



MINUTES OF A MEETING OF THE
TENNESSEE BOARD OF ARCHITECTURAL AND ENGINEERING EXAMINERS
Davy Crockett Tower
Nashville, Tennessee
Thursday, February 11, 2016

CALL TO ORDER

Robert Campbell, Jr., Chair, called the regular meeting of the Tennessee Board of Architectural and Engineering Examiners to order at 9:05 a.m. on February 11, 2016, at the Davy Crockett Tower, in Nashville, Tennessee. A quorum was declared present.

The following **Board members** were present:

Hal Balthrop	Professional Engineer
Robert Campbell, Jr.	Professional Engineer
Jerome Headley	Registered Architect
Philip Lim	Professional Engineer
Bill Lockwood	Registered Landscape Architect
Rick Thompson	Registered Architect
Frank Wagster	Registered Architect

The following **Board members** were present via conference call:

Susan Ballard	Registered Interior Designer
Susan Maynor	Public Member

The following **Associate Engineer members** were present:

Richard Bursi	Professional Engineer
Stephen King	Professional Engineer
Laura Reinbold	Professional Engineer

The following **Board staff** was present:

John Cothron	Executive Director
Ellery Richardson	Legal Counsel
Zack Nitzschke	Paralegal
Wanda Phillips	Office Manager
Wanda Garner	Administrative Assistant

The following **guests** were present for part or all of the meeting:

Kasey Anderson, Tennessee Society of Professional Engineers/American Council of Engineering Companies of Tennessee (TSPE/ACEC-TN)
Don Baltimore, Tennessee Interior Design Coalition (TIDC)
Ashley Cates, American Institute of Architects-Tennessee (AIA-TN)
Nathan Ridley, TN American Society of Landscape Architects (TN ASLA)
Chris Gwaltney, P.E., representing the American Society of Civil Engineers (ASCE) Tennessee Section

No changes were made to the agenda.

CONSENT AGENDA (attached)

Motion was made by Mr. Lockwood and seconded to approve the minutes of the December 3-4, 2015 meeting. The motion passed unanimously.

Motion was made by Mr. Lim and seconded to approve the Complaints for Board Decision. The motion carried unanimously.

PROFESSIONAL SOCIETY REPORTS

Kasey Anderson, Ashley Cates, Don Baltimore and Nathan Ridley reported on the activities of the TSPE/ACEC-TN, AIA-TN, TIDC and TN ASLA respectively. Kasey Anderson reported that TSPE/ACEC-TN is watching the following legislation:

- House Bill (HB) 1951/Senate Bill (SB) 1919—As introduced, exempts nonresident licensees from liability for the professional privilege tax. TSPE and ACEC-TN oppose this bill.
- HB1674/SB1621—As introduced, prohibits the state or any local government from requiring a company bidding on a state or local construction project to employ individuals who reside within the jurisdiction of the state or local government. TSPE and ACEC-TN support this bill.
- HB1726/SB1672—As introduced, allows construction design professionals under contract with certain state agencies to bill and receive payment monthly; specifies services that are included in the basic services fee and the services that will require additional compensation. TSPE, ACEC-TN, and AIA-TN support this bill.
- HB2347/SB1742—As introduced, requires a local government entity to make records of proposals and statements that are received by the local government in response to a service request or a request for solicitation open for public inspection only after the contract award is announced.
- HB1892/SB1830—As introduced, requires that general permits issued under the Water Quality Control Act be no more restrictive than federal requirements for management of storm water post construction; requires that provisions of certain general permits be promulgated in rule form prior to implementation.
- HB2407/SB2093—As introduced, enacts the “Public-Private Transportation Act of 2016.”
- HB1811/SB2106—As introduced, creates the offense of using a drone to fly within 250 feet of a critical infrastructure facility for the purpose of conducting surveillance or gathering information about the facility.
- HB1533/SB2535—As introduced, allows the state fire marshal to require and perform field inspections in lieu of requiring review and approval of plans and specifications for construction and alteration of certain buildings or structures, and to charge a fee of no more than \$200 for inspections that were untimely requested.

BUDGET PRESENTATION

Assistant Commissioner Brian T. McCormack reviewed the Board’s expenditures and revenue for fiscal year 2015.

LEGAL CASE REPORT (presented by Ellery Richardson) (attached)

- *Case No. L15-AEL-RBS-2015022299* *Complaint #2015022299*
Motion was made by Mr. Lim and seconded to authorize a formal hearing with authority to settle with a Consent Order for a civil penalty of five hundred dollars (\$500); 90 days from receipt of Consent Order to bring all Professional Development Hours current; an

automatic audit of continuing education hours for the next license renewal period; and to take and pass the Board's laws and rules exam. The motion passed with Mr. Thompson abstaining.

- *Case No. L15-AEL-RBS-20150217771* *Complaint #2015021777*
Motion was made by Mr. Wagster and seconded to authorize a formal hearing with authority to settle with a Consent Order for a civil penalty of five hundred dollars (\$500) and to take and pass the Board's laws and rules exam. The motion passed unanimously.
- *Case No. L15-AEL-RBS-20150221771* *Complaint #2015022177*
Motion was made by Mr. Balthrop and seconded to authorize a formal hearing with authority to settle with a Consent Order for a civil penalty of nine thousand two hundred and fifty dollars (\$9,250) and to take and pass the Board's laws and rules exam. The motion passed unanimously.

Board members requested that the Contractors' Board and the owner/building official be made aware of the circumstances.

- *Case No. L15-AEL-RBS-2015016881* *Complaint #201501688*
Motion was made by Mr. Balthrop and seconded to authorize a formal hearing with authority to settle with a Consent Order for a civil penalty of one thousand dollars (\$1,000) and to take and pass the Board's laws and rules exam. The motion passed unanimously.

Break 10:40 – 10:50 a.m.

DIRECTOR'S REPORT

Mr. Cothron reported his activities and those of his staff and Board members. Licensing Data, Complaint Data, Financial Data and Budget Projections were submitted and reviewed for informational purposes.

LEGISLATIVE UPDATE

Mr. Cothron reviewed pending legislation of interest to the Board, including the following:

- HB1615/SB1503—Extends the Board of Architectural and Engineering Examiners four years to June 30, 2020, and establishes minimum attendance requirement for Board members.
- HB2201/SB2469—As introduced, enacts the "Right to Earn a Living Act." Would require agencies to conduct an annual review of all rules to ensure that regulations of entry into businesses, professions, and occupations are demonstrably necessary and carefully tailored to legitimate health, safety, and welfare objectives. Also would allow individuals to petition an agency to repeal or modify a regulation.
- HB2569/SB2534—Amends T.C.A. § 62-2-304 relative to comity registration requirements for architects; allows acceptance of applicants whose qualifications do not meet the requirements of the laws and rules if they hold a license in another jurisdiction and a NCARB certificate.

Mr. Cothron also reported that Section 7, Item 31 of the appropriations bill (SB2653/HB2629) earmarks \$350,000 for the Board's grants program.

ENGINEER COMMITTEE REPORT

The Engineer Committee, through Mr. Balthrop, reported on topics discussed. The minutes of the Engineer Committee meeting follow these minutes.

Based on evidence received from NCEES regarding a Principles and Practice of Engineering (PE) examination irregularity and a review of records and recommendation by Mr. Cothron and Ms. Richardson, the Engineer Committee, through Mr. Balthrop, moved

- to release the October 2015 exam results of Test Taker A (Candidate #16-122-40) and
- to invalidate the results of Test Taker B (Candidate #13-509-71) and place the candidate on a proctor watch if the applicant takes any future exams.

The motion passed unanimously.

UNFINISHED BUSINESS

- *Action Items* (attached)

The action items taken from the December meeting were reviewed and the required action had either been taken or is in process.

In regard to the question about professional corporations issuing shares of stock to non-licensed individuals, Mr. Cothron reported that very few professional corporations in Tennessee provide services regulated by the Board. The vast majority provide medical, dental, legal, and accounting/financial services. Mr. Cothron and Ms. Richardson were asked to conduct further research on this issue.

- *Expert Testimony Policy*

Ms. Richardson reported that she will prepare language for consideration at the next meeting.

- *Proposed Rule Changes* (attached)

The Board expressed a desire to increase the grants appropriation to support education in lieu of reducing fees, since a fee reduction would have a minimal impact on registrants. The Grants Committee of the Board will meet to develop a proposal and guidelines for the use of additional grant funds.

Motion was made by Mr. Balthrop and seconded to file the proposed rule changes presented by Ms. Richardson as proposed rules (instead of rulemaking hearing rules), with the exception of the proposed change to Rule 0120-01-.10 Education and Experience Requirements – Engineer, which was deleted. The motion passed unanimously.

NEW BUSINESS

- *Authorization of Travel and Speakers*

Motion was made by Mr. Lim and seconded to authorize Mr. Balthrop to speak to engineering students at Tennessee Technological University in March and to authorize three members of the Board/Staff to attend the University of Tennessee at Knoxville College of Architecture and Design Career Day on February 26, 2016. The motion passed unanimously.

- *Call for Officer Nominations*

The Chair announced that the Nominations Committee will meet prior to the April meeting to create a slate of officers for fiscal year 2016-2017 and for Board members to give nominations to the Chair of the Nominations Committee.

- *Qualifications-Based Selection and Submission of Historical Data*
Mr. Cothron noted that he had received a question from a registrant regarding the acceptability of submitting historical data in response to a RFQ, which would include fees associated with past public projects. The Board expressed concerns that submission of historical data opens up fee discussions that are not in the spirit of qualifications-based selection and may circumvent the law and put a registrant in jeopardy. The Board asked Ms. Richardson to prepare a legal opinion on the issue.

Ms. Maynor disconnected from the conference call at 12:55 p.m.

UNFINISHED BUSINESS, cont.

- *Proposed Rule Changes, cont.*
Motion was made by Mr. Balthrop and seconded to approve the Economic Impact Statement prepared by Ms. Richardson. The motion passed with Ms. Ballard abstaining.

Motion was made by Mr. Balthrop and seconded to approve the Regulatory Flexibility Analysis prepared by Ms. Richardson. The motion passed with Ms. Ballard abstaining.

The meeting adjourned at 1:00 p.m.

ATTACHMENTS



MINUTES
BOARD OF ARCHITECTURAL AND ENGINEERING EXAMINERS
ENGINEER COMMITTEE MEETING
Davy Crockett Tower
Nashville, Tennessee
Wednesday, February 10, 2016

CALL TO ORDER

Hal Balthrop, P.E., Committee Chair, called the Engineer Committee meeting to order at 1:05 p.m. on February 10, 2016, in Room 5-B of the Davy Crockett Tower at 500 James Robertson Parkway, Nashville, Tennessee.

The following **Board members** were present:

Hal Balthrop, P.E.	Chair, Middle TN Member
Robert Campbell, P.E.	East TN Member
Philip Lim, PE	West TN Member
Ricky Bursi, P.E.	West TN Associate Member
Stephen King, P.E.	East TN Associate Member
Laura Reinbold, P.E.	Middle TN Associate Member

A quorum was present.

The following **Board staff** was present:

John Cothron	Executive Director
Ellery Richardson	Legal Counsel
Wanda Phillips	Administrative Manager

Visitors present: Chris Gwaltney, P.E., representing the American Society of Civil Engineers (ASCE), Tennessee Section, and Kasey Anderson, Tennessee Society of Professional Engineers/American Council of Engineering Companies of Tennessee (TSPE/ACEC-TN)

NEW BUSINESS

APPLICATIONS FOR DISCUSSION

- **Haider Fadhil Al-Mamoury** (Comity) – A NCEES evaluation determined that the applicant’s degree is deficient one course in general chemistry or biological sciences and 6 semester hours in general education. After allowing general education credit for citizenship, civic involvement, and an ethics course, the committee concluded that the applicant must complete one course in general education and one course in general chemistry or biological sciences to remedy the deficiencies.
- **Kevin Jon Burgers** (Exam) – The application was approved.
- **Olivia Cynthia Freeman** (Exam) – The committee concluded that the applicant needs more experience.
- **Kyle Eugene Griffin** (Exam) – The committee requested that the applicant submit an updated experience record for review to sit for the October 2016 PE exam.
- **Tyler Joyner, Sr.** (Exam) – The committee concluded that the applicant needs more experience.
- **Christopher James Morrival** (Exam) – The application was approved.
- **Michael Eugene Nightingale** (Comity) – The application was denied since the applicant’s undergraduate degree is in engineering technology.
- **Thomas Brent Porter** (Exam) – The application was approved.
- **Brock Leon Shepard** (Comity) – The application was denied since the applicant’s undergraduate degree is in engineering technology.

APPLICANT INTERVIEW

- **April Michelle Brown** (Exam) – A phone interview was conducted with the applicant at 2:00 p.m. The committee requested that the applicant submit an updated experience record for review to sit for the October 2016 PE exam.

2015 EXAMINATION RESULTS

Mr. Cothron reviewed the 2015 engineering examination results and noted that there was a 48% increase in the number of candidates for the Fundamentals of Engineering (FE) exam in 2015 compared to 2014.

Mr. Cothron reported that NCEES identified an exam irregularity during the October 2015 PE exam administration. Two candidates were flagged by a copying/collusion detection analysis, requiring Board investigation and action. After reviewing the evidence, the committee decided to recommend that the Board release the results of Candidate #16-122-40 and invalidate the results of Candidate #13-509-71, who will also be placed on proctor watch.

REPORT ON NCEES MEMBER BOARD ADMINISTRATORS' (MBA) MEETING

Mr. Cothron provided a brief report on the NCEES MBA Meeting, which was held in Atlanta, Georgia, on February 6, 2016. Key takeaways included:

- Nationally, the number of FE exam candidates is increasing slightly, but is still well below the levels seen prior to the conversion of the exam to a computer-based format.
- NCEES will begin transitioning the PE exams to a computer-based format in 2018, a process expected to take about four (4) years. The 16-hour Structural exam has not yet been evaluated for computer-based testing.
- The NCEES Financial Reserves Task Force is developing guidelines for using reserves and will present a motion at the Annual Meeting to create a standing committee to oversee the use of reserves.
- The Education Committee is discussing experience credit for concurrent time (i.e., time spent in engineering work while completing a graduate degree in engineering), and will present a motion on the issue.
- The Technology Task Force is discussing electronic seals and signatures, building information modeling (BIM), and the use of remote sensing technology. The task force is working on position statements.
- The MBA Committee is proposing rule changes to accept the NCEES continuing education standard (on a calendar year basis) to improve mobility.
- Application and renewal fees are being eliminated for NCEES record holders, and continuing education tracking will be available to record holders (at no cost) in June 2016.

UNFINISHED BUSINESS

UPDATE ON 2016 NCEES SOUTHERN ZONE MEETING

Mr. Cothron reviewed plans for the 2016 NCEES Southern Zone Interim Meeting in Nashville on April 7-9.

LICENSING AGREEMENTS WITH FOREIGN JURISDICTIONS

The committee members reviewed a draft memorandum of understanding with the Japan PE/FE Examiners Council (JPEC) and asked Mr. Cothron to pursue an agreement with JPEC.

DECOUPLING OF EXPERIENCE AND EXAMINATION REQUIREMENTS FOR PE REGISTRATION

Kasey Anderson reported that TSPE/ACEC-TN are planning to pursue legislation next year to decouple the experience and examination requirements for PE registration in Tennessee.

DISCUSSION RE: APPLICANTS WHO SIT FOR THE PE EXAM IN ANOTHER JURISDICTION AND THEN APPLY FOR REGISTRATION BY EXAMINATION IN TENNESSEE

Committee members discussed the application process for individuals who sit for the PE exam in another jurisdiction (but are not licensed in that jurisdiction) and then apply for registration by examination in Tennessee. Ms. Richardson advised that there is no provision in the laws and rules for the past practice of allowing such applicants to apply for registration by examination. Following the advice of legal counsel, the committee concluded that such applicants must first become registered in the jurisdiction where they sat for the exam, and then apply for registration in Tennessee by comity. Consequently, the committee decided not to pursue the proposed change to Rule 0120-01-.10 Education and Experience Requirements – Engineer stating that applicants who have already passed the examination in another jurisdiction are not required to have completed their experience by the date of the examination.

ENERGY SERVICE COMPANIES AND ENGINEERING REGISTRATION LAWS

The committee expressed concern about non-registrants offering energy services involving the practice of engineering. This issue will continue to be monitored.

Adjourn. The Chair adjourned the meeting at 4:46 p.m.