

MINUTES
South Carolina Board for Registration of Professional Engineers and Surveyors
Board Meeting
November 18, 2010
Synergy Business Park – Room 108, Kingstree Building
Columbia, South Carolina

1. Meeting Called to Order

Chairman Gene L. Dinkins, P.E. and L.S., called the meeting to order at 9:34 a.m. Board Members present were Anderson Kinghorn, Jr., P.E.; Thurl Amick, L.S.; Nancy Cottingham, public member; Theresa Hodge, P.E.; Cecil O. Huey, Ph.D., P.E.; Charles Joye, P.E.; and Miller L. Love, Jr., P.E.

Staff members participating during the meeting included: Jan Simpson, Board Administrator, and Melissa Jones, Program Assistant. Other LLR employees participating in the meeting included: Christa Bell, Assistant General Counsel; Todd Bond, Investigator, OIE; Sharon Dantzler, Deputy General Counsel; Sandra Dickert, OBS; Steve Freshley, Chief Investigator, OIE; Jamie Saxon, Hearing Advice Attorney; and Michelle Sims, Administrative Assistant.

a. Public notice

Mr. Dinkins stated public notice of this meeting was properly posted at the S. C. Board of the Registration for Engineers and Surveyors office, Synergy Business Park, Kingstree Building and provided to all requesting persons, organizations, and news media in compliance with Section 30-4-80 of the South Carolina Freedom of Information Act.

2. Introduction of Board Members and All Other Persons Attending

Mr. Dinkins introduced the board members

3. Approval of Agenda

Ms. Simpson added review of a Consent Agreement in case # 2006-23 to the agenda, George Rodgers and Automated Systems Engineering.

MOTION

Mr. Kinghorn made a motion the Board approve the amended agenda. Mr. Joye seconded and the motion carried unanimously.

4. Applications Hearings

a. Arvin V. Thornburg – Application to become Emeritus Engineer and to renew Surveyor license (dual Licensee)

This matter was recorded by a court reporter in order to produce a verbatim transcript should one be necessary. The Board questioned Mr. Thornburg on basic information found in statutes and regulations. Mr. Thornburg's answers were incorrect.

MOTION

Mr. Joye made a motion that it is the finding of this Board that Mr. Thornburg has not met the Board's tests of the laws, rules and regulations as required by Board Order dated March 2010; therefore, the suspension of his license remains in place for the practice of engineering and land surveying. Mr. Amick seconded the motion which carried unanimously.

b. John M. Willett

This matter was recorded by a court reporter in order to produce a verbatim transcript should one be necessary.

MOTION

Mr. Kinghorn made a motion the Board grant approval for Mr. Willett to begin the portfolio process for licensure as a Professional Engineer in South Carolina. Mr. Joye seconded the motion which carried unanimously.

c. Jerry E. Byrd

This matter was recorded by a court reporter in order to produce a verbatim transcript should one be necessary.

Mr. Byrd did not appear during this meeting. Ms. Simpson noted Mr. Byrd was notified by letter sent electronically that he was on the agenda for this meeting.

MOTION

Mr. Love made a motion the Board deny the application until the Board receives necessary information and appearance. Mr. Kinghorn seconded the motion which carried unanimously.

d. Dennis Corporation

This matter was recorded by a court reporter in order to produce a verbatim transcript should one be necessary.

Mr. Love and Mrs. Hodge recused themselves from participating and voting in this matter as their companies have contracts with the applicant firm.

MOTION

Mr. Kinghorn made a motion the Board grant the COA to Dennis Corporation for a branch office in West Virginia and cautioned the company to ensure accuracy of information on the website and in publications regarding the services offered by each office. Mr. Joye seconded the motion which carried unanimously.

5. Disciplinary Hearing

In the Matter of Case # 2006-023

Amended Consent Agreement

This matter was recorded by a court reporter in order to produce a verbatim transcript should one be necessary.

Ms. Bell noted Mr. Rodgers has appealed the Board's decision to the Administrative Law Court (ALC) and that the ALC is holding the matter in abeyance until the Board has taken action on the amended consent agreement.

MOTION

Mrs. Hodge made a motion the Board reject the Consent Agreement modifying the terms of the original order for Mr. George Rodgers. Mr. Love seconded the motion which carried unanimously.

6. Approval of the September 21, 2010, Board Meeting Minutes

MOTION

Mrs. Hodge made a motion the Board approve the September 21, 2010, Board meeting minutes. Mr. Kinghorn seconded the motion which carried unanimously.

7. Chairman's Remarks – Gene Dinkins

Mr. Dinkins made no remarks at this time.

8. Administrator's Remarks, For Information – Jan Simpson

a. Administrative Disciplinary Report – Missy Jones

Mrs. Jones briefed the Board regarding the disciplinary report.

b. Legislative Report – Jan Simpson

Ms. Simpson asked the Board to review Regulations proposed by the Landscape Architectural Board. She asked that any comments be sent to her by the end of the comment period, December 29, 2010.

c. Administrator's Report – Jan Simpson

Ms. Simpson stated letters of caution were issued to 21 individuals who indicated on the renewal form that they were disciplined by another state. Disciplinary actions were taken for a variety of reasons including, but not limited to, failure to renew and insufficient continuing education hours. Cease and Desist Orders were issued to 167 individuals in South Carolina who did not renew their license. The Orders prompted several individuals to reinstate and several to request emeritus status or retired status.

Ms. Simpson recently was elected to a seat on the National Council of Architectural Registration Boards. The one-year term will take effect in June 2011; she is eligible for three one-year terms.

d. Financial Report – Jan Simpson

Ms. Simpson presented the members with a financial report. She noted LLR staff is working on creating a report in a more user-friendly format.

The Board asked that the total balance on hand be available for the next meeting.

Ms. Simpson noted the educational fund balance was \$227,092.00 as of June 30, 2010.

9. Office of Investigation and Enforcement Report -- Steve Freshley

Office of General Counsel Report – Christa Bell

a. Number of Investigations – Steve Freshley

b.. Number of Open Complaint Cases – Steve Freshley

c. Number of OIE Pending Investigations – Steve Freshley

IRC Report

Mr. Freshley stated there are currently five active cases in OIE. The oldest case is 397 days old and the youngest case is 35 days old.

MOTION

Mr. Kinghorn made a motion the Board accept the October 7, 2010, IRC report and the November 8, 2010, IRC report. Mr. Huey seconded the motion which carried unanimously.

- d. Number of OGC Pending Hearings – Christa Bell
- e. OGC Case Report – Christa Bell

Ms. Bell stated there are ten cases currently in OGC, eight of which are pending action and one will be heard by the SC Administrative Law Court. She had noted earlier in the meeting the George Rodgers matter is on appeal with ALC. She said OGC has closed 15 cases since January 2009.

10. Unfinished Business

a. Commissions paid for Engineering and/or Surveying Services – Gene Dinkins
This topic was carried over from the last meeting. The Board discussed a dissenting opinion from former Board member, Skip Lewis, cautioning the Board to proceed carefully on this issue. Discussion ensued in regard to situations that could be viewed as a licensee paying for commissions. The Board members differed in their opinion and interpretation.

Mr. Lewis's response was for the Board's information only and no action was required or taken on this matter.

b. Revised Draft of Board Parameters
Board members reviewed the revised draft of Board parameters. Discussion ensued regarding a \$6,500.00 fine and a public reprimand in regard to unlicensed practice for 18 months. It was noted during the discussion that staff used the formula developed by Mrs. Hodge to reach that amount.

c. Survey Coordinators – Gene Dinkins
Mr. Amick stated he has not gathered any additional information. Discussion followed regarding a rumor of unlicensed surveying practice by a company that has been sanctioned by other states. Ms. Simpson asked that the discussion be halted because a complaint could be filed in this matter.

d. Construction Staking – Thurl Amick
Mr. Amick stated Ms. Simpson had received a phone call regarding construction staking. He further stated they have had conversations and exchanged emails on this matter. He has researched the statute and cannot locate an industrial exemption allowing contractors and construction companies to perform construction staking and surveying and referenced Section 40-280(a). In his opinion, a licensed surveyor must do construction staking. He read the definition of surveyor under Section 40-22-20(24)(a)

Discussion ensued regarding non-licensed individuals doing construction staking and surveying, 40-22-280(a), Section 40-22-290 and adding further restrictions.

The Board asked Ms. Dantzler to research the definition of surveying, exemptions, and Board Regulations for the January 2011 meeting.

Mr. William Gray, PLS, appeared before the Board to seek clarification on the Board's position on construction staking. He stated several crews are laying out approximately thirty percent of planned developments in the Beaufort area, laying out roadways, sewer systems, storm water systems, water systems. He alleged the activity is not overseen or directed by a licensed surveyor. He alleged the individuals are independent subcontractors the general contractor hires as site prep people for a fee. He also noted they are not certifying anything.

Discussion ensued in regard to industry exemptions vs. subcontractors hired by others. Mr. Gray stated he inquired if the individuals are employees of the firm but they apparently are not and have separate tax entities for offering surveying services.

Mr. Gray asked the Board what work is considered to be under the responsible charge of a surveyor? He cited instances where the individuals are performing services, then preparing "as-built" drawings and having a Surveyor sign and stamp then even when the work was not performed under the surveyor's supervision. Mr. Dinkins stated that is a different topic and falls under the decision making process, the review of the work, and the extent of the control and direction the PLS has in the project.

e. **Approval of Draft for Jurisdiction Examination**

Board staff developed a jurisdiction examination (test on state laws) and the draft was reviewed by the Board. The jurisdiction exam will be used as needed. No copies of the exam were distributed.

MOTION

Mr. Love made a motion the Board approve the jurisdiction exam. Mr. Amick seconded the motion which carried unanimously.

11. New Business

a. **Engineer Technology Review Committee**

Ms. Simpson stated the Board has one candidate, Michael Zoccardo, a PE in North Carolina, to consider. She noted Mrs. Hodge served on the committee that interviewed the candidate.

Mrs. Hodge stated Mr. Zoccardo is a civil engineer who had prepared plans for water, sewer, and storm drainage. The committee did not recommend him for licensure due to a lack of breadth and depth of knowledge to qualify for licensure in South Carolina.

MOTION

Mrs. Hodge moved to deny the candidate for licensure. Mr. Joye seconded the motion which carried unanimously.

b. **Election of Board Officers for 2011**

Chairman

NOMINATION

Mr. Dinkins nominated Mr. Kinghorn as chairman. Mrs. Cottingham seconded the nomination.

Vice chairman

NOMINATION

Mrs. Cottingham nominated Mrs. Hodge as vice chairman. Mr. Huey seconded the nomination which carried unanimously.

Secretary

NOMINATION

Mr. Joye nominated Mrs. Cottingham as secretary. Mr. Kinghorn seconded the nomination which carried unanimously.

The officers will become effective January 1, 2011.

c. Surveyor Education –SCSPLS Application for Funding

The SCSPLSA submitted a request for funding in the amount of \$14,450 to support the Society's Continuing Education Conference in February 2011. Mr. Dinkins noted this event is the society's main event for surveyors.

MOTION

Mr. Dinkins made a motion the Board approve the request. Mr. Joye seconded the motion which carried unanimously.

d. Review of IRC Members and Terms

The Professional Engineers currently serving on the Investigative Review Committee are Bill Knowles and Hollis Walker. The Surveyor members are Rick Inman and Dennis Johns. An annual review of appointees is requested by LLR.

Marguerite McClam and Pat Gambill have expressed interest in serving on the IRC. Mr. Love noted Dennis Fallon is retiring as Dean of the School of Engineering at The Citadel in 2011 and recommended the Board consider him as an IRC member

Mrs. Hodge volunteered to draft term limits and a rotational outline.

The Board asked that this matter be placed on the agenda for the January 25, 2011, meeting.

e. Clarification on "Retired" and "Emeritus" Status for Engineers and Surveyors

Ms. Simpson requested clarification regarding change in licensure from retired to Emeritus and from lapsed to Emeritus. Discussion ensued, but issue was unresolved. The Board asked that this matter be placed on the agenda for the January 2011 meeting.

f. Draft of Landscape Architects Regulations

The Board briefly reviewed the document earlier in the meeting. Ms. Simpson reminded the members that comments regarding the regulations are due prior to December 29, 2010.

g. Building Official Manual Revisions

Ms. Simpson reviewed the progress made in revising the Building Officials Manual. A joint committee of this Board and the Board of Architecture agreed to specific revisions which were then amended slightly and approved by the Board of Architects on Tuesday, November 16, 2010.

The long-range goal is to revise the entire Manual, but short-term, the plan is to revise Section 300 and re-post it on web sites. One portion of Section 300 regarding building officials was deleted in its entirety as it is also printed in Section 200.

The Committee suggested the following paragraph of Section 300 regarding upfits or alterations to a building less than 5,000 square feet be reworded as follows:

Upfits or alterations to a building that is less than 5000 square feet and less than 3 stories in height do not require the services of a design professional unless the alterations will increase the area of the building beyond 5000 square feet or affect the structural safety of the building. If either the building size or structural safety is affected by the alteration, the services of a design professional are required. If the use of a building is currently or changes to become one of assembly, institutional, educational or hazardous occupancy, or changes to become one of these classifications, the services of a design professional ~~is~~ are required (regardless of size).

MOTION

Mr. Kinghorn made a motion the Board accept the building official manual with the revision and have it distributed to all building officials. Mr. Joye seconded the motion which carried unanimously.

i. Funding Request – SCSPE

Mr. Joe Jones submitted a request for funding in the amount of \$4000 to support speakers and venue costs for the Annual winter meeting of SCSPE and ACEC. The meeting will be held February 23, 2011, in Columbia. He said two education tracks are planned—business and environmental—and a third track might be added to increase interest. He will provide an agenda as soon as it is complete. The funding is provided from the Board's Education and Research Fund as authorized by Section 40-22-245.

MOTION

Mrs. Hodge made a motion the Board approve the request for \$4,000.00. Mrs. Cottingham seconded the motion which carried unanimously.

It was noted that SCSPE's legislative reception will be held on January 25, 2011.

h. Response to Legislative Audit Council

Mr. Dinkins stated he has received a letter from Thomas Arden of the Legislative Audit Council asking for the Board's comments in regard to budgeting, issuance of licenses and investigations of complaints.

Executive Session

MOTION

Mrs. Hodge made motion the Board enter executive session to confidentially discuss the LAC letter. Mr. Joye seconded the motion which carried unanimously.

Return to Public Session

MOTION

Mr. Kinghorn made a motion the Board return to public session. Mr. Love seconded the motion which carried unanimously.

Mr. Joye left at this time.

j. Support for Engineers and Surveyors – Gene Dinkins

Mr. Dinkins noted that Section 40-22-245 allows the Board to use up to \$10.00 of each renewal fee for research and education. He believes the Board should seek opportunities to provide funding for worthwhile, beneficial events that fall under the criteria stated in the statute. The "set-aside" generates approximately \$160,000.00 every two years from individual renewal fees; when firm renewal fees are added, the total is approximately \$200,000.00 biennially. Mr. Dinkins noted a significant decline in the surveying profession as shown in a drop in numbers of individuals taking exams for licensure: about 1150 individuals took the October 2010 exam as when usually approximately 2,000 individuals take the exam nationwide. Approximately 600 individuals nationwide took the PS exam, whereas that number has typically been between 1,100 and 1,200 individuals nationwide. He stated South Carolina may license only 12 individuals by exam over the next year.

Mr. Dinkins suggested creating a library of materials to be checked out for exam study/review; or, offering a “scholarship” for an exam review course to individuals who have met all requirements to become licensed; or funding similar supportive activities. He said the Board could offer similar programs for the engineers as well. Discussion ensued on how the Board could best utilize the available funds for the purposes approved by the Legislature.

MOTION

Mr. Love made a motion the Board support—in concept—additional funding for research and education related to licensure for surveyors and engineers with the specific activities to be determined at a later time. Mr. Kinghorn seconded the motion which carried unanimously.

Joe Jones noted Clemson University used to have a review course which has not been offered in the last several years. He will research the possibility of re-establishing the review course. Mr. Love stated The Citadel also offered a review course at one time; however, the individuals teaching the course were the exam proctors and could no longer teach the course.

The Board asked that this matter be placed on the agenda for the January 25, 2011, meeting.

12. Discussion Topics

a. Nominations for NCEES National Awards

Mr. Dinkins stated the deadline for nominating an individual for a distinguished award is the end of January 2011. It is a very detailed process.

b. SCSU-USC Program – Gene Dinkins

Mr. Dinkins stated he asked Ms. Simpson to obtain a status report on the joint SCSU-USC initiative from Dr. Lewis of SC State. Dr Lewis reported that SCSU’s Board of Trustees approved the program, and they will seek approval of the Commission on Higher Education the first of November. No further update has been received.

Mr. Jones stated he discussed the matter with USC during a recent meeting with the civil engineering and environmental departments. He noted USC is perplexed as to why the matter would have to go before the Commission on Higher Education; USC has not yet received any applications from SC State students.

c. NCEES Change to Education Standard

Mr. Dinkins reported that NCEES’s Miami office is now closed and education evaluation activities have been transferred to NCEES headquarters in Clemson, SC. The Credentials Evaluation Service is a division of NCEES that evaluates foreign and non-ABET engineering education to determine substantial equivalence to an ABET-accredited program. While that term is being phased out, the Board depends on evaluations for information on acceptability of foreign education. NCEES’s evaluation places less emphasis on humanities courses. South Carolina accepts evaluations from its own Education Consultant as well as from NCEES. The Board suggested Dr. Castro review the change in the Education Standard to identify any positive or negative factors.

13. Board Member Reports

a. NCEES Board – Gene Dinkins

Mr. Dinkins stated he attended the NCEES Board of Directors meeting last weekend in Santa Fe, New Mexico.

b. NCEES Committee Reports

Mr. Dinkins stated the Computer-Based Testing (CBT) Committee spent two days interviewing Pro Metric and Pearson Vue and spent the third day reviewing the information gathered in the interviews. The first administration of computer-based exams could occur within two to three years. The FE and FS exams will be converted first, and the PS exam could be converted shortly afterward. The PE exam, however, will be more difficult as there are different tests for various engineering disciplines. Mr. Dinkins noted exam fees will increase but security will be greatly enhanced and there are many options for item types with a computer-based exam that are not currently possible. Vendor proposals are due in January 2011.

Mr. Dinkins stated NCEES created a task force to study USGBC's activities related to building commissioning. He noted the Board previously reviewed building commissioning and determined it was engineering work.

Mr. Love stated the ACEC, the American Society of Civil Engineers, and the American Public Works has begun a LEED infrastructure program. There will be an institute of sustainability for infrastructure. The U.S. Green Building Council declined an invitation to collaborate on the project. Therefore, the three organizations will work together on the project with the goal of creating a set of criteria for an infrastructure program similar to sustainability criteria for buildings.

Mr. Love reported on NCEES's Registering Continuing Education Program (RCEP), a joint venture between NCEES and ACEC. Providers may apply to become a "registered provider" of continuing education. ACEC will maintain for licensed engineers and surveyors nationwide a database of continuing education activities taken through registered providers and the number of credits accrued. It is hoped that state boards will accept the program. He proposed that South Carolina consider being the first state to accept the CE transcript as the sole documentation submitted by a licensee chosen for audit. He asked this matter be placed on the January 25, 2011, agenda.

Discussion ensued regarding the application process in OLC.

Mr. Amick, Mr. Kinghorn, Ms. Cottingham, Mr. Love, and Mrs. Hodge asked that they be mailed a hard copy of the meeting agenda items.

14. Public Comments

No public comments were made during this meeting.

Adjournment

MOTION

There being no further business to be discussed at this time, Mr. Kinghorn made a motion the meeting be adjourned. Mr. Love seconded the motion which carried unanimously.

The November 18, 2010, meeting of the SC Board of Professional Engineers and Surveyors adjourned at 3:52 p.m.