

MINUTES
REGULAR QUARTERLY BOARD MEETING
TEXAS BOARD OF PROFESSIONAL ENGINEERS
SOUTH INTERSTATE 35
AUSTIN, TX 78741
August 17, 2017 – 10:30 AM

Call to Order. Daniel O. Wong, Ph.D., P.E., Presiding Officer, called the Regular Quarterly Board meeting of the Texas Board of Professional Engineers to order at 10:30am on August 17, 2017 at the Texas Board of Professional Engineers, 1917 S. IH35, Austin, TX. (NOTE: all votes are unanimous unless noted).

1. Roll Call and Welcome Visitors.

Daniel O. Wong, Ph.D., P.E.	Chair
Sam Kannappan, P.E.	Vice Chair
Dr. Sina Nejad, P.E.	Secretary
Edward Summers, Ph.D.	Treasurer
Lamberto “Bobby” Ballí, P.E.	Member
Albert Cheng	Public Member <small>(absent)</small>
Catherine Norwood, P.E.	Member
Elvira Reyna	Public Member <small>(absent)</small>
R. Kyle Womack, P.E.	Member

A quorum was present. Ms. Veena Mohan, Assistant Attorney General, was present to provide legal counsel to the Board. Mr. Jose I. Guerra, P.E., and Govind Nadkarni, P.E., Advisory Members, were present.

The following staff members were present:

Lance Kinney, Ph.D., P.E.	Executive Director
David Howell, P.E.	Deputy Executive Director
Dave Daigle, P.E.	Director of Compliance & Enforcement
Rick Strong, P.E.	Director of Licensing
Jeff Mutscher	Chief Financial Officer
Morgen Cuming, JD	Staff Attorney
Clif Bond	Supervising Investigator
Rick Valdes	Investigator
Dorothy Gonzales	Executive Assistant

Visitors: Peyton McKnight, American Counsel for Engineering Companies (ACEC); Raghunath Dass, P.E.; Greg Thompson, Texas Section of the American Society of Civil Engineers (ASCE); Lyndsay Q. O’Leary, P.E., LEED AP, ASCE; Terry Bilderback, P.E., Texas Society of Professional Engineers (TSPE); Kent O’Brien, P.E., Texas Department of Transportation; Mark Farris, Attorney, Farris & Hutton, P.C.; Trish Smith, Executive Director, TSPE; Jose Ballí.

Agenda Item #21 was taken out of order.

Dr. Wong, stated the agenda item, Consideration of appropriate sanction for *Texas Board of Professional Engineers v. Raghunath Dass, P.E.*, License No. 90119, SOAH Docket No. 460-12-3264, would be taken up at this time.

Ms. Cuming, Staff Attorney for the Board, summarized to the Board members a timeline of actions, process and proceedings the Board has taken on Mr. Dass’s case. She also summarized actions taken by Administrative Law Judge, Court of Appeals, and the district courts. Ms. Cummings provided the Board members with a proposed Final Board Order for Mr. Dass, and recommendations appropriate for the

violations noted.

Mr. Jimmy Allen Hall, J.D., attorney representing Mr. Dass, addressed the Board members and shared his clients experience in the profession and his personal character. He proceeded in sharing with the Board members that his client is not in violation of the Texas Engineering Practice Act (TEPA).

Dr. Wong asked Mr. Hall if he needed additional time to continue his comment. Mr. Hall responded that he did.

It was MOVED/SECONDED (Nejad/Summers) to allow Mr. Hall an additional three minutes to continue his statement. A vote was taken and the MOTION PASSED.

Dr. Wong called the meeting into executive session at 10:46am, August 17, 2017, and requested that all non-board members leave the room, with the exception of general counsel from the Office of the Attorney General, Karen Watkins and Veena Mohan.

Dr. Wong called the meeting into open session at 11:19am on August 17, 2017. There was no action taken during closed session.

It was MOVED/SECONDED (Ballí/Norwood) to adopt staff's proposed final order as submitted. A vote was taken and the MOTION PASSED.

Dr. Wong called the meeting back to order of the agenda.

2. **Public Comment.**

Mr. Mark Farris, Attorney, Farris & Hutton. Mr. Farris was before the Board regarding his complaints against Jaster Quintanilla and Associates and other engineers and commented on these cases.

3. **Consent Agenda.**

(The following items may be acted upon under Consent Agenda and are marked with an asterisk* on the Regular Quarterly Board Meeting Agenda)

- May 24, 2017, Licensing Committee Minutes **(See agenda item #7)**
- May 24, 2017, Texas Board of Professional Engineers, National Council of Examination for Engineering & Surveying Training Minutes **(See agenda item #4)**
- May 25, 2017, Enforcement Committee Minutes **(See agenda item #5)**
- May 25, 2017, Legislative Committee Minutes **(See agenda item #8)**
- May 25, 2017, Regular Quarterly Board Meeting Minutes **(See agenda item #6)**
- Administrative Reports, Outstanding Administrative Penalties, Dismissed Cases, Violation Terminated Cases, Voluntary Compliance Cases **(See agenda item #17)**
- Licensing Applications. **(See agenda item #22)**

It was MOVED/SECONDED (Summers/Ballí) to adopt the Consent Agenda as submitted. A vote was taken and the MOTION PASSED.

Discuss and Possibly Approve Board Minutes:

4. ***(Consent Agenda)** May 24, 2017, Texas Board of Professional Engineers, National Council of Examination for Engineering & Surveying Training Minutes
5. ***(Consent Agenda)** May 25, 2017, Enforcement Committee Minutes
6. ***(Consent Agenda)** Discuss and possibly approve minutes of the May 25, 2017, Regular Quarterly Board Meeting

Discuss and Possibly Accept Committee Minutes:

7. ***(Consent Agenda)** May 24, 2017, Licensing Committee Minutes

8. ***(Consent Agenda)** May 25, 2017, Legislative Committee Minutes

Agenda items 4-8 were approved under Consent Agenda, see above.

Discuss and Possibly Act on the following agenda items (10-24):

9. **Board Members' Activity Reports.**

(Report – submitted in accordance with §131.11 (g))

- Ballí
- Kannappan
- Nejad
- Norwood
- Reyna
- Summers
- Womack
- Wong

10. **Advisory Members' Activity Reports.**

- Gonzalez
- Guerra
- Nadkarni

Agenda items 9-10 were included for information only, no action was taken.

11. **Finance and Budget.**

• **FY17 3rd Quarter Budget.**

Mr. Mutscher commented that the budget report is through the end of May and shows that the Board is on target with revenues and expenses.

• **FY18 Budget and Fees.**

Mr. Mutscher discussed with the Board members the 2018 Fiscal Year proposed budget. He reviewed the revenues and expenditures, SDSI transfer, and estimated ending fund balance. The revenues and expenses for the year have been very close to budgeted amounts. One additional item, the transfer of land to Texas Department of Transportation (TxDOT) for the highway project which was discussed and approved in previous Board meetings will provide an additional amount of funding before the end of the fiscal year. With the additional funding, the ending fund balance would be just over a million dollars. This is higher than planned, but still consistent with the fund balance policy. The projections over the next 4-5 years would move the fund balance down to reduce the fund balance. Staff met with Dr. Summers and reviewed each line item. Mr. Mutscher discussed fees and revenues. Mr. Mutscher discussed the current \$80 PE application reactivation fee. Dr. Kinney added that staff is seeking guidance from the Board regarding the reactivation fee. The Board made the following motion regarding the reactivation fee.

It was MOVED/SECONDED (Ballí/Kannappan) to amend the PE application reactivation fee to be \$40. A vote was taken and the MOTION PASSED 7 to 1; Nejad opposed.

Mr. Mutscher also mentioned that staff is requesting to remove the \$5 fee for duplicate certificates for PEs, EITs, and Firms which is included in the proposed budget. He also reviewed the itemized expenditure budget report. Funds received from the land transfer to TxDOT will be reinvested in the building and land in the form of repairs and improvements. He added that the State Auditor's Office informed Dr. Kinney they will begin an agency audit which will cost the agency \$50,000. One additional item on the expense side is the merit increase for the Executive Director per his performance evaluation completed and approved by the Board Chair. Dr. Wong commented that he completed and reviewed Dr. Kinney's performance which is available to all Board members if needed. Mr. Mutscher also commented at the request of the Board Chair, money has been put aside in the budget for a building use study which will be under the direction of Dr. Kinney. The rest of the information reflects the current activities and how the fund balance estimate was developed. Mr. Mutscher stated that the budget was developed using the Board approved process. Dr. Summers commented that he was involved in the budget process and is in favor of the budget as presented.

It was MOVED/SECONDED (Summers/Norwood) to adopt the 2018 Fiscal Year budget with the fee changes and expenditures presented. A vote was taken the MOTION PASSED.

Mr. Mutscher also informed the Board that the Comptroller's office audited transactions from payroll, purchase vouchers, and travel, over 350 distinct transactions plus ad hoc queries. Each Board member

will be receiving the final report soon.

Discuss and Possibly Act on Issues Regarding Committee Reports or Items on the Committee Agendas:

12. Licensing Committee meeting summary (August 16, 2017).

- **Personal Appearances from Licensing Applicants:**
 - Godwin Arthur
 - Saul Balcazar Jr.
 - Zachary Neil Grosel
 - Robert G. Hermosillo
 - LaTonya Sharie Johnson
 - Daniel Nathan Karpen
 - Matthew Raymond Kelly
 - Robert Joseph Ontko
 - Timothy, Mayberry

It was MOVED/SECONDED (Nejad/Ballí) to approve that Godwin Arthur, Saul Balcazar Jr., Matthew Raymond Kelly, Robert Joseph Ontko, Timothy Mayberry to be licensed in Texas; Robert Hermosillo be allowed to sit for the PE exam with a waiver of the FE exam; Daniel Nathan Karpen be licensed in Texas after successful completion of the 30 hr. Ethics course; and LaTonya Sharie Johnson be allowed to sit for the PE exam. A vote was taken and the MOTION PASSED.

- **Discuss and possibly approve the Policy regarding Personal Appearance process.**

Dr. Nejad commented that this policy will allow applicants who have single, reported criminal incident be addressed by staff and not have to appear before the Licensing Committee. Staff can still use board circulation or recommend personal appearance if needed.

It was MOVED/SECONDED (Nejad/Summers) to approve the Personal Appearance process. A vote was taken and the MOTION PASSED.

Dr. Nejad added that the Committee was provided a report from the Director of Licensing. No action was taken.

13. Policy Advisory Opinion (August 17, 2017).

- **Discuss and possibly approve the request for an advisory opinion EAOR 43 Policy Advisory Request Regarding a Texas Real Estate Commission (TREC) licensed inspector providing an opinion on a residential foundation and its relation to the practice of engineering.**

It was MOVED/SECONDED (Womack/Ballí) to approve EAOR 43 as submitted. A vote was taken and the MOTION PASSED. The Board also appointed Mr. Lamberto "Bobby" Ballí, P.E. as the liaison to work with staff on this advisory.

14. Legislative Committee Meeting summary (August 17, 2017).

- Summary of Legislative and Special sessions

Dr. Nejad reported that Mr. Howell gave a summary of the bills passed in the 85th Legislative Session that impacted the agency and the staff assigned on items for action. No action was required.

15. Nominating Committee Meeting (August 17, 2017).

- **2018 Officer Slate.**
 - Dr. Sina Nejad, P.E. Vice Chair
 - R. Kyle Womack, P.E. Secretary
 - Edward Summers, Ph.D. Treasurer

It was MOVED/SECONDED (Wong/Norwood) to approve the officer slate for Fiscal Year 2018 as presented above. A vote was taken and the MOTION PASSED.

- **Renew Advisory Members Contract for Fiscal Year 2018.**
 - Edmundo Gonzalez Jr., P.E., R.L.P.S.
 - Jose Guerra, P.E.

- Govind Nadkarni, P.E.

It was MOVED/SECONDED (Wong/Ballí) to approve the Advisory Members Contract for Fiscal Year 2018. A vote was taken and the MOTION PASSED.

Discuss and Possibly Act on Reports or Items reported by the Executive Director:

16. Executive Director's Report.

- **Daily Activity Report.** Dr. Kinney mentioned his report is provided as an exhibit, and if anyone has any questions, he is ready to discuss. No action required.
- **IH 35 Expansion.** Dr. Kinney gave an update on the expansion of IH35, and the TBPE land acquired by TxDOT.
- **Strategic Plan/Journey Towards Excellence (JTE).** Dr. Kinney updated the Board on the 2017 Strategic Plan/JTE activities.
- **National Council of Examiners for Engineering and Surveying Annual Meeting-August 22-26, 2017 (NCEES).** Dr. Kinney commented on reviewing of the motions via a webinar. He added that Mr. Ballí is nominee for the NCEES Secretary/Treasurer position.
- **Outreach.** Dr. Kinney mentioned that each year the Board sets a new record for attendees. This year, staff made presentations to over 22,000 attendees and webinars are a big hit.
 - **Draft Plan for Regional Advisory Meetings.** Dr. Kinney reported that as directed by the Board members, staff has begun to coordinate the out of town advisory meetings.
 - **Beaumont.** The TBPE Conference in Beaumont is tentatively scheduled on October 18th. Staff is working closely with Dr. Nejad, Lamar University and local engineering societies. Staff will invite all Board members.
 - **Midland.** Staff is working closely with Mrs. Norwood to schedule a TBPE Spring Conference. Advisory Member Nadkarni, P.E., mentioned that Corpus Christi ASCE is also interested in hosting a TBPE Conference in the local area.
 - **Kudos.** Dr. Kinney mentioned that Kudos are included for the Board members to view. He thanked everyone that makes the outreach presentations a success.

Discuss and Possibly Act on Enforcement/Disciplinary Matters:

17. ***(Consent Agenda) Administrative Reports, Outstanding Administrative Penalties, Case Pending Status Report, Dismissed Cases, Violation Terminated Cases, Voluntary Compliance Cases.**
Report to full Board pursuant to Board rule §139.21

This agenda item was approved under Consent Agenda, see above.

18. Agreed Board Order.

(Motion Required)

Practice Violations

1. AARC Environmental, Inc. (Norwood-recused)
2. Stephen Paul Blake, P.E. (Kannappan-recused)
3. Civil Engineering Consultants, Inc. (Norwood-recused)
4. Ludi Design (Kannappan-recused)

It was MOVED/SECONDED (Summers/Nejad) to approve Agreed Board Orders 1 and 3 as submitted. A vote was taken and the MOTION PASSED. Mrs. Catherine Norwood, P.E. recused herself.

It was MOVED/SECONDED (Norwood/Ballí) to approve Agreed Board Orders 2 and 4 as submitted. A vote was taken and the MOTION PASSED. Mr. Sam Kannappan, P.E., recused himself.

19. Consent Orders.

Informal Reprimands *(In accordance with Board Rule 139.31(b) individual names are not listed)*

1. D-37169
2. D-37093
3. D-37150
4. D-37023

Non-Practice Violations

5. Wei Xiang Fung, P.E. – D-36930

6. Kenneth H. Lloyd, Jr., P.E. (Inactive) – D-37016
7. James David Peel, P.E. – D-37015
8. Street Hamilton Schellhase, P.E. – D-36983

Practice Violations

9. Phillip John Barnett, P.E. – D-36513
10. Gordon Lynn Duncan, P.E. – D-37055
11. Eric Gerard Russek, P.E. – D-36677

Firm Registration

12. GPM Engineering – B-37208

It was MOVED/SECONDED (Ballí/Norwood) to approve the Consent Orders as submitted. A vote was taken and the MOTION PASSED.

20. SOAH Final Board Order.

- **Intex Builders, Inc. – Case B-35836 [SOAH Docket No. 460-17-3288].**

It was MOVED/SECONDED (Norwood/Nejad) to approve the proposed final board order as submitted. A vote was taken and the MOTION PASSED.

- **Thai Huynh, P.E. – Case D-36898 [SOAH Docket No. 460-17-4404].**

It was MOVED/SECONDED (Summers/Womack) to approve the proposed final board order as submitted. A vote was taken and the MOTION PASSED.

21. Consideration of appropriate sanction for *Texas Board of Professional Engineers*

v. Raghunath Dass, P.E., License No. 90119, SOAH Docket No. 460-12-3264, on remand by trial court.

This agenda item may be considered under Executive Session in accordance to the Open Meeting Act, Gov't. Code A. Chapter 551.071, Consultation with Attorney.

Agenda item #21 was taken out of order, see above.

Discuss and Possibly Act on Licensing Applications requiring board ruling:

22. *(Consent Agenda) Licensing Applications.

Vote or Reconfirm Votes Pursuant to Board Rule §133.87:

- Approved for Exams
- Approved for Licensure
- Firms Approved
- Waivers – FE
- Waivers---PE
- Not Approved for Licensure

This agenda item was approved under Consent Agenda, see above.

Discuss and Possibly Act on Other Matters

23. Issues from the Board member to consider for next scheduled Board Meeting.

None at this time.

24. Adjourn.

It was MOVED/SECONDED (Kannappan/Norwood) to adjourn the meeting at 12:30 pm. A vote was taken and the MOTION PASSED.

Date the Board approved the minutes as submitted: November 16, 2017