

Minutes
ARIZONA STATE BOARD OF TECHNICAL REGISTRATION
1110 West Washington, Conference Room #240
Phoenix, AZ 85007

Tuesday April 25, 2017
9:00 a.m.
OPEN SESSION

1. **CALL TO ORDER** – 9:03am

2. **ROLL CALL** – Jason Madison, Stephen Noel, LeRoy Brady, Jason Foose, Neal Jones, Eugene Montgomery, Andrew Everroad, Dr. Alejandro Angel, Edward Marley (left at 12:14pm)
Staff: Melissa Cornelius, Patrice Pritzl, Robert Stam, Douglas Parlin, Kurt Winter

3. **CALL TO THE PUBLIC**

No one appeared before the Board.

4. **ADOPTION OF MINUTES**

Review, Consideration, and Possible Action on the following:

A. Approve, modify and/or reject March 28, 2017 Board meeting minutes.

Mr. Marley moved and Mr. Foose seconded to accept the minutes; motion carried.

5. **CONSIDERATION OF CASES REFERRED FOR FORMAL HEARING**

Formal Hearings or Related Proceedings will begin at 9:30 a.m.

A. Formal Administrative Hearing and/or Review, Discuss and Take Possible Action on State's Motion to Deem Respondents' Admission to Allegations in the Complaints and Notices of Hearing:

1. Case No. P14-004, Hector Fimbres, Non-Registrant and Fimbres Design Studio LLC, Non-registrant Firm.

Scott Donald, A.A.G., presented a motion to continue the hearing.

Mr. Marley moved and Mr. Noel seconded to Continue the Hearing; motion carried.

2. Case No. P16-015, Michael Bostic, Geologist #35021

Scott Donald, A.A.G., appeared before the Board representing the State. Respondent did not appear before the Board and was not represented by legal council. Marc Harris, A.A.G., was present to advise the Board.

Mr. Noel stated he knew Mr. Bostic but could be fair and unbiased in this matter.

Mr. Donald stated that the Board sent a Notice of Hearing to Respondent's address on file but the Board had not received an answer. Mr. Donald asked the Board to deem the allegations in the complaint admitted.

Mr. Marley moved and Mr. Foose seconded to grant the State's motion to deem the allegations in the Complaint and Notice of Hearing as admitted; motion carried.

Mr. Marley moved and Mr. Foose seconded to adopt the Factual Allegations and the Alleged Violations from the Complaint and Notice of Hearing as Findings of Fact and Conclusions of Law; motion carried.

Mr. Noel moved and Mr. Marley seconded to enter the following order: Respondent shall pay the costs of investigation and administrative penalty of \$4000 to be paid within 12 months from the effective date of the Order, have his registration suspended for three years and, after 12 months of suspension, Respondent may petition the Board to lift the suspension which the Board has sole discretion to decide upon; motion carried.

B. Motion to Continue a Hearing

1. Case No. P16-072, David Madrid, Non-Registrant

Mr. Brady moved and Mr. Marley seconded to accept the motion to Continue the Hearing; motion carried.

6. ENFORCEMENT MATTERS

Review, Consideration and Possible Vote on the following:

A. Complaints Proposed for Resolution by Dismissal or Closure:

1. HI17-016, Jessica Owens, Non-Registrant

Mr. Marley moved and Dr. Angel seconded to dismiss the complaint; motion carried.

2. P17-040, Michael Hendrix, P.E. (Civil) #23648

Mr. Foose recused himself because Respondent was a contract employee of his employer.

Respondent appeared before the Board. Steven Robinson, Alleger, also appeared before the Board. Steve Letoske, staff member of Respondent, appeared before the Board.

Alleger argued not to dismiss the case because Respondent was ultimately responsible for the plans and road in this matter. Dr. Angel asked Alleger to elaborate. Alleger stated that Mohave County employees drafted an engineering plan and Respondent was the supervisor of said employees and therefore was responsible for the plans his employees created.

The investigator, Mr. Kraemer, explained to the Board that laws governing government businesses differed from that of private businesses in regards to who is ultimate responsibility for an employee's work. Mr. Donald, A.A.G, supported this explanation.

Respondent stated that he was not ultimately responsible for the plans and road in this matter. Dr. Angel asked Respondent to explain the plan's heavy maintenance designation. Respondent stated that the heavy maintenance designation allowed the county to maintain the road more extensively than a maintenance designation; a set of plans or placing a bid before contractors was therefore unneeded. Mr. Brady asked how much was budgeted and spent on the project. Respondent answered that the County spent little on the project; Mr. Letoski estimated the project's budget to be roughly \$230,000. Mr. Brady asked whether the amount would exceed the threshold for the maintenance work. Respondent stated the County planned to bid out the work. Dr. Angel opined that the project exceeded the scope of maintenance because of its design elements. Mr. Madison reminded the Board members to focus on whether Respondent was responsible for the plans. Mr. Marley stated he believed the project to be a public works project and therefore required the supervision of a registrant. Mr. Donald stated that Respondent mentioned the factors as to why the plans did not require sealing but he could not confirm or deny the reasoning. Respondent stated the County did not act upon the plans and that all design plans are sealed and any construction bid out. Dr. Angel asked which registrant was in charge of the plans. Mr. Letoski replied that Tim Walsh took charge of the plans. Dr. Angel and Mr. Brady asked if the plans sent to the contractors were sealed. Mr. Letoski stated that the County does not need to submit plans to contractors for maintenance work.

Dr. Angel moved and Mr. Brady seconded to dismiss the case and open investigations regarding the preparation of the plans and engineering practices of Mr. Walsh and Mr. Letoski; motion carried.

B. Complaints Proposed for Resolution by Letters of Concern:

1. HI17-015, Ronald Fillet, C.H.I. #38567

Mr. Foose moved and Mr. Brady seconded to issue a Letter of Concern; motion carried

2. HI16-019, Kevin Howard, C.H.I. #39408

Mr. Foose moved and Mr. Brady seconded to issue a Letter of Concern; motion carried

C. Complaints Proposed to Offer Consent Agreement:

1. P17-030, Stephen Drake, R.L.S. #46472

Respondent appeared before the Board telephonically. Tom Pender, the employer of Respondent, appeared before the Board.

Mr. Foose explained to the Board that he believed this to be a boundary dispute but did find that Respondent violated the land surveyor minimum standards. Mr. Pender agreed that the issue is a boundary dispute but claimed that the Alleger used his position in an abusive manner. Dr. Angel asked Mr. Pender to elaborate. Mr. Pender answered that Alleger used company time and equipment to find issues with the survey and filed a complaint with the Board. Dr. Angel stated that the two parties should have discussed the issues. Mr. Pender stated Alleger would not discuss the issues.

Mr. Foose moved and Mr. Marley seconded to reject the offered consent agreement and modify it to indicate that ARS 32-128(c) was violated, Respondent shall be issued a Letter of Reprimand, pay an administrative penalty of \$500, and if not signed within 30 days proceed to formal hearing; motion carried.

2. AL17-015, Shane George, Non-Registrant

Mr. Foose moved and Mr. Brady seconded to accept the signed consent agreement; motion carried.

3. AL17-011, Premise Communication, Alarm Business #18979

Mr. Foose moved and Mr. Brady seconded to accept the signed consent agreement; motion carried.

4. P17-042, Donald Surface, R.L.S. #16203, and Surface Engineering, Inc., Firm #16370

Dr. Angel asked whether Respondent corrected the survey and, if not, should language be included in the consent agreement to correct it. Mr. Foose stated he was content with the consent agreement as written.

Mr. Foose moved and Mr. Brady seconded to accept the signed consent agreement; motion carried.

D. Complaints Monitoring Investigations:

1. P17-073, Andrie Neiciulescu, P.E. (Civil) #49559 (suspended)

Mr. Foose moved and Mr. Brady seconded to move the case to hearing for revocation; motion carried.

2. AL16-008, Paul Varley, Alarm Agent #57759

Mr. Foose moved and Mr. Everroad seconded to remove the stay of revocation and revoke Respondent's registration; motion carried.

E. Complaints Requiring Board Guidance:

1. P17-038, Scott Burden, R.L.S. #13554

Respondent appeared before the Board. Alleger, Tim Lockhart, appeared before the Board.

Mr. Foose stated that he believed this to be a boundary dispute. Mr. Lockhart stated that the original property lines can be traced back roughly 60 years but Respondent's survey was not in line with those property lines or a subsequent alta survey Alleger commissioned. Respondent stated he conducted a survey for the neighboring parcel. Mr. Foose stated that this matter was beyond the Board's scope and reiterated that it was a boundary dispute.

Dr. Angel moved and Mr. Foose seconded to offer a Letter of Concern; motion carried.

2. P15-016, Vincent Dalke, R.A. #30769

Alleger, Jene Planck, and his son, Wesley Planck, appeared before the Board. Respondent appeared before the Board. LGE in house council, Mark Lassiter, appeared before the Board.

Alleger stated that Respondent took proprietary data from his firm and was using it at another firm. Alleger asked the Board to rule that the data Respondent took was

proprietary data to set a precedent for future cases and revoke Respondent's registration. Mr. Noel asked if Alleger went to court over copyright laws. Alleger responded yes, but lost the binding arbitration.

Respondent admitted that he took the data, but said that he did not use the data. Respondent also stated that the courts found that the taken data was not proprietary data. Respondent opined that the Board's allegations were not immediately clear until Respondent was before the enforcement advisory committee.

Mr. Marely asked Respondent why he took CAD files and not pdf files. Respondent answered he took whole folders which happened to contain CAD files. Mr. Jones asked if Respondent's employment contract contained language prohibiting Respondent from taking data without permission upon leaving the firm. Respondent answered yes. Dr. Angel asked why Respondent took the data when he did not intend to use the data. Respondent answered that working for Alleger was difficult and he was fearful. Dr. Angel asked why Respondent took proposals and financial information. Respondent answered that they were within the file folders he took. Respondent also stated that he was a partner at the firm and felt at the time of leaving that he had rights to much of the taken data. Mr. Jones asked if Alleger bought back Respondent's 3% ownership. Respondent answered yes. Mr. Marley asked if the data was still on LGE's server. Respondent answered yes. Mr. Montgomery asked if the files were marked proprietary. Respondent answered not to his knowledge. Dr. Angel opined that it should be a simple task to remove the data. Respondent agreed but stated that a legal issue was preventing the removal of the data.

Mr. Marley opined that Respondent was not forthcoming in his statements about the data on LGE's server. Mr. Lassiter explained to the Board that due to the litigation between LGE and Archicon, Archicon had prevented LGE from removing the data. Mr. Foose asked how the data got onto the server. Mr. Lassiter answered that Respondent uploaded the data unbeknownst to LGE. Mr. Foose asked if Respondent had permission to upload the data. Mr. Lassiter answered no.

Mr. Marley expressed concern over the taking of CAD files, which he believed contained proprietary data, and asked if the data was accessible. Mr. Lassiter answered the data was not secured due to litigation and therefore accessible. Mr. Marely opined that Respondent acted unethically within the realm of his profession.

Mr. Donald asked the Board to inquire for an update on the litigation as to whether the data was proprietary. Dr. Angel opined that whether or not the data was proprietary was not something for the Board to decide; what was to be decided was whether Respondent was fit to be a registered architect. Mr. Madison agreed. Respondent asked that the Board allow him to keep practicing his profession.

The Board decided to take a ten-minute recess for members to think about, but not discuss, possible motions.

Upon resuming the meeting after the ten-minute break, Dr. Angel moved and Mr. Marley seconded to go into executive session for legal advice; motion carried. The Board entered executive session at 10:57am. The hearing returned to public session at 11:34am.

Mr. Everroad opined that Respondent engaged in misconduct, during the civil matters the arbitrator did not discuss Respondent's misconduct and Respondent had not been forthcoming in his explanations. Mr. Marley agreed and added that Respondent acted with gross negligence. Dr. Angel agreed that Respondent engaged in misconduct and gross negligence and added that Respondent did not act according to the standards of the AIA and thus within the realm of his profession.

Mr. Marley moved and Mr. Foose seconded to issue a consent agreement containing the following; Respondent shall have his registration suspended six months; be issued a Letter of Reprimand; pay an administration penalty of \$2000; pay the cost of investigation, complete eight hours of ethics training; complete 12 months probationary status until the costs are paid and the ethics course completed; and if not signed in 30 days refer back to the Board; motion carried. Dr. Angel voted nay.

F. Reconsideration of Prior Board Action:

1. P17-047, Stacy Waite, R.L.S. #53794, and J Marbles Land Surveying, LLC, Firm #17927

Respondent appeared telephonically, but due to a bad connection, there was no discussion. Staff attempted to call Respondent back hoping for a better connection but Respondent did not answer.

The Board directed staff to send a Consent Agreement to Respondent and to communicate with him so he can be present physically or telephonically for the next scheduled meeting.

Mr. Foose moved and Mr. Jones seconded to postpone the matter; motion carried.

7. LICENSING MATTERS

Discussion, Consideration and Vote on the following:

Whether to Authorize Exams or Deny Application

- A. Timothy Spangler, Land Surveyor Examination Application #170260

Applicant appeared before the Board.

Mr. Foose stated he reviewed the application, had issues with one of the Applicant's references and asked the Board if he should authorize the application. Dr. Angel questioned the validity of applicant's references and asked Applicant if he or his references filled out the reference sheets. Applicant stated his references filled out the

reference sheets. Dr. Angel opined that two of the three references were not valid and Applicant needed to find additional references. Applicant explained that due to the number of times he has had to apply many of his references refused to give him new, updated forms. Dr. Angel asked for an update from Staff regarding any cases regarding Applicant. Mr. Donald stated that the AG's Office was preparing a Complaint and Notice of Hearing for Applicant. Mr. Madison opined that if the Applicant wished to test now the pending case against him should not affect whether he could test, though it might affect his ability to register. Mr. Foose agreed and wished to approve Applicant's exam authorization. Dr. Angel asked Mr. Donald if approving Applicant to test set an expectation for registration. Mr. Donald answered no, stating that the Applicant must meet all the requirements to register.

Mr. Foose moved and Mr. Brady seconded to authorize application to test; motion carried. Mr. Jones voted Nay.

Whether to Grant or Deny Request for Extension of Licensing Timeframes

B. Brandon Campbell, Civil Engineer Application #170346

Dr. Angel moved and Mr. Jones seconded to grant a timeframe extension of 12 months; motion carried.

Criminal History

C. Gennaro Maida, Alarm Agent Application #162838

Mr. Brady moved and Mr. Noel seconded to grant a timeframe extension of 60 days; motion carried. Mr. Jones voted Nay.

D. Roland Ochoa, Alarm Agent Application #162820

Dr. Angel moved and Mr. Brady seconded to grant a timeframe extension of 60 days; motion carried.

8. LICENSING CONSENT AGENDA

A. Review, Consideration, and Action on Staff Recommendations for the following:

1. Cancellation of registrations and certifications that have been expired for one full renewal period;

Dr. Angel moved and Mr. Noel seconded to cancel registrations and certifications that have been expired for one full renewal period; motion carried.

2. Review of the List of registrations and certifications granted by the Executive Director pursuant to A.R.S. § 32-122.05, 32-122.06, and A.R.S. § 32-123.

List available for public review upon request.

9. POLICY MATTERS

Review, Consideration, and Possible Action on the following:

A. Latest Edition of the Newsletter

The Board discussed the Newsletter. Dr. Angel asked if cases of revocation should be included in the Newsletter. Ms. Cornelius informed him that once closed, cases and their outcomes are open to the public.

Dr. Angel moved and Mr. Everroad seconded to publish the Newsletter; motion carried.

B. Letter to NCARB Regarding WCARB Dues

The Board discussed the letter Mr. Marley composed.

Mr. Foose moved and Mr. Marley seconded to send letter; motion carried.

C. Legislative Update

Ms. Cornelius reported that the Fingerprint Bill passed the House and Senate. Ms. Pritzl reported that she had concerns regarding the 'Waiver of Fees' Bill because of many unanswered questions such as whether the waived fees will include initial fees or all fees and how applicants and registrants can apply for fee waivers. Ms. Pritzl also reported that Superior Court Judges now have increased authority over cases appealed to them from administrative hearings.

D. Whether to Continue Licensing Firms

Ms. Cornelius reported that the AZBTR has been licensing firms since 1935, the engineering firms association supports firm registration since they feel it is important for the public to look up whether a firm is registered and Arizona is not the only state that registers professional firms. The Board will discuss this topic further after additional research.

10. DIRECTOR'S REPORT

A. Budget Update

The new computer system is still set to go live in July.

B. Previous Meeting Follow-Up

The Governor's office approved the Board's submitted rule changes and the next step is submitting a rule docket.

C. Staff Update

The Board hired Robert Stam as the new licensing manager.

D. Statistics Review

11. BOARD CHAIR'S REPORT

Nothing to Report

12. STANDING COMMITTEE REPORTS

A. Legislation and Rules Committee – Nothing to report.

B. Home Inspector Rules and Standards Committee – Nothing to report.

13. BOARD MEMBER REPORTS ON OUTSIDE ACTIVITIES

A. ASBOG – Nothing to report.

B. CLARB – Annual Board of Directors meeting in North Carolina in May.

C. NCARB – Annual meeting in Boston in June.

D. NCEES – Annual meeting in August.

14. FUTURE BOARD MEETINGS – May 23, 2017

15. SUGGESTED TOPICS FOR FUTURE MEETING AGENDAS.

Follow up on firm registration. Governor's Executive Order 2017-03

16. MEETING ADJOURNMENT – 1:36pm

Jason Madison Chairman

Handwritten signature of Jason Madison in black ink, written over a horizontal line.

Melissa Cornelius, Executive Director

Handwritten signature of Melissa Cornelius in black ink, written over a horizontal line.