

PROFESSIONAL CONDUCT MEETING MINUTES



COMMONWEALTH OF MASSACHUSETTS
Board of Registration
of
Hazardous Waste Site Cleanup Professionals
ONE WINTER STREET, 3rd Floor
BOSTON, MA 02108

PROFESSIONAL CONDUCT COMMITTEE

Minutes of Meeting on March 29, 2018

Approved on April 26, 2018

Prepared by: Beverly Coles-Roby

Meeting Location:

MassDEP NERO
205B Lowell Street
Wilmington, MA 01887

1. List of Documents Used at the Meeting:

- Agenda
- Draft Minutes of Meeting on February 21, 2018
- Active Case List

2. Call to Order: Co-Chairperson James N. Smith called the meeting to order at approximately 1:00 p.m. The Board members in attendance were Maria Pinaud, Debra Listernick, Marc J. Richards, Farooq Siddique, Dr. Gail Batchelder, Gregg McBride, Kathleen Campbell, and David Austin. Board member Kirk Franklin was absent. Staff members present were Beverly Coles-Roby and Lori Williamson. Wendy Rundle, Executive Director of the LSP Association (“LSPA”), Wes Stimpson of WES Associates, and David LaPusata of MassDEP were also present.

3. Previous Minutes: The draft minutes of the meeting held on February 21, 2018, were approved as written. Board member Dr. Gail Batchelder abstained from voting to approve the minutes.

4. Old Business: None

5. Status of Complaint Review Teams and Active Case List

At co-chairperson, James N. Smith’s request, the Complaint Review Teams (“CRT”) reported on progress made since the February 21, 2018 meeting. Ms. Coles-Roby gave the reports on the status of each case as reflected in the Active Discipline Case List. She

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prefaced her comments by stating that all recent developments were catalogued in the Active Case List.

Ms. Coles-Roby explained that 05C-07; 08C-03; and 11C-04 would be discussed during Quasi-Judicial Session at the conclusion of today's Board meeting.

Ms. Coles-Roby reported that in the matter of 10C-01, the Assistant Attorney General representing the Board is set to advise the court that the LSP is unwilling to settle the case and the court will rule on the parties' Motions for Judgment on the Pleadings.

With respect to 12C-01, Ms. Coles-Roby again indicated that the Complaint Review Team would present its report to the Board at its April 2018 meeting.

The Committee discussed a March 19, 2018, letter filed by the LSP in 16C-01 in response to the dismissal of the complaint. The letter was addressed to Mr. Smith. Mr. Austin said that he understood the LSP's desire to have something on record given that there is no right of appeal. Ms. Coles-Roby explained that she communicated with the LSP and asked him/her not to contact individual Board members. Ms. Listernick stated that she too understood why the LSP submitted a letter. However, she thought that his issue was with MassDEP not the Board. She concluded by saying that the letter should be filed along with the LSP's other paperwork. Ms. Pinaud informed the Committee that final audit findings should also go in the LSP's file. Dr. Batchelder cautioned that it is important to keep in mind that this matter was not something that could be ignored. The Board had a reason why it issued the warning, she said. Ms. Listernick noted that the Board did not find fault worthy of discipline. Mr. Siddique questioned whether the letter merited a response. Ms. Pinaud asserted that it did not because the dismissal letter represented a final determination. Mr. Smith agreed saying that the matter required no further action.

Ms. Coles-Roby introduced a new case, docketed as 17C-05. She went on to explain that there are in actuality three cases which were combined because they arise out of the same site; same set of operative facts; and each alleged among other things, conflict of interest. One of the cases was filed on November 30, 2017. The other two were both filed on January 2, 2018. She indicated that the cases had received some media attention and involved a citizens group. Mr. Austin noted that all three complaints requested that the Board remove the LSP from the project. Mr. Siddique opined that pursuant to the Board's regulations these cases do not rise to the level of conflict of interest. Mr. Richards concurred indicating that the developer hired the LSP for multiple purposes, which is what LSPs do. He also agreed that he saw no evidence that could be construed as a conflict of interest. Mr. Smith believed that the parties' complaints were with the proposed development, not the LSP. Mr. Siddique said LSPs do provide both permitting services as well as LSP services. Ms. Listernick examined a second allegation saying, that the complainants' issues with the Public Involvement Process ("PIP") did not discourage public participation, in her view. Mr. Siddique said that the library, where the public meetings were held, was reasonable. Mr. Smith told the Committee that the LSP laid out a timeline that demonstrated there was nothing inappropriate about the process. Mr. Stimpson added that PIP actually decides the location so, it is planned. Ms. Listernick next raised the allegation of the LSP and his/her

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spouse working on the same project. She said under its regulations, the Board cannot give the relief requested--removal of the LSP from the project. Ms. Rundle wanted to know whether the Board had checked the submitted PIP documents to assure that the timelines added up. Mr. Austin thought that it was MassDEP's job to check the timelines. Dr. Batchelder said that the PIP process is possibly the only thing that the LSP did not do correctly. Mr. McBride asked if the LSP addressed what came out after the meeting. Mr. Siddique indicated that the LSP's response in the last paragraph at page 3 discussed the issue. Ms. Campbell asserted that the complainants focused on the PIP process: the library; the Thanksgiving holiday; and when the meetings were held. Mr. Richards said that the LSP's response was very detailed and the location may have been the location for other PIP proceedings. Mr. Smith summed up the discussion by saying that the Board lacks the regulatory authority to remove a LSP from a site; that the PIP followed the Massachusetts Contingency Plan; and that the conflict of interest claims do not violate the Board's regulations. He added one final coda: it does not constitute a violation for two spouses to work on the same project. Ms. Campbell commented that she thought the complainants may be using the process to slow down construction. The Committee voted unanimously to recommend that the complaints be dismissed. Ms. Pinaud is recused from these cases and therefore, did not participate in the discussion.

6. New Business:

No new business was discussed.

7. Future Meetings: [April 26, 2018—MassDEP Boston](#)

8. Adjournment: The meeting was adjourned at approximately 1:38 p.m.