering Companies (ACEC) had representatives from both North and South, Nevada Association of Land Surveyors (NALS), American Society of Civil Engineers (ASCE), and the President of American Public Works Association (APWA).

Mr DeSart said that topics discussed by the group included the need for organizations to communicate with each other during these Legislative sessions and work together on proposals being submitted, showing the support of each other. He stated that there was a discussion by all of the representatives regarding any possible conflict of the lobbyist representing other organizations similar to the Board. It was decided that Ms Mamola would ask Susan Fisher if there could be a possible conflict.

Mr DeSart said the group discussed adding a PAL Council Corner to the Board’s newsletter so that organizations can share what events are happening. He said that Carla Palma plans to report on SWEA in the next issue of the newsletter to share its activities. He also said that Ms Mamola had done a presentation of a calendar that would be on the Board’s website for organizing events which the representatives agreed would be beneficial.

13. Corporate Name Requests

ESC, Inc. – The Company has licensed engineers in Missouri but do not feel they are doing engineering work in Nevada.

Mr Blaney explained that the company is under a nondisclosure clause with their client where they could not fully explain what they were providing for services. Mr Blaney suggested that the engineer seek licensure through Comity with Nevada which the engineer is in the process of doing.

17-93 Motion was made by Ms Purcell, seconded by Ms Larkin to approve the company’s request once the engineer is licensed. The motion passed unanimously.

14. Contract Extension with legal firm Allison MacKenzie for Board Legal Services

Calendar years 2018 and 2019 not to exceed \$150,000 per fiscal year

Calendar year 2020 not to exceed \$165,000 per fiscal year

17-94 Motion was made by Mr Cranor, seconded by Ms Cheng, to approve contract extension for Allison MacKenzie legal services. The motion passed unanimously.

15. Decision on Southern Nevada Proposed Amendment to 2018 International Building Code related to Professional Geologist Requirement

Mr DeSart expressed his concern with the use of the term ‘professional geologist’ in a code requirement for engineering services (referencing Appendix O & P). He explained that there is a definition within the NRS for professional geologist, however there is no licensing board to oversee the qualifications to be called a licensed professional geologist. He believes that this is an engineering service and should be done by a licensed engineer who is competent in their expertise within that area.

Ms Mamola stated that her response regarding the proposed amendment to the international code was that when a geological professional prepares a written geologic report for engineering purposes, it is considered the practice of engineering for NRS 65.0501, A and B, and per the law, only licensed professional engineers can practice professional engineering.

17-96 Motion was made by Mr DeSart, seconded by Mr Wright, to approve Ms Mamola's analysis and response. The motion passed unanimously.

16. Audit Report for Fiscal Year 2016-2017. Brian Anderson, Wipfli CPAs and Consultants will be available for questions.

Brian Anderson with Wipfli LLP joined the meeting via telephone.

Ms Mamola stated that Mr Anderson was the person who completed the audit and was available for any questions by the Board members.

Mr Anderson discussed the process of the audit and completed it without any major problems

17-98 Motion was made by Ms Purcell, seconded by Ms Cheng, to approve the audit as presented. The motion was passed unanimously.

Mr Kidd was not present during this agenda item.

17. Southern Nevada Regional Transportation Commission

Ms Mamola stated that she had received a letter on August 9th from ACEC regarding possible QBS violation due to a request for proposal issued by Southern Nevada RTC. She said she reviewed the information then shared it with Chairman LaRiviere. After reviewing the board's laws and speaking with Chairman LaRiviere, it was determined that there was a probable violation. A letter was drafted to RTC the same day advising that there was a possible violation of the law. A letter was received on August 24th from the RTC Attorney Greg Gilbert, saying they disagreed. Ms Mamola asked board counsel, Chris MacKenzie, to draft a letter in response advising RTC that we believe they are asking for engineering services as defined by the law and strongly encouraged the RTC to reconsider their selection process and make changes to conform to the law.

Ms Mamola spoke with RTC by telephone and they were willing to modify the process slightly and not consider costs until the very end of the selection process. They agreed to select candidates for interview based on qualifications, do the interview and create a short list based on qualifications. Costs would be considered after RTC scored and ranked the interview candidates. Otherwise RTC would have had to redo their whole RFP, just pull it, and redo it to conform to the law. Subsequently, a different firm outside of ACEC notified Ms Mamola of another RFP [River Mountains Loop Trail Improvements Study] very similar to the Resort Corridor Feasibility Study RFP that also requested engineering services using cost as part of the basis for selection in lieu of selecting based solely on qualifications.

Russell Rowe with Rowe Law Group, representing ACEC, referenced the letter he submitted to the Board which outlined their concerns with respect to the Resort Corridor Feasibility Study RFP that was issued by Southern Nevada RTC. Mr Rowe believes there are several provisions in the scope of work that very clearly fall under the definition of the practice of engineering under the law 625.050, and requests the board's opinion.

Mr Rowe stated that there are potentially four other RFP's on deck that could also include similar language to the one discussed in his letter submitted to the Board.

Mr Wright asked what the law specifically states in regard to the RFP. Mr Rowe provided the definition read in 625.050, stating that it is a broad definition and that is why they have come directly to the board for clarification.

Mr Wright asked if the services highlighted in the letter could be provided by anyone other than a professional engineer. Mr Plumber answered that the highlighted services are what is considered the essence of the

argument and would be services provided by an engineering firm, specifically the traffic analysis and corridor analysis, which require specialized training in order to obtain a license.

Mr MacKenzie advised the board that this was not a noticed hearing for RTC to defend themselves against the RFP. This is just an opportunity to provide an advisory position that the Executive Director reached the conclusion that it does constitute engineering services for professional engineering. He suggested looking at the scope of the RFP that was provided and if the language in it constitutes professional engineering.

Mr Wright asked Ms Mamola what RTC disagreed about during their telephone conversation. Ms Mamola explained that RTC interprets the law to mean that they only have to use QBS for projects that require an engineer's stamp. RTC stated they have an internal policy that says they must abide by qualifications based selection for projects that require an engineer's stamp.

Mr Wright asked Ms Mamola if it was her understanding from her telephone conversation that RTC's interpretation is that if they do not have to have something stamped then it is their opinion that it is not considered engineering. Ms Mamola stated the RTC's interpretation is that they are not required to follow qualification based selection as stated in the law if the document is not going to need a stamp by an engineer.

Ms Mamola stated that she provided RTC with the NRS that describes the practice of engineering and pointed out that reports and studies don't necessarily need to be stamped by an engineer. And that planning, reports, and studies related to engineering projects are considered the practice of engineer. Their interpretation of the law for qualifications based selection is that if it isn't being stamped, if it is not a set of plans being stamped by an engineer, stamped and signed, they are not required to follow QBS.

Mr DeSart stated that it is clear that part of what RTC is asking for in the RFP does involve the practice of engineering as it's defined in NRS 625.050.

Ms Larkin stated that in her perspective, coming from working at NDOT, that her opinion is that there are some grey areas in this RFP. Ms Larkin said that to her it looked more like data collection and planning, but agreed that there was some merit to the RFP being a planning study and just not an overwhelming suggestion of engineering. Mr DeSart replied that from the definition of NRS 625.050, planning, where in the public welfare or safeguarding of life, health or property is concerned, that according to the NRS, it is engineering.

Chairman LaRiviere stated that the highlighted areas in the [Rowe Law Group] letter appear to him to be engineering. Ms Larkin agreed that when you start to identify the parts of it, that she would agree.

Mr DeSart stated that he would make a motion for this particular RFP. Since it includes traffic analysis, system capacities, and scopes of work that include evaluation of data and not just collection of data, and also involves the safeguarding of public health, safety, and welfare, he would make a motion.

Ms Larkin stated she'd like to put on the record that she did not believe the RFP to be overwhelmingly engineering.

17-99 Motion was made by Mr DeSart, seconded by Mr Wright, that a portion of the work in that RFP [Resort Corridor Feasibility Study] is engineering. The motion passed unanimously with one member abstaining.

Mr Kidd was not present during this agenda item.

18. International Comity policy

Ms Mamola referenced the draft included in the Board packet being considered by the Board.

Chairman LaRiviere stated that there are currently 36 countries that are members of IEA, International Engineering Alliance group. Ms Mamola stated that other states are entering into their own bilateral agreement between countries and that state. She further stated that she is discussing with other states the advantage of the IEA's bilateral agreement with NCS. This would provide the ability for states to approve Comity applications from other states and countries faster and easier knowing that all applicants have been vetted the process conforms to the agreed-upon conditions and standards set by those agreements.

17-95 Motion was made by Ms Larkin, seconded by Ms Purcell, to approve Policy No. 1, related to International Comity. The motion passed unanimously.

19. Administrative Process for Initial and Comity Licensure

Administrative process of the weekly emails and Board members response for approval was discussed. It was determined that staff would send one batch of emails weekly per discipline for the Board members review. The Board members would have one week to reply before staff would send a reminder email. It was also determined that staff would state in those emails that staff has reviewed the applications and recommend approval. If there are specific notes for an applicant, they would be noted at that time.

Ms Mamola proposed the same administrative processes for Initial licensure applications as currently in place for Comity license applications. A discussion was conducted and it was determined that the Initial licensure application process would remain unchanged. It was further discussed that the four years of experience required for Initial licensure be obtained prior to the application date being submitted.

20. Board Approval of Non-Appearance Applications for Initial Licensure

The Board considered 23 non-appearance applications for initial licensure and recommendations were made.

17-97 Motion was made by Ms Purcell, seconded by Mr DeSart, to approve the recommendations. The motion passed unanimously.

Please refer to Appendix "A" of these minutes for the names and action taken by the Board.

21. Status of Board and Staff Assignments

Ms Mamola reviewed those items completed and those still pending.

22. Meeting Dates

The next Board meeting is scheduled for January 11, 2017 at the Clark County Department of Building and Fire Prevention - Las Vegas, NV.

23. Topics for Future Meetings, Including Possible Proposed Amendments to the Nevada Professional Engineers and Land Surveyors' Law, NRS/NAC 625

Ms Larkin requested software engineering be discussed at the next meeting. Ms Cheng requested that entertainment engineering be added to the agenda also.

Ms Mamola agreed to put both on the agenda for the January Board meeting and also to include the topic of geological engineering and there not being a national exam, but a state produced exam and whether it makes

sense to continue. Ms Mamola stated that the person at UNR who wrote the state-developed exam is no longer available.

24. Signing certificates of licensure

The Board signed wall certificates for those persons who were licensed by comity and initial licensure.

25. Public Comment Period

Mr Larkin provided his input about attending the meeting today. There were no other public comments.

Adjournment

There being no further business, Chairman LaRiviere adjourned the meeting at 3:01 p.m. on Thursday, November 9, 2017.

Respectfully,

Patty Mamola, PE
Executive Director