

MINUTES
South Carolina Board for Registration of Professional Engineer and Surveyors
9:30 a.m., April 8, 2014
Synergy Business Park, Kingstree Building
110 Centerview Drive, Room 108
Columbia, SC

Call To Order

Chairperson Rickborn called the meeting to order at 9:33 a.m.

Statement of Public Notice

Chairperson Rickborn read that the public notice of this meeting was properly posted at the South Carolina Board of Registration for Professional Engineers and Surveyors, 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.

Introduction of Board Members and Other Persons Attending

Board members present included Timothy Rickborn, PE, Chairperson; Dennis Fallon, Ph.D, PE, Co-Chairperson; John P. Johnson, PE, PLS, Secretary; Gene L. Dinkins, PE, PLS; Miller L. Love, Jr., PE; Theresa Hodge, PE; Jeffrey Mulliken, Ph.D, PE; and Nancy W. Cottingham.

Staff members present included Lenora Addison-Miles, Administrator; Britton Jenkins, Program Assistant; Sara McCartha Esq., Advice Counsel; and Erin Baldwin, Esq., Office of General Counsel.

Others present included Marguerite McClam; Dennis Johns; David Crutchfield; Don Zimmerman; Kim Long; Brian Keys; Pat Gambill; Brian Isom; Linda McDonald; Zach McGhee; and Kent Hudson.

Approval of Meeting Minutes

MOTION: To approve the minutes from the March 13, 2014 meeting. Love/Hodge/approved.

Review of Agenda

Mr. Rickborn asked if there were any proposed changes to the agenda for the April 8, 2014 meeting. Mr. Fallon said that he would like to discuss the results of the Carolina's Conference, and would do so during the public comments discussion. Mr. Rickborn said he would like to move item 14b after item 9.

MOTION: To approve agenda with suggested changes from Mr. Rickborn.
Love/Johnson/approved.

Reports

- a. Office of Investigations and Enforcement Report –Mrs. Miles reported the Office of Investigations and Enforcement has received a total of 16 cases this year. The oldest active case is 89 days. They have closed 15 cases. Mr. Rickborn inquired about the oldest active case being listed as 89 days, when at the March 13th meeting, the oldest case was listed at 222 days. Mrs. Baldwin said that could be that the case has moved out of the Office of Investigations and Enforcement by dismissal or has moved down to the Office of General Counsel.

- b. Investigative Review Committee Report- Mrs. Baldwin reported the committee reviewed the Letter of Caution items from the April 8th report to give a better description of the IRC logic. There has been no change of position, but there is more detail to give the board a better understanding. Mr. Dinkins said that this is the best logic and description that the board has gotten in a long time and thanked the committee for giving more detail. Mr. Love said that many times, the board gets questions from licensees about the disciplinary actions taken on certain cases. Mrs. McCartha said that the cases on the IRC are not public and if someone has a question about a specific case, they can refer to the Communications Office to provide a status for that case. Mrs. Baldwin added that the Office of General Counsel is more than happy to answer questions from the public about the rationale of a decision, but they are limited to what information they can provide due to privacy reasons. Mrs. Hodge requested more details on the IRC report for the cease and desist items. Mrs. Baldwin said that she can give more information on the cease and desist cases if it is available.

MOTION: To approve the Letter of Caution items on the March 3, 2014 IRC report.
Hodge/Fallon/approved.

- c. Office of General Counsel Report- Mrs. Baldwin reported there were six open cases pending in the Office of General Counsel. One case is pending a Consent Agreement or Memorandum of Agreement. She expects that she will have a hearing scheduled for the July 15th board meeting. Mrs. Baldwin reported that they have been working on the expert reviewer letters and the process is moving along.
- d. Administrative Reports – Mrs. Miles reported that there was no financial report since the March 13th 2013 meeting. She reported that there is a total of 28,119 licensees. The email blast regarding upcoming renewals will go out to licensees on Friday, April 18, 2014 and the paper notices will be mailed no later than Tuesday, April 22nd. The online system will be available Friday April 18th when the e-blast is sent.

Application Hearings

- a. David Mazorra appeared before the board for an application hearing for PE licensure by comity. He was not represented by counsel. This matter was recorded by a court reporter to produce a verbatim transcript, should one be necessary.

MOTION: To enter executive session for legal advice. Dinkins/Love/approved.

MOTION: To exit executive session. Love/Cottingham/approved.

MOTION: To grant PE licensure by comity to Mr. David Mazorra. Dinkins/Fallon/approved.

- b. Donald Zimmerman appeared before the board for an application hearing for PE licensure by comity. He was not represented by counsel. This matter was recorded by a court reporter to produce a verbatim transcript, should one be necessary. Mr. Fallon was recused.

MOTION: To enter executive session for legal advice. Love/Hodge/approved.

MOTION: To exit executive session. Cottingham/Love/approved.

MOTION: To deny PE licensure by comity for Mr. Donald Zimmerman since he does not meet the education requirements per statute. Hodge/Mulliken/approved.

Application Reviews

- a. The Board reviewed an application by comity for Mr. William Goff. Mr. Goff requested a waiver of the Fundamentals of Engineering Examination. Mr. Johnson was recused.

MOTION: To deny application by comity for Mr. Goff since he has not taken the Fundamentals of Engineering Exam. Dinkins/Love/approved.

New Business

- b. Deed-Survey Recording Question- Brian Keys, Brian Isom, and Mrs. Linda McDonald from the SCDOT addressed the board about a cease and desist order from Aiken County and their refusal to accept right of way deeds from the SCDOT. Mrs. McDonald requested clarification on whether exhibits filed with SCDOT Right Of Way deeds were surveys subject to land surveying standards. Mrs. McDonald explained that when acquiring property, SCDOT's surveyors go out and measure the amount of property needed from each property owner on plan sheets. They then go to each property owner to negotiate the sale of the property, and prepare a title of real estate in which they reference those plan sheets. An exhibit is attached which is an excerpt of the engineering plan and is not a survey. It is an exhibit to a deed. Mrs. McDonald is not aware of any law that requires a plat of survey with a conveyance of land. Mrs. McDonald said that they prepare surveys after the project is complete. She explained that as part of SCDOT's construction contracts, they require their highway contractor to have a surveyor monument the right of way, prepare a survey of the new right of way, and record it at the RMC office of the county in which the land is located. SCDOT is not subdividing land, only submitting documents that indicate how much land they need to acquire. Mr. Dinkins said that when the standards of practice were revised in 2007, they brought all property surveys up to the same level being that they had to meet the same standards and requirements. He asked if it was possible to have the land surveys done at the time of acquisition instead of at the end of the project. Mrs. McDonald said that it would be very costly to the taxpayers and they are not required by law to do that. Mr. Dinkins asked if a slight adjustment in the final location of the road have any bearing on the property line. Mr. Keys said that it could and with every situation SCDOT deals with, there is always some kind of exception. If anything happens during the process that changes the right of way line, SCDOT would have to go back to get another deed, and go back to the property owner to get permission for additional property, if needed. Mrs. Hodge says that the exhibit was merely a map for the property owner to visually show how much of the property is being taken and not a survey. Mr. Love asked if there was a way to allow SCDOT time to establish their procedures, and issue a statement on behalf of the board requesting that counties or agencies honor the exhibits submitted by SCDOT in the meantime. Mr. Dinkins agreed and suggested that the Board take all of the presented documents as information, do some research, and come back to discuss and make a decision at the next meeting. Mrs. Hodge asked if they could submit the information in writing without the exhibit. Mrs. McDonald said that they could, but they would need to have a metes and bounds description and that would be difficult to explain to the property owners. Mr. Love suggested that the

representatives go back to SCDOT, gather additional information from other surveyors so that they can negotiate a middle ground. Mr. Love said it would be difficult to vote on it today without additional research. Mr. Dinkins asked if they could request staff not to issue cease and desist orders until the issue is resolved. Mrs. Miles said they could do that.

Review of Licensure Recommendations

- a. One candidate, Richard Balgowan (Civil) was recommended for licensure by the Portfolio Review Committee. Mr. Skip Lewis chaired the committee.

MOTION: To grant PE licensure to portfolio review candidate. Love/Hodge/approved.

Investigative Review Committee Professional Members

The board requested that the members of the Investigative Review committee come to the board meeting for an open discussion about the Investigative Review Committee process. Members present were: Pat Gambill, Dennis Johns, and Zach McGhee. Mr. Dinkins said that the IRC is on the front line by handling a majority of disciplinary cases. He explained that the Board puts a lot of trust and confidence in the IRC and thanked them for their time. Mr. Gambill said that the staff does a great job preparing the cases and they sometimes end up with more cases than they would prefer in a single meeting. He appreciated that all the cases are available electronically and are able to be viewed in the meetings by PowerPoint. Mr. Dinkins said the Board wants to make sure they have consistency and that the decisions made by the IRC are reasonable. Mrs. Hodge asked if another engineer or surveyor should be added to the committee. Mr. Love suggested if an additional person is appointed, that the board should meet with them so that they understand the purpose of the committee and what is expected of them from the board. Mr. Dinkins asked the committee what their work load was like regarding the engineering versus surveying cases. Mr. McGhee said that they get a lot of surveying cases. Mr. Johns said that it is fairly even, but the detail on the surveying cases are not as in depth, and that the engineering cases sometimes take longer because of all the detail and drawings. Mr. Gambill added that he does think the committee needs an additional person and would be most beneficial in an area that they have less expertise in. Mr. McGhee said there are usually more civil cases. Mrs. Baldwin reported that the committee heard 13 cases at the last meeting. Mrs. Baldwin said that they have an exceptional investigator and she gets as much information for the IRC as she can. She added that most of the cases have been structural and civil, but it is hard to predict what cases could be seen in the future. Mrs. McCartha added that due to the fact that the IRC is a complaint based disciplinary process, there is no way to predict it, but said that the board could consider a way to give the committee some flexibility. Mr. Dinkins asked if board members could sit on the IRC to convey the thoughts of the board to the committee. Mrs. Baldwin said that could present a quorum problem during board meetings because the sitting member on the committee would have to recuse themselves, and a problem of giving one board member the responsibility of speaking for the board. Mrs. Bell added that the Board parameters and previous orders serve as the precedent and the board's stance on certain violations. She added that sometimes it is necessary for the Board to update those parameters from time to time. Mrs. McCartha added that creating and revisiting Resolution Guidelines from time to time is also very helpful. She stated that she is able to provide data about cases that have come before the board and is able to provide that information, if requested. She said the best plan would be to meet with the Office of the Investigations, Mrs. Miles, and Board Staff to come up with a draft of Resolution Guidelines and to bring it before the board for review during the July meeting. Mr. McGhee suggested that a structural engineer would be beneficial to the IRC. Mr.

Gambill added that all IRC members should be present at meetings, if possible, to aid in consistency. Mr. Dinkins said that based on the recommendations of the IRC, the Board should consider adding a new member to the committee, possibly a structural engineer. Mrs. Bell added that LLR thanks the members of the IRC for their work.

The board recessed for lunch from 12:28 p.m. to 1:02 p.m.

Portfolio Review Process-Mitchell Tibsrhany

Mr. Rickborn said that Mr. Tibsrhany was not able to make the meeting and will be present at the next Board meeting scheduled for July 15, 2014.

Unfinished Business

- a. Review of Action Items from March 13, 2014 meeting – Rickborn - The board reviewed action items from the March 13, 2014 meeting. Mrs. Miles explained that the payment to SCSPE has been processed. Mrs. McClam thanked the board for their contribution. Mr. Rickborn added that he contacted Mr. Gossett regarding the Industrial Exemption on March 13, 2014 and he has not heard back from him. Mrs. McCartha reported the bill passed in both the House and full committee in the Senate, and is now pending on the floor. Mr. Dinkins asked if there were any comments back from SCDOT and the stream restoration plans. Mrs. McCartha stated SCDOT has been notified of the Board’s opinion.
- b. Southern Zone Meeting Update – Hodge-Mrs. Hodge reported that as of March 7, 2014, there is a total of 173 registrations for the NCEES Southern Zone Meeting scheduled for April 23-26 in Charleston, South Carolina. Dr. Fallon will contact General Rosa, from the Citadel, as an option for the opening guest speaker, if Governor Haley is unable to attend. Mr. Love said Mayor Riley does have a few minutes on his calendar to come over and greet visitors to Charleston.

MOTION: To enter into executive session for legal advice. Johnson/Fallon/approved.

MOTION: To exit out of executive session. Johnson/Mulliken/approved.

Mrs. Hodge thanked the SCSPE and SCPLS for their contributions to the NCEES Southern Zone meeting.

- c. FE and FS CBT Approvals (Automatic/Manual) Update – Rickborn- Mr. Rickborn met with Tim Miller of NCEES regarding Automatic and Manual approvals for FS/FE CBT approvals. NCEES is not going to change the way they do things in terms of reporting back to the board how many tests candidates have taken. Mr. Dinkins noted the Board would not deny licensure to an applicant that failed the exam twice in South Carolina, and passed in another state, and does not see a difference. Mr. Rickborn added that if they intend to go to automatic approvals, they would need to get that specific rule out of the regulations at some point. Mrs. McCartha said that it would not be looked upon favorably if the board is not upholding something that is in their regulations. Mr. Dinkins said this would be a great topic to bring up at the NCEES Southern Zone meeting. Mr. Rickborn suggested that the board move forward with automatic approvals and begin the process of updating the regulations. Mr. Rickborn asked to add that to the July agenda. The Board directed staff to transition to automatic for FE and FS CBT approvals.

- d. Electronic Submittal of Plats for Approval/Recording Update – McCartha- Mrs. McCartha reported that she researched the laws in regards to seals and referred to South Carolina statute 40-22-270 and additional guidance in regulation 49-207. Regulation 409-207(B)(2) states, “Rubber stamps, impression seals, or computer generated seals, identical in size, design and content with the approved impression seals may be used by the firm.” She explained that the only place in the statutes or regulations where the use of impression seals would be required is in 40-22-270 (7), which reads, “The clerk of court or the register of deeds for any county shall refuse to accept for filing or recording a map, plat, survey, or other document within the definition of surveying, dated after July 1, 1977, which does not have affixed to it the personal signature and prescribed impression seal of a professional surveyor.” She says that based on what she read it seems that electronic seals are acceptable unless the law is specific in saying that you need an impression seal. Mr. Dinkins asked if there was an overriding state statute that would trump the Board’s statute by allowing electronic stamps. Mrs. McCartha said that she is not aware of any overriding statutes. Mrs. McCartha will gather additional information and provide an update at the next meeting.

New Business

- a. Proposed Changes to NCEES Bylaws- Miles- Mrs. Miles reported that a copy of the changes of the NCEES bylaws was distributed at the March 13th meeting and it was requested that it be added on the April 8th meeting. The changes will be voted on at the NCEES annual meeting in August. Mr. Dinkins suggested that no action be taken on these items until August.
- c. 2014 NCEES Annual Meeting Funded Delegate- Miles – Mrs. Miles spoke to the board about selecting a funded delegate and first time attendee for the NCEES annual meeting in August. The board designated Mr. Mulliken as the first time attendee for the NCEES annual meeting.

MOTION: To fund board members not funded by NCEES, Board administrator, attorney, and investigator to attend the NCEES annual meeting in Seattle, Washington in August 2014. Dinkins/Hodge/approved.

Other Business

Mrs. Hodge announced that SCSPE and the ACEC will have their annual conference and the Board is scheduled to be on the agenda on Thursday, June 12, 2014 for a two hour panel. The conference will be held in Hilton Head, South Carolina at the Marriott.

Mr. Dinkins asked for clarification on the next steps of action regarding the SCDOT. Mrs. McCartha said that she would speak to Mrs. McDonald regarding their procedures and report back at the next meeting. She suggested that the board not take a position until they have further information.

Dr. Fallon thanked the board, on behalf of the students of the Citadel, for their support of the Carolina’s Conference. He said that without the help of the board, the event would not have been as successful.

Mrs. Miles reported additional numbers as requested earlier in the meeting. There are 177 Emeritus Engineers and 11 Emeritus Surveyors. There have been 113 candidates scheduled for the April/May

window for the FE exam. Seventeen candidates have taken the exam and 96 candidates are scheduled. There are a total of 155 exam candidates scheduled for the April PE Exam, eight surveyors, ten for structural, and seven for state specific. Mr. Rickborn asked that Mrs. Miles provide a printed update in the meeting handouts for the July meeting.

Public Comments

Mrs. McClam announced that the SCSPE planned to serve pizza to the exam candidates on April 11, 2014 and invited the Board to attend.

Notice of Next Meeting

The next meeting of the SC Board of Registration for Professional Engineers and Surveyors will be held on Tuesday, July 15 2014 at the SC Department of Labor, Licensing, and Regulation, Synergy Business Park, Kingstree Building, 110 Centerview Drive, Room 105 Columbia, SC and will begin at 9:30 a.m.

There being no further business:

MOTION: To adjourn.

The meeting adjourned at 2:43 p.m. Johnson/Hodge/approved.

Respectfully Submitted,

Britton S. Jenkins, Program Assistant