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OCCUPATIONAL LICENSURE

Minutes of the March 28, 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
Edward Englander, Esq., Public
Member
Daniel Caron, PE Kenneth
Anderson, PLS Nancy Gould, PE
Joyce Hastings, PLS

Board Members Absent

Paul Tsang, PE

Members of the Public Present

Abbie Goodman, TECET

Division Staff Members Present at Various Times during the Meeting:

Colleen Maloney, Associate Commissioner of Policy
and Boards
Philip Chan, Board Counsel
Jenna Hentoff, Board Counsel
Eric Funk, Board Administrator

1. At 9:06AM, Associate Commissioner of Policy and Boards Colleen Maloney provided notice that pursuant to M.G.L. Ch. 30A, § 20, the meeting would be recorded.



2. At 9:06AM, Kenneth Anderson motioned, seconded by Nancy Gould, to open the meeting. Motion passed unanimously with a vote of 6-0. Members in Favor: Dan Caron, Edward Englander, Nancy Gould, Paul Tyrell, Kenneth Anderson, and Ronald Willey. Members opposed: None.
3. Azu Etoniru joined the meeting at 9:08AM.
4. The Board reviewed the minutes of the January 25, 2024, Open Meeting. Kenneth Anderson moved, seconded by Azu Etoniru, to accept the minutes as written. Motion passed with a vote of 7-0. Members in Favor: Dan Caron, Edward Englander, Nancy Gould, Paul Tyrell, Kenneth Anderson, Ronald Willey, and Azu Etoniru. Members opposed: None.
5. Joyce Hastings joined the meeting at 9:09AM.
6. The Board reviewed the minutes of the January 25, 2024, Executive Session. Azu Etoniru moved, seconded by Nancy Gould, to accept the minutes as written. Motion passed with a vote of 8-0. Members in Favor: Dan Caron, Edward Englander, Nancy Gould, Paul Tyrell, Kenneth Anderson, Ronald Willey, Azu Etoniru, and Joyce Hastings. Members opposed: None.
7. Chairman Paul Tyrell's safety item focused on inclement weather. He reminded the Board to be attentive and exercise caution while driving or moving about during poor weather conditions.

Vice Chairman Ronald Willey also cautioned Board members about working in confined spaces. He spoke about understanding the dangers that may be present when entering an unfamiliar underground or confined space and to take all prudent precautions to ensure your own safety as well as those you are working with.

8. Chairman Paul Tyrell informed the Board that the next meeting was scheduled to be held on April 25, 2024. Chairman Paul Tyrell, Nancy Gould, and Ed Englander noted potential conflicts. Chairman Paul Tyrell proposed moving the meeting to Wednesday, April 24, 2024. After a brief discussion, it was decided that the meeting would be moved to Wednesday, April 24, 2024. Eric Funk stated that he would speak with Executive Director Kathleen McNally to cancel the meeting on Thursday, April 25, 2024, and have a new Microsoft Teams meeting scheduled for Wednesday, April 24, 2024.
9. Board Counsel Jenna Hentoff provided the Board with an update on the topic from last month pertaining to the quality of filings at the Registry of Deeds. She stated that she spoke with colleagues regarding the drafting of a letter to the MA Registries of Deeds and should that happen, the letter would be handled within the agency, for Board review. She further stated that prior to that occurring, it is recommended that the Board conduct its own review to comport with any issues of due process if allegations are to be made against specific people or entities, but also to ensure that the Board has enough information available to support its position. This could be handled through the investigatory process.

Chairman Paul Tyrell indicated that he feels that the concern he raised has now gone off track. He stated that he, Azu Etoniru, and Kenneth Anderson have all visited the Registry of Deeds in Suffolk County and identified a number of drawings that are non-compliant with the Registry Standards and /or 250 CMR. Further, he believes that the investigatory work has been completed and an advisory letter to a sister agency reminding them of the importance of following their standards and those of 250 CMR to ensure the health, safety, and welfare of the public. In addition, he stated that going through a formal complaint process would be onerous

to DOL staff, and he does not wish to file complaints.

Board Counsel Jenna Hentoff stated that ultimately the issue lies with the plans/drawings that have been filed which the Board does have jurisdiction over. Chairman Paul Tyrell clarified that the issue is that the Registry should not have accepted the plans because they did not comply with either their own standards, or 250 CMR. He further stated that the individuals whose stamps appear on the filings may not even be aware that the plans/drawings have been filed at the Registry because they don't meet the filing standards.

Kenneth Anderson agreed with Chairman Paul Tyrell but also stated that he wasn't sure how effective the Board could be if the Registry of Deeds was not willing or able to properly train their staff.

Chairman Paul Tyrell concurred and added that because the Board is aware of the issue, it can't ignore it just because it appears another agency is. To that end, he stated that he would obtain documentation of a few plans/drawings from the Suffolk County Registry of Deeds and requested that Azu Etoniru, Kenneth Anderson, and Joyce Hastings also obtain documentation of one or two plans/drawings from a Registry of Deeds of their choosing that do not meet either the Registry standards and/or the requirements of 250 CMR. He asked that they all provide the documentation to Board staff for inclusion in the packet for Board review and discussion at the next meeting.

Azu Etoniru indicated that Chairman Paul Tyrell is right on target with regard to this issue and believes that any letter to either the Registry of Deeds or the Secretary of State's Office, which oversees all Registries of Deeds, take the tone of soliciting their assistance with ensuring that the standards are being followed to help protect the public.

Board Counsel Jenna Hentoff again cautioned the Board about conducting their own research and discussing these issues in open session, and urged the Board to utilize the investigatory process. In response, Chairman Paul Tyrell asked how then the registry would be informed of any issues if complaints can only be made against licensed individuals, who may not even be aware that their work was filed at the Registry of Deeds.

Chairman Paul Tyrell then stated that he would like the Division to go on record acknowledging that it is aware of this practice and is choosing not to do something about it. He acknowledged that this practice is placing the public in jeopardy and the licensees in jeopardy and asked how the Division would suggest that this be addressed.

Dan Caron asked how many individual Registry of Deeds locations are in Massachusetts. After a quick search, the number was determined to be 21 individual offices. He stated that he agreed with Chairman Paul Tyrell in that taking out complaints against hundreds, if not thousands of individuals for non-compliance of Board requirements when they may not even be aware that their work had been filed, does not actually address the root issue, which lies with staff at the Registry of Deeds offices themselves.

Chairman Paul Tyrell stated that the question of how best to proceed now resides with the Division.

10. Board Counsel Jenna Hentoff informed the Board that the draft language for Continuing Professional Competency (CPC) regulations remains under review by the Governor's Legal Office.
11. Board Counsel Jenna Hentoff informed the Board that the Office of Prosecutions is seeking

recommendations of anyone who may be willing and able to act as an expert witness in a case involving land surveying.

Chairman Paul Tyrell asked Kenneth Anderson, Joyce Hastings, and Azu Etoniru to make a recommendation.

Azu Etoniru asked if former Board members would be excluded from participating. Board Counsel Jenna Hentoff stated that provided they were not involved in any way with the matter when they were a member of the Board, they would be able to participate.

Chairman Paul Tyrell acknowledged Abbie Goodman. Abbie Goodman asked if it was possible to get the specific county where the complaint was from to try and narrow down potential recommendations. Board Counsel Jenna Hentoff indicated that she did not have that level of detail and reiterated that Prosecutions is seeking names and contact info for anyone who might be willing to act as an expert witness and Prosecutions will determine if they are suitable or conflicted out on any particular matter.

12. Board Counsel Jenna Hentoff introduced Phillip Chan as the new Board Counsel. She indicated that he would be transitioning to full-time Board Counsel over the next few months.
13. Board Counsel Jenna Hentoff informed the Board that there were no further legal topics for discussion.
14. Associate Commissioner of Policy and Boards, Colleen Maloney, advised the Board that Executive Director Kathleen McNally continues to work through the NCEES Enforcement Exchange backlog and uploading case outcomes to the NCEES Enforcement database.

She also informed the Board that the revised and updated complaint tracking spreadsheet continues to undergo review and updating. She further stated that the process has been completed for 2022 and is now into 2023.

In addition to the above, she advised Chairman Paul Tyrell that Executive Director Kathleen McNally was working with NCEES to resolve login credential issues she was experiencing as well as obtaining credentials for members of OI as was previously requested.

15. Associate Commissioner of Policy and Boards, Colleen Maloney proposed reconvening the State Specific Jurisprudence (JP) Exam CBT Conversion Subcommittee sometime in the coming weeks. She stated that the underlying existing contract language review was complete, and the hope was to advance the discussions with the vendor to the next phase as well as touch on related questions pertaining to the question bank, scope and format of proctoring, etc.

Chairman Paul Tyrell asked Ronald Willey to participate as he was the Chair of the State Specific Jurisprudence (JP) Exam CBT Conversion Subcommittee, as well as Azu Etoniru and Joyce Hastings to again participate. He stated that he would participate as well, and invited any other Board members who have an interest to indicate their desire to participate.

Ronald Willey stated that he was happy to serve as Chair of the Subcommittee.

Board Counsel Jenna Hentoff reminded the Board that the Subcommittee would be meeting in Executive Session.

16. Chairman Paul Tyrell reminded the Board that the NCEES Annual Meeting would take place in Chicago on August 14-17, 2024. As always, the Board will have three funded delegate slots and new this year, there will be a fourth funded delegate to attend the Law Enforcement Program.

Chairman Paul Tyrell informed Nancy Gould that as a new member, she would be eligible as a first-time attendee funded delegate and suggested that Dan Caron may find the Law Enforcement Program to be informative.

Chairman Paul Tyrell asked that the travel authorizations forms be sent out as soon as possible.

17. Vice Chair Ronald Willey stepped away briefly from the meeting at 9:50AM.
18. Board Counsel Jenna Hentoff informed the Board that in the matter of 2021-000832-IT-ENF, a settlement agreement was reached whereby Gary James agreed to accept a 30-day suspension of his license and paid a \$1,000 fine for engaging in land surveying outside the scope of his Civil engineering license.
19. Chairman Paul Tyrell presented the application review report provided by Eric Funk for Board consideration. Azu Etoniru moved, seconded by Kenneth Anderson, to accept the report and ratify the application approvals. Motion passed with a vote of 7-0. Members in Favor: Dan Caron, Edward Englander, Nancy Gould, Paul Tyrell, Kenneth Anderson, Azu Etoniru, and Joyce Hastings. Members opposed: None.
20. Board Counsel Jenna Hentoff provided the Board with a brief overview of applicant #1034149, who disclosed that they had discipline from another state's engineer licensing board. The applicant entered into a consent agreement with the SC Board, effective April 2021, in which he admitted that he offered and/or performed engineering services under his engineering firm which did not have a valid Certificate of Authorization (COA). He agreed to a public reprimand and to pay a \$1,000 fine.

Dan Caron motioned, seconded by Kenneth Anderson, to take no further action. Motion passed with a vote of 7-0. Members in Favor: Dan Caron, Edward Englander, Nancy Gould, Paul Tyrell, Kenneth Anderson, Azu Etoniru, and Joyce Hastings. Members opposed: None.

21. 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. As there are at least 7 potential candidates, the plan is to split the oral exams/interviews over 2 dates. The members consulted their calendars and determined that both April 11, 2024, after 10:00AM and April 18, 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 April 11, 2024, at 9:00AM could be offered to those candidates for their oral exam/interview.

22. Chairman Paul Tyrell gave a brief overview of the email from Joshua Twitty, NCEES, dated March 11, 2024, seeking to gauge consistency amongst state licensing boards on their treatment of Subsurface Utility Engineering (SUE). He explained that SUE is a bit of a misnomer in that it is not generally considered engineering, rather it is subsurface utility mapping.

Kenneth Anderson opined that SUE is not considered engineering or surveying in Massachusetts. If the subsurface utility mapping depicted offsets to property lines, then it would be considered surveying.

Dan Caron inquired about Civil engineers who design subsurface utility systems. Chairman Paul Tyrell explained that there are four levels of subsurface utility engineering, which again, should really be called mapping. The four levels, generally speaking, are: visuals from the

surface, mapping, physical digging using tools such as a vacuum excavator or pressurized water and air, and desktop study. The SUE methods are used to identify existing conditions, not proposed design work.

In response to the 5 questions posed in the email, the Board answered as follows:

“Is SUE the practice of engineering in your state?” Board response is “no.”

“Is SUE the practice of surveying in your state?” Board response is “no.”

“Is SUE both surveying and engineering in your state?” Board response is “no.”

“Is SUE neither surveying or engineering in your state?” Board response is “yes.”

“Has your board ever taken a position on SUE issues?” Board response is “no.”

Board Counsel Jenna Hentoff recommended providing the statutory definitions for both engineering and land surveying in response to Mr. Twitty in addition to the specific answers to the questions. She further recommended adding language clarifying that the Board reviews all matters on a case-by-case basis as well as the Board’s chart that outlines what tasks a PE Civil engineer and what a Land Surveyor can perform in Massachusetts.

Abbie Goodman informed the Board that MassDOT is now requiring greater utilization of licensed engineers and/or land surveyors for supervision in SUE work. She suggested that this also be noted in any response to NCEES.

23. Chairman Paul Tyrell opened the meeting for public comment and recognized Abbie Goodman who noted that the NCEES PE Civil exam recently underwent revision and now focuses more on depth of knowledge rather than breadth of knowledge.

Chairman Paul Tyrell explained to the Board that every five years NCEES performs a PAKS (professional activities and knowledge/skills) study to verify whether the exam is still relevant and competent in breadth and depth. He further stated that he has not heard that the PAKS study resulted in a substantive change to the exam.

Abbie Goodman asked if the changes would have any bearing on how the Board reviews applications, to which Chairman Paul Tyrell responded, no, it would not. She further inquired about whether the Board would be issuing licenses differently to reflect the specific variation of the NCEES PE Civil exam that the applicant passed. For example, if the applicant passed the NCEES PE Civil: Transportation exam, would their license reflect that specific subject matter area? Chairman Paul Tyrell stated that he would research the matter and report back at a future meeting.

Abbie Goodman also inquired if the Division of Occupational Licensure (DOL) would be issuing a press release regarding the Joint Professional Practice Guide in an effort to spread the work to all the municipalities.

Associate Commissioner of Policy and Boards, Colleen Maloney, stated that she would work with Abbie Goodman to get word out to as many organizations and municipalities as possible. Whether a press release is issued by the DOL is up to the communications team.

24. At 10:14AM, Kenneth Anderson moved, seconded by Ed Englander, to end the Open Session of the meeting and enter Closed Investigative Conference pursuant to G.L. c. 112, § 65C. Motion passed unanimously with a vote of 8-0. Members in Favor: Dan Caron, Edward Englander, Nancy Gould, Paul Tyrell, Kenneth Anderson, Ronald Willey, Azu Etoniru, and Joyce Hastings. Members opposed: None.

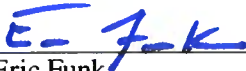
Report of actions taken during closed investigate conference:

➤ 2023-000672-IT-ENF:

Refer to Prosecutions

25. At 10:24AM, Ed Englander moved, seconded by Azu Etoniru to exit closed session and adjourn the meeting. Motion passed unanimously with a vote of 8-0. Members in Favor: Dan Caron, Edward Englander, Nancy Gould, Paul Tyrell, Kenneth Anderson, Ronald Willey, Azu Etoniru, and Joyce Hastings. Members opposed: None.

Respectfully submitted by,


Eric Funk
Board Administrator

Documents used at the public meeting:

- Agenda for March 28, 2024 Meeting
- Draft Minutes of January 25, 2024 Open Meeting
- Draft Minutes of January 25, 2024 Executive Session
- Documents regarding 2024 NCEES Annual Meeting
- Applicant #1034149 Consent Agreement with SC Board
- Email from Joshua Twitty, NCEES, dated March 11, 2024, seeking to gauge consistency amongst state licensing boards on their treatment of Subsurface Utility Engineering (SUE).