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Minutes of the January 25, 2024 Open Meeting

Meeting was held remotely by video conference and telephone pursuant to Chapter 2 of the Acts of 2023: *An Act Making Appropriations for the Fiscal Year 2023 to Provide for Supplementing Certain Existing Appropriations and for Certain Other Activities and Projects*, signed into law on March 29, 2023.

The following attendance was recorded:

Board Members Present Remotely

Paul Tyrell, PE, PLS, Chairman
Ronald Willey, PE, Vice Chairman
Azu Etoniru, PE, PLS
Daniel Caron, PE
Kenneth Anderson, PLS
Nancy Gould, PE
Paul Tsang, PE
Joyce Hastings, PLS

Board Members Absent

Members of the Public Present

Abbie Goodman, TECET
Nathan Rocha, PLS License Applicant
Kevin Flowers, PLS License Applicant
James O'Neil, PLS License Applicant
Timothy Dutille, PE License Applicant
Jessica Fosbrook, PMA Consultants
Peter Hansen

Division Staff Members Present at Various Times during the Meeting:

Kathleen McNally, Executive Director of
Various Boards
Patricia LaFore, Board Counsel
Jenna Hentoff, Board Counsel
Mary Pixley, Prosecuting Counsel
Eric Funk, Board Administrator

1. At 9:02AM, Executive Director Kathleen McNally provided notice that pursuant to M.G.L. Ch. 30A, § 20, the meeting would be recorded.



2. At 9:02AM, Azu Etoniru motioned, seconded by Ronald Willey, to open the meeting. Motion passed unanimously with a vote of 8-0. Members in Favor: Paul Tsang, Joyce Hastings, Azu Etoniru, Dan Caron, Paul Tyrell, Nancy Gould, Ronald Willey, and Kenneth Anderson. Members opposed: None.
3. The Board reviewed the minutes of the December 21, 2023, Open Meeting. Azu Etoniru moved, seconded by Nancy Gould, to accept the minutes as written. Motion passed with a vote of 7-0-1. Members in Favor: Paul Tsang, Joyce Hastings, Azu Etoniru, Dan Caron, Paul Tyrell, Nancy Gould, and Ronald Willey. Members opposed: None. Members Abstaining: Kenneth Anderson.
4. Chairman Paul Tyrell's safety item focused on icy conditions during winter. He recommended keeping rock salt/ice melt handy to address icy conditions on stairs, walkways, and sidewalks on and around property. He further advised that keeping such items and ice scrapers handy in one's vehicle is a good idea.
5. Chairman Paul Tyrell informed the Board that the next meeting was scheduled to be held on February 29, 2024. Several members noted a conflict with that date and requested that the meeting be switched to the previous Thursday, February 22, 2024. All members were in agreement that the new meeting date would be February 22, 2024.

Executive Director Kathleen McNally informed the Board that she would have the website updated to reflect the new date and would send out a meeting invite for February 22, 2024.

6. Chairman Paul Tyrell acknowledged the recent passing of Andrew Liston after his long battle with ALS. He informed the Board that Mr. Liston was a licensed P.E. and PLS who served as Chair of the Massachusetts Board of Registration of Professional Engineers and Land Surveyors; president of the Massachusetts Association of Land Surveyors and Civil Engineers (MALSCE); president of the National Council of Examiners for Engineering and Surveying (NCEES); and served on the United States Council for International Engineering Practice (USCIEP). He further noted Mr. Liston's commitment to fostering ethical practices and ensuring the health, safety, and welfare of the public.
7. Chairman Paul Tyrell informed the Board that on Friday, January 26, 2024, he would be speaking at MALSCE's Fifteenth Annual Legal Perspectives on Land Surveying. He stated that in preparing for this speaking engagement, he reviewed the first ten (10) plans that had been recorded at the Suffolk County Registry of Deeds in 2024 and was appalled to discover that only one (1) of the ten (10) plans filed met the regulatory requirements of 250 CMR. As such, Chairman Paul Tyrell requested that the topic be added to the agenda for discussion at the February 22, 2024, meeting.

Chairman Paul Tyrell acknowledged that Abbie Goodman had a question. Ms. Goodman asked if the topic could be discussed further later in the meeting under the "items not reasonably anticipated" agenda topic.

Board Counsel Patricia LaFore indicated that since the topic would require substantive review and discussion, further discussion was best tabled until the February 22, 2024, meeting.

8. Board Counsel Patricia LaFore informed the Board that the draft language for Continuing Professional Competency (CPC) regulations remains under review. She reiterated that the updated draft language had been forwarded to the Governor's Legal Office for review. She further stated that as requested during the December meeting, the Board's concerns over the length of time that these draft regulations have been under review; the continued potentially negative impact to the health, safety, and welfare of the general public; and a request for a

timeframe for determination, had been emailed to DOL's General Counsel on or about December 21, 2023.

Board Counsel Patricia LaFore acknowledged that neither she nor Board Counsel Jenna Hentoff had received a response to their email.

9. Board Counsel Patricia LaFore informed the Board that there were no further legal topics for discussion.
10. Vice Chair Ronald Willey inquired if the Board could vote to hold a discussion later in the meeting concerning the filing issues at the Suffolk County Registry of Deeds mentioned earlier by Chairman Paul Tyrell or if members were prohibited from bringing items to the Board for discussion.

Board Counsel Patricia LaFore again reiterated that members are welcome to bring items to the attention of the Board for discussion; however, if a potential topic requires substantive review and/or discussion, it should be brought to the attention of Board staff in advance of the meeting so that the topic can be added to the agenda in order to comply with the Open Meeting Law. Further, any supporting documentation for the discussion can be distributed to members for review, and any other interested party would have advance notice of the discussion topic and could attend the meeting.

Vice Chair Ronald Willey stated that he disagreed with the Board Counsel's stance on the matter. Board Counsel Patricia LaFore responded that the Open Meeting Law requirements are clear on the matter and the Board must follow the rules and regulatory requirements accordingly.

Chairman Paul Tyrell informed the Board that he expects all members to come well prepared for thoughtful discussion of this matter at the February 22, 2024 meeting.

11. Executive Director Kathleen McNally informed the Board that the revised and updated complaint tracking spreadsheet continues to undergo review and updating but that the process has been slowed by other projects that fall under her purview and required the majority of her time since the last meeting. She advised the Board that the DOL is seeking to hire additional staffing for the unit to assist with the workload as it encompasses four (4) separate Boards.

She also informed the Board that the comprehensive review of the NCEES Enforcement Exchange remains ongoing and where appropriate, disciplinary actions and dispositions taken by the Board are being reported and uploaded to the individual's NCEES Enforcement record.

She also advised the Board that in regard to closed matters, there were two (2) matters recently settled, one (1) involving William Parrott, who does not hold a license to practice in Massachusetts, and one (1) involving John Spink, who did hold a P.E. license in Massachusetts.

In the first matter, 2022-000934-IT-ENF, Mr. Parrott signed a Consent Agreement and paid a \$1,000 fine, effective January 17, 2024. The Board also sent notice to the Rhode Island (RI) Board regarding Mr. Parrott as he holds a Sprinkler Fitter's license in RI.

The second matter actually consists of three (3) separate cases involving John Spink, a licensed PE Structural Engineer in Massachusetts. The three (3) cases are 2023-000053-IT-ENF, 2023-000118-IT-ENF, and 2023-000311-IT-ENF. Mr. Spink agreed to voluntarily surrender his license to practice in Massachusetts with a signed Voluntary Surrender Agreement, effective January 3, 2024.

12. Executive Director Kathleen McNally informed the Board that an exchange of documentation

between DOL and Virtual Inc./PCS regarding the proposed conversion of the State Specific Jurisprudence (JP) exam from paper and pencil to a computer-based testing (CBT) format, has occurred. The documentation is currently under review by Legal with the expectation of more movement on this topic in the coming months.

13. Executive Director Kathleen McNally notified the Board that on January 12, 2024, the Jurisprudence (JP) Exam Education Subcommittee met to review and score the October 2023 JP exam.

Joyce Hastings provided the Board with the Jurisprudence (JP) Exam Education Subcommittee report on the October 2023 exam results. This was the sixth administration of the exam since the reduction in the number of exam questions from 50 to 40. The subcommittee's recommendation was to set the pass rate at 70%.

There were eight (8) exam takers. Two (2) of the eight (8) exam takers were Massachusetts residents. Six (6) of the eight (8) exam takers were first-time takers of the exam. Of the eight (8) exam takers, three (3) achieved a passing score of at least 70%.

Dan Caron motioned to accept the recommendation of the subcommittee, seconded by Kenneth Anderson. Motion passed unanimously with a vote of 8-0. Members in Favor: Paul Tsang, Joyce Hastings, Azu Etoniru, Dan Caron, Paul Tyrell, Nancy Gould, Ronald Willey, and Kenneth Anderson. Members opposed: None.

14. Eric Funk asked the four (4) members of the Professional Land Surveyor Oral Exam/Interview Subcommittee about potential dates for holding upcoming oral exams/interviews. The members consulted their calendars and determined that either February 1, 2024, or February 6, 2024, would be available for offering to candidates.

It was also determined that should there be any Professional Engineer candidates in need of oral exams/interviews, then February 1, 2024, could be offered to those candidates for their oral exam/interview.

15. Chairman Paul Tyrell presented the application review report provided by Eric Funk for Board consideration. Azu Etoniru moved, seconded by Joyce Hastings, to accept the report and ratify the application approvals. Motion was seconded by Paul Tsang. Motion passed unanimously with a vote of 8-0. Members in Favor: Paul Tsang, Joyce Hastings, Azu Etoniru, Dan Caron, Paul Tyrell, Nancy Gould, Ronald Willey, and Kenneth Anderson. Members opposed: None.
16. Chairman Paul Tyrell gave a brief overview of the email from a concerned Public Works Engineer, regarding a concerning trend for the engineering profession in Massachusetts, dated December 17, 2023.

Chairman Paul Tyrell stated that the individual's concern relates to the outsourcing of technical engineering and surveying work to overseas outfits, to then be utilized in the United States. He further stated that he had encountered this topic a few years earlier with the possibility that U.S. firms and/or licensed P.E.'s or PLS's could perform work, produce calculations, collect data, etc., and then send that information/data to places like India which could provide drafting services overnight for use in the U.S. the next day.

He informed the Board that this practice has not flourished as some in the industry might have anticipated it would. This was in part due to timelines, communications, different designs, the differing CAD platforms, etc.

Chairman Paul Tyrell noted that this topic remains a genuine concern; however, he acknowledged that in the end, it all comes down to the registrant's responsibilities. He

reminded the Board that per 250 CMR 5.04, *A Registrant must exercise Direct Charge and Supervision over those persons assisting in the preparation of Instruments of Service*. He further stated that under no circumstance should a registrant allow anyone, including their employer, to pressure them into stamping any drawings that they are not comfortable with or that were not produced under their direct charge and supervision.

Dan Caron acknowledged that his firm does outsource some work to a company in India. He stated that the practice began when the firm had difficulty finding qualified applicants for open positions during COVID. He further stated that his firm has direct charge and supervision over all work as the company in India is solely functioning as a drafting service. He echoed Chairman Paul Tyrell's statement that the Board's regulations are clear regarding direct charge and supervision and if anyone is not complying with the Board's regulations, they are in violation and should be investigated.

Paul Tsang acknowledged that his firm also outsources some work to companies in India and Poland. He stated that while the practice is cost effective, registrants are still responsible for the work and must remain in direct charge and supervision.

Nancy Gould also acknowledged that her firm engages with overseas drafting services but as with the others, direct charge and supervision remains with the licensed P.E.'s.

Dan Caron and Kenneth Anderson both recommended that a written response to the concerned Public Works Engineer would be appropriate and the response should highlight the language regarding direct charge and supervision as detailed in 250 CMR 5.04. It should also encourage filing a complaint if he/she is aware of any possible violation of 250 CMR 5.04.

17. Executive Director Kathleen McNally advised the Board that NCEES reached out regarding the names of the three (3) MA Board funded delegates for the 2024 Northeast Zone Interim meeting on May 2-4, 2024, in Washington D.C.

Chairman Paul Tyrell and Vice Chair Ronald Willey both indicated that they would like to attend as funded delegates. Nancy Gould expressed interest as did Joyce Hastings. Azu Etoniru stated that he would be attending as the Northeast Zone Secretary which has separate funding.

18. Chairman Paul Tyrell opened the meeting for public comment and recognized Abbie Goodman who again inquired if the Board had provided written responses to the three (3) emails that were discussed at the October 26, 2023, Board meeting.

Eric Funk informed Abbie Goodman that the Board continues to work on draft responses for the three (3) emails.

She also inquired about the status of the press release that was going to be sent concerning the publication of Professional Practice: A Guide to the Practice of Architecture, Engineering, and Land Surveying in Massachusetts. Executive Director Kathleen McNally stated that she would check with Associate Commissioner of Policy and Boards Colleen Maloney on the status of the press release and report back with an update.

19. At 9:49AM, Azu Etoniru moved, seconded by Nancy Gould, to end the Open Session of the meeting and enter Closed Executive Session pursuant to G.L. c. 30A, §21(a)(7) for the purpose of or complying with or exercising the Board's authority under G.L. c. 66, § 10; G.L. c. 4, § 7, ¶ 26(a) and (c); and G.L. c. 6, § 172. Motion passed unanimously with a vote of 8-0. Members in Favor: Paul Tsang, Joyce Hastings, Azu Etoniru, Dan Caron, Paul Tyrell, Nancy Gould, Ronald Willey, and Kenneth Anderson. Members opposed: None.

Executive Director Kathleen McNally acknowledged that the recording of the Open Session of the meeting had ended.

20. At 9:52AM, the Board exited Closed Executive Session and entered Closed Investigative Conference pursuant to G.L. c. 112, § 65C.
21. At 10:23AM, Azu Etoniru moved, seconded by Nancy Gould to exit closed session and adjourn the meeting. Motion passed unanimously with a vote of 8-0. Members in Favor: Paul Tsang, Joyce Hastings, Azu Etoniru, Dan Caron, Paul Tyrell, Nancy Gould, Ronald Willey, and Kenneth Anderson. Members opposed: None.

Respectfully submitted by,

Eric Funk
Board Administrator

Documents used at the public meeting:

- Agenda for January 25, 2024 Meeting
- Draft Minutes of December 21, 2023 Open Meeting
- Andrew Barry Liston Obituary
- Email from a concerned Public Works Engineer, regarding a concerning trend for the engineering profession in Massachusetts, dated December 17, 2023.