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BOARD OF ENGINEERS AND LAND SURVEYORS

Minutes of the JULY 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
Nancy Gould, PE
Joyce Hastings, PLS
Kenneth Anderson, PLS
Edward Englander, Esq., Public Member

Board Members Not Present

Paul Tsang, PE.

Members of the Public Present

Abbie Goodman
Kevin Flowers
Jeremy Souza
Jack Kaiser
James O'Neil
Dion Small
Sebastián Torrence

DOL Division Staff Members Present

at Various Times during the Meeting:

Colleen Maloney, Deputy Commissioner of Boards and Policy
Eric Funk, EN LS Board Administrator
Philip Chan, Board Counsel
Kathleen McNally, Executive Director of Engineer and Land Surveyor Board



1. At 9:01 A.M. Executive Director Kathleen McNally announced the opening of the meeting and that there was a quorum present. She provided notice that pursuant to M.G.L. Ch. 30A, § 20, the meeting would be recorded.
2. At 9:03 a.m. Azu Etoniru made a motion to open the meeting and Ron Willey seconded the motion. The Motion passed with a vote of 8-0. Members in Favor: Nancy Gould, Paul Tyrell, Ronald Willey, Dan Caron, Joyce Hastings, Azu Etoniru, Ken Anderson, and Ed Englander. Members opposed: None. Members abstaining: None.
3. The Board reviewed the minutes of the May 30, 2024 Open Meeting. Ed Englander moved, seconded by Joyce Hastings, to accept the minutes which were approved with the following edits by Azu Etoniru, with corrections to sections #6, #7, #9, and #13.
4. Chairman Paul Tyrell's safety item focused on boater safety and respect for the ocean and to stay away from whales. The Chair advised that anything can happen, and that recently in the news two gentlemen in a boat were flipped out of their boat in seconds, by the whale. Also, while white water rafting, put on your life jacket properly to avoid accidents.
5. Chairman Paul Tyrell informed the Board that the next meeting date was scheduled to be held Thursday, August 29, 2024. The Chair requested all members check their calendars to determine if any scheduling conflicts exist so that there will be a quorum. No conflicts were identified.
6. Chair Tyrell discussed the topic of the quality of filings at the Registry of Deeds in Suffolk County. Chair Tyrell stated that in his review of the filings at the Registry of Deeds, the Registry is not adhering to its own guidelines and regulations. Chair Tyrell suggested to Board Counsel that an advisory letter be sent to the Registry, and he requested a status from Board Counsel on this topic. Board Counsel reported that he spoke to General Counsel and Deputy General Counsel on this topic and that an advisory letter was not recommended as the agency does not have the authority to issue an advisory as DOL has no jurisdiction over the Registry. Board Counsel recommended to the Board that he and DOL draft the framework for a general bulletin advisory to be placed on DOL's website regarding the standards for how plans should be filed at the Registry. Board Counsel will draft this advisory and when it is completed it will be brought to the Board for review. Board Chair Tyrell disagreed with this position, and he wants the minutes to reflect that unlicensed practice is occurring at the Registry of Deeds and the Board does not support this. Board Counsel stated that DOL is acting by posting an advisory on the DOL website and he advised the Board that DOL does not have jurisdiction over the Registry of Deeds. Paul Tyrell suggested an advisory letter be sent to the Registry identifying the issues and notifying the Registry that the Board is concerned with this issue and does not support this. Ed Englander suggested a letter be sent to the Chief Justice of the Land Court, who does have jurisdiction over the Registry, and send it notifying the Land Court as a courtesy. Board Counsel Chan stated that he would need to inform General Counsel and ask their guidance on this issue. Chair Tyrell stated that it is not the Land Court side of operations that concerns the Board, but rather the recording side where this is occurring. Dan Caron stated that Chair Tyrell and Board members should draft this letter. Chair Tyrell said if DOL is opposed to this action, then the Board would not draft an advisory letter to the Registry. Board Counsel stated that DOL cannot support a Board member writing an advisory in their board capacity. Dan Caron suggested the Board as a whole draft a letter to the Registry and get approval from DOL. Board Counsel Chan stated that the DOL Legal Department does not have the authority to send an advisory as DOL does not have jurisdiction over the Registry. Board Counsel suggested that instructions be posted and disseminated about

how to file a legal complaint against licensees, and issue advisory letters directed towards individual licensees. Board Counsel reiterated that the management of DOL and the legal department are against this position because DOL has no jurisdiction to advise another agency how to perform its operations. Nancy Gould stated that if the Board recognizes a negative risk to the public, what is the Board's position regarding protecting the public. Chair Tyrell stated that the Board is also not protecting its licensees in this matter. Azu stated that the tone of the advisory is simply alerting the Registry as to what is happening instead of instructing the Registry, so that the tone is less adversarial and more cooperative. Most of the complaints that the Board complaint committee receives are regarding this issue. Azu suggested the Board should send a letter identifying the issue in a non-adversarial tone rather than an advisory letter. Dan Caron stated that the Board gets multiple complaints against unlicensed individuals and does not have jurisdiction over unlicensed engineers and land surveyors, yet we review these complaints. Ed Englander stated the employees at the Registry may need more comprehensive training regarding plans and the recording of the plans. Ed Englander stated that in his practical experience, there are incidents where the attorneys involved in the process are also negligent. Board Counsel reiterated that the agency is reviewing this and trying to resolve this issue. Board Counsel advised the Board that complaints can be taken out against the licensees and unlicensed individuals. Deputy Commissioner Colleen Maloney stated that she understands the Board's frustration, and that DOL is taking this issue very seriously and will investigate this issue and address it further. Ken Anderson stated that he could file multiple complaints on this matter, but stated that he may have to recuse himself in some of the complaints. Board Counsel stated that his role is to provide counsel to the Board to the best of his ability within the parameters of the law, even if the Board does not agree with the advice provided by Board Counsel.

7. Nancy Gould, the Board's licensed fire safety engineer, presented a fire safety issue which was explained in an email she submitted to the Board regarding the City of Boston Inspectional Services Department (ISD), and the State Requirements for stamping Fire Protection Plans/Documents. The City of Boston ISD returned submitted fire safety protection plans that were not stamped by a licensed Fire Safety Protection Engineer. There was discussion amongst the Board members regarding this licensure and competency issue pursuant to the requirements of 250 CMR 5, which points to competency in any area as the requirement for being able to stamp plans. Eric Funk stated that this issue has come up previously, and that in Massachusetts, it is up to the local building inspector to determine what stamp is required for specific projects. Local building inspectors/officials utilize the building code as well as zoning laws, etc. in their respective cities/towns to determine what type of stamp is required on a project.
8. The Chair informed the Board that the 2025 NCEES Northeast Zone Meeting will be held at the Sonesta Hotel in Cambridge, Massachusetts. Chair Tyrell is the liaison for the Northeast Zone and he will be coordinating the social and cultural events for the 2025 conference.
9. Joyce Hastings presented the JP Land Surveying Exam Subcommittee Chair report. She reported that Dennis Drumm has been the head of this subcommittee for a long time, and he wants to resign as chair, but remain on the subcommittee. Mr. Drumm nominated Mr. Daniel McIsaac to become the new chair of the subcommittee, and the subcommittee members were in agreement with Mr. McIsaac as the new chair of the JP Land Surveying Exam Subcommittee. Chair Tyrell was also in agreement with Mr. McIsaac as the new chair of the subcommittee. Chair Tyrell stated that there is a perception among the land surveyors that the Land Surveying exam is extremely difficult. Abbie Goodman asked for the date of the JP LS exam. Eric stated that he needs to get in contact with PCS to determine an October date, and an accessible location to hold the exam. Ken Anderson stated that regarding the low exam pass rate, there are candidates who take the oral exam as a prerequisite to sit for the written exam, and some of the candidates are not as strong as they could be, but the Board tries to give more candidates the benefit of the doubt. Joyce Hastings stated


that the JP LS exam is not that difficult to pass if the candidates study appropriately, and study the suggested topics which are on the exam.

10. Chair Tyrell brought up the discussion of a topic inquiry from a licensed engineer, and the Chair asked Eric Funk to discuss it. Eric Funk presented this issue to the Board based on an email request from a licensee regarding the Rules and Regulations and whether a licensee is competent to practice in areas outside of their license subject. After much discussion amongst the Board members, the Board agreed that it cannot opine on whether or not a local building inspector/official must accept the certification of a particular PE on a specific project. The Board does not make determinations of competency for practice by a licensee, unless a specific complaint is initiated and presented to the Board that a violation has allegedly been committed by a licensee.
11. Board Counsel Philip Chan gave his legal report and gave a status update on the Continuing Professional Competency (CPC) Regulations. Attorney Chan advised the Board that he has nothing new to report, and that he spoke to the General Counsel of DOL, and Deputy General Counsel, about the CPC Regulations which are still under review by the Governor's Legal Office at the Office of A & F. Attorney Chan did relay the Board's frustration with the duration of time to review and process these CPC regulations.
12. Board Counsel Philip Chan thanked the Board for its recommendations regarding expert witnesses to retain for litigation matters.
13. Attorney Chan informed the Board that there were no further legal topics for discussion.
14. Executive Director Kathleen McNally advised the Board that she continues to work through the NCEES Enforcement Exchange backlog and uploading case outcomes to the NCEES Enforcement database.
15. She also informed the Board that the revised and updated complaint tracking spreadsheet kept by Dan Caron is up to date. Dan Caron will notify Kathleen if there are additional records and status dispositions he needs for his records.
16. Joyce Hastings gave the report on the JP LS Exam Subcommittee for the April 2024 JP Exam. Joyce reported that there were seven test takers and out of seven, there were two first-time test takers, and two Massachusetts residents. The exam subcommittee set a passing grade of 70. Four people passed the exam which is a pass rate of 57%. One of the Massachusetts residents, who was a first-time test taker, also passed the exam on the first attempt. Paul Tyrell stated that Massachusetts has different laws, riparian rights, and statutes, and is unique compared to other states and jurisdictions. Eric Funk reported that two of the first-time test takers passed the exam with a score of over 90%. Joyce stated that one passed with a score of 96%. Dan Caron moved to accept the scores of the JP test takers, and Ed Englander seconded the motion. Members in Favor: Nancy Gould, Paul Tyrell, Ronald Willey, Dan Caron, Joyce Hastings, Azu Etoniru, Ken Anderson, and Ed Englander. Members opposed: None. Members abstaining: None. The motion passed unanimously.
17. Executive Director Kathleen McNally informed the Board the CBT (computer-based testing) status for JP Land Surveying exam, which is still offered in paper, is the same. We need to go with PCS as the vendor for the exam as it is more cost effective since they handle our engineering exams already and cost is a major factor. We need to convene a subcommittee to get the Land Surveying JP written exam transitioned to CBT. Kathleen McNally stated that the convening of the State Specific Jurisprudence (JP) Exam CBT Conversion Subcommittee is the next step in this process to move the written exam forward to CBT (computer-based testing). The issues are the exam question bank, the open book exam, and test locations. Chair Tyrell said that transitioning

to CBT creates newer opportunities for exam questions that will increase the exam bank pool, and that NCEES can assist us with this. The current exam question bank currently contains approximately 167 questions.

18. Executive Director Kathleen McNally informed the Board that there were two consent agreements involving Mr. Carlos Rodriguez who had two disciplinary complaints. He paid a \$3,000 fine for two separate violations of unlicensed practice, and both were resolved via consent agreements. Kathleen informed the board that she will update the NCEES Enforcement Exchange with this information. Chair Tyrell reminded the Board that the NCESS Enforcement Exchange notifies the public of licensees who have violations and discipline against their license in Massachusetts, and other state jurisdictions.
19. Chair Tyrell asked if there were any questions about the applications and suitability of applicants, and if there were any questions regarding the digital applications. There were no suitability questions or issues raised. Azu Etoniru moved to accept the applications, seconded by Joyce Hastings. A roll call vote was taken, and the motion passed with a vote of 8-0. Members in Favor: Nancy Gould, Paul Tyrell, Ronald Willey, Dan Caron, Joyce Hastings, Azu Etoniru, Ken Anderson, and Ed Englander. Members opposed: None. Members abstaining: None. The motion passed unanimously.
20. Dan Caron asked Eric Funk a question regarding the applications and if a column could be added on the "A Comity" Application spreadsheet to let the Board members know if any of the applicants are MLE's or non-MLE's. Eric responded that any of the "A applications" on the list are MLE's. Any of the non-MLE applicants are sent to the Board members for review and determination, as Eric does not make those determinations. Eric does the full MLE applications, and if he sees any issues with these applications, he sends the applications to a Board member to review and determine. Dan stated that he understood that but asked if Eric could please add another column to the application spreadsheet to mark this information regarding MLE and non-MLE. Eric said that he would do so. Chair Tyrell defined MLE as Model Law Engineer as governed by NCEES regulations which set the national standards for types of engineers. A Model Law engineer is the highest type of engineer based on education, practice, and licenses. Massachusetts licenses engineer who do not hold this title or license but are licensed because the licensees meet the Massachusetts licensing standards. Dan Caron stated that an MLE license meets the standards in all 50 state jurisdictions.
21. Executive Director Kathleen McNally requested permission from the Chair to reopen the Executive Director report to inform the Board about current Massachusetts engineering projects being performed by licensee, Mr. Patrick Doyle. Mr. Doyle is required to inform the Board on a quarterly basis about projects he is performing in Massachusetts, as part of his conditional comity license agreement for his Massachusetts P.E. Civil Engineering license #58367.
22. Correspondence was addressed earlier in the meeting in the prior Discussion topics.
23. The Chair asked for public comments. Abbie Goodman informed the Board that the Professional Competency (CPC) Regulations have been pending at the Executive Office of Administration and Finance (A & F) since at least September of 2023.
23. There were no additional public comments or questions at this time.

24. Eric advised the Board that there were no topics for the Executive Session.
24. Nancy Gould moved to close the meeting, and Ed Englander seconded the motion, so the Board could go to Closed Investigatory Conference. Members in Favor: Nancy Gould, Paul Tyrell, Ronald Willey, Azu Etoniru, Dan Caron, Joyce Hastings, Ken Anderson, and Edward Englander. Motion passed 8-0. Opposed: None. Motion passed unanimously.
25. The Open Session Meeting closed and concluded at 10:50 A.M. The recording was turned off at this time.
26. Closed Investigative Conference:
- 2023-000790-IT-ENF Dismiss
 - 2023-000821-IT-ENF Dismiss with Advisory Letter
 - 2023-000038-IT-ENF Dismiss
 - 2024-000060-IT-ENF Dismiss with Advisory Letter
 - 2024-000132-IT-ENF Refer to Prosecutions
24. Ron Willey moved to adjourn the meeting, and Azu Etoniru seconded the motion. A roll call vote was taken. Members in Favor: Nancy Gould, Paul Tyrell, Ronald Willey, Azu Etoniru, Dan Caron, Joyce Hastings, Ken Anderson, and Edward Englander. Motion passed 8-0. Opposed: None. The Motion passed unanimously.
25. The meeting was adjourned at 11:05 A.M.


Respectfully submitted,
Colleen Maloney,
Associate Deputy Commissioner

Documents Used at the Public Meeting:

- Agenda for July 25, 2024 Meeting.
- Draft Minutes of May 30, 2024 Open Meeting.
- Email/Letter regarding licensing requirements to stamp fire safety plans filed with Mass building departments.
- Letter from a PE licensee regarding competency in areas of engineering where licensee is unlicensed.
- Consent Agreements 2022-000932-IT-ENF; 2023-000112-IT-ENF.
- Licensee Letter reporting engineering projects pursuant to a conditional licensure agreement for license #58367.

