

STATE OF DELAWARE



DELAWARE ASSOCIATION OF PROFESSIONAL ENGINEERS
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September 26, 2011

MINUTES – COUNCIL MEETING, SEPTEMBER 14, 2011

A meeting of the Council of the Delaware Association of Professional Engineers was held on Wednesday, September 14, 2011, at the Wild Quail Conference Center, Wyoming, Delaware.

President Pawlowski convened the meeting at 3:15 p.m.

Council Members present:	W.D. Balascio, P.E.	C.L. McAllister, P.E.
	D.G. Clark, P.E.	H.M. Medlarz, P.E.
	W.Z. Crouch, P.E.	G.G. Pawlowski, P.E.
	S. Gharebaghi, P.E.	F.A. Newton
	K.R. Kooker, P.E.	V.G. Robertson, Esq.
	R. Leitsch, P.E.	A.D. Shine, P.E.
	M. Lester, P.E.	J.E. Tracey, Esq.

Council Members absent: D.P. Barbato, P.E. - excused

Staff present: P. Abshagen

DAG: Catherine (Terry) Hickey, Esq.
Andrew Kerber, Esq.

Secretary Medlarz took the Roll call and declared a quorum was present.

Open Forum

DAG Kerber requested Council approve a subpoena for additional documents from Daystar Sills in the MacIntosh hearing Case 10/004.

Motion by Shine, seconded by Newton, Council approve the subpoena with minor revisions. (ABSTAIN: Tracey, Medlarz, Clark and Lester) Motion carried.

Kerber advised the MacIntosh subpoena requesting copies of correspondence or a log of destroyed documents was in response to the original subpoena.

Executive Session:

Motion by Robertson, seconded by McAllister, at 3:25 p.m. to enter Executive Session to discuss pending litigation. (Council members Clark, Lester, Medlarz, and Tracey recused) Approved unanimously.

Motion by Robertson, seconded by Newton, Council return to Open Session at 3:35 p.m. Approved unanimously.

Motion by Robertson, seconded by Newton, Council authorize a motion be filed in Superior Court unless the subpoena in Case 10/004 is complied with by September 30, 2011, as determined by the Hearing Panel Chair. (Council members Tracey, Medlarz, Clark and Lester recused). Motion carried.

Minutes of the August 10, 2011 Executive Committee Meeting

Council reviewed the Minutes of the August 10, 2011 Council meeting. Motion by Newton, seconded by Robertson, Council approve the Minutes of the August 10, 2011 Council meeting as submitted. Approved unanimously.

D.A.G. Report

Hearing Panel Report/Final Order – University Consulting Engineers Case 10/076 was presented to Council.

DAG Kerber objects to the terms of the Order which provides 60 days to comply. Firm has opportunity to use term “expert” vs. “engineering” company on his letterhead, website, etc. The Cease & Desist Order issued was entirely appropriate. LE/E Committee also asked for fines for three separate violations (\$5,000 for each violation), and this was not considered by the Hearing Panel. The statute under Section 2824 allows for both a fine and Cease & Desist, and the fine provides room for negotiation.

DAG Hickey objects to this improper procedure.

Council member Robertson cautioned that Council went to great lengths to create a Hearing Panel, so as not to re-try cases at the Council level. A summary of evidence is provided to Council.

Motion by Robertson, seconded by Lester, Council approve the Final Order in the matter of University Consulting Engineers (subject to correction of typo). (Recused: Newton, Medlarz, Crouch, McAllister)
ABSTAIN: Shine. Motion carried.

Executive Session

Motion by McAllister, seconded by Robertson, at 4:00 p.m. to enter Executive Session to discuss pending/potential litigation. (Council member Tracey and DAG Kerber were excused). Approved unanimously.

Motion by Robertson, seconded by Newton, Council return to Open Session at 4:40 p.m. Approved unanimously.

Motion to Stay/Quash a subpoena in a second University Consulting Engineers matter has been filed. Since Council has no pending litigation before it, there is no valid basis for granting this stay.

Motion by Robertson, seconded by McAllister, the motion to stay/quash the University Consulting Engineers subpoena is denied. Approved unanimously.

(Council took a short break.)

(Council reconvened at 4:55 p.m.)

A New Castle County Chamber of Commerce publication included a segment entitled “We need a new approach to boards and commissions”, including a reference to the University Consulting Engineers’ case and

its use of the term "engineer." The article is not factual. Council discussed whether a response should be provided. Consensus of Council was not to provide any additional focus on this issue.

Motion by Clark, seconded by Medlarz, Council not respond to the New Castle County Chamber of Commerce. (OPPOSED: Pawlowski, Lester) Motion carried.

Committee Reports

Executive Committee

The Executive Committee met just prior to the Council meeting, therefore, a written report is unavailable. Items discussed at Executive Committee meeting will be covered under the appropriate Committee reports.

Financial Report

Income/expense activity -- The first four months of the fiscal year reflects income at 48% and expenses at 29% of projections. Report to be approved subject to audit.

The Finance Committee will revisit exam fees with NCEES computer-based testing fee set to increase to \$250, plus state fees, effective January, 2014.

Employee Benefits & Compensation

Careers USA has provided an employee for a temporary to full-time position.

Law Enforcement/Ethics Committee

Chair McAllister presented the report of the committee's meeting on September 7, 2011.

- Case closures -- 2 cases recommended for closure. Motion by McAllister, seconded by Kooker, Council approve the closure of the 2 cases listed on Exhibit A of the report dated September 9, 2011. Approved unanimously.
- Engineering Practice Assessor (EPA) scope of work was modified. This to finalize the EPA 6-month basis contract.
- Consent Agreement (Case 10/087) -- LE/E Committee needs to provide a written recommendation for submission of this Consent Agreement to Council.

Examining Committee

Council reviewed the report of the Examining Committee's meeting of August 30, 2011. Sixty-five (65) individual applications for licensure were reviewed and confidential recommendations made for Council action consisting of **31** applications for **comity**; **1** application for an individual who was previously licensed that required reapplication; and **33** applications for **examination**. The Committee also reviewed **8** applications for **Certificates of Authorization**; **1** request for **Temporary Permit**; and **6** requests for Reinstatement of licenses.

Motion by Shine, seconded by Newton, Council approve the recommendations of the Examining Committee as shown on Exhibits A1-A3 of the report dated September 6, 2011.

External Affairs Committee -- Chair Barbato to present a report at the next Council meeting.

Facilities Committee

Council Ipad and the "Acceptable Ipad Use Policy" were distributed to all Council members at this meeting. Next meeting, a representative from Apple will be present to answer any questions we may have on the use of the Ipad.

Public Information

Fall issue of the newsletter to be published Sept./Oct. timeframe.

Government Affairs/By-laws Committee

Legislation signed by the Governor August 3, 2011 and incorporated into new law books distributed to Council at this meeting.

Ad-Hoc/Policies & Procedures Manual -- No report.

Ad-Hoc/CPC -- No report.

Correspondence -- None

NCEES

President Pawlowski reported briefly on the Annual meeting in Providence, Rhode Island on August 23-27, 2011.

- Computer-based testing will increase the NCEES exam fee to \$250 (plus any state fees).
- The Delaware motion to require combined zone meetings failed.
- The Engineer forum discussion was on the role of the engineer in responsible charge in construction projects.
- The alternate path to licensure (similar to Canada) failed.
- Enforcement forum addressed remote supervision.

Old Business -- None

New Business

- Application #17586 was reviewed by the Examining Committee, however, a replacement reference was warranted and although this was received in time for this applicant to take the October, 2011 exam, it was not presented to the Examining Committee. Motion by Lester, seconded by Robertson, Council approve applicant #17586 to sit for the PE exam. Approved unanimously.

- The Executive Committee presented its slate of officers to Council:

President	-	Charles L. McAllister, P.E.
Vice President	-	Hans M. Medlarz, P.E.
Secretary	-	Daniel Barbato, P.E.
Treasurer	-	Keith Kooker, P.E.

Council Elections:

- Office of President: the Executive Committee nominates Charles L. McAllister, P.E. Hearing no further nominations from the floor, Motion by Newton, seconded by Robertson, nominations for the office of President be closed. Approved.

Charles L. McAllister, P.E. has been elected as President.

- Office of Vice President: the Executive Committee nominates Hans M. Medlarz, P.E. Hearing no further nominations from the floor, Motion by Newton, seconded by Robertson, nominations for the office of Vice President be closed. Approved.

Hans M. Medlarz, P.E. has been elected as Vice President.

- Office of Secretary: the Executive Committee nominates Daniel P. Barbato, P.E. Hearing no further nominations from the floor, Motion by Tracey, seconded by Robertson, nominations for the office of Secretary be closed. Approved.

Daniel P. Barbato, P.E. has been elected as Secretary.

- Office of Treasurer: the Executive Committee nominates Keith R. Kooker, P.E. Hearing no further nominations from the floor, Motion by Robertson, seconded by McAllister, nominations for the office of Treasurer be closed. Approved.

Keith R. Kooker, P.E. has been elected as Treasurer.

President McAllister advised that Committee Chairs will be appointed at the next Council meeting to be held on October 12, 2011 in the offices of DAPE, New Castle, Delaware.

Meeting adjourned at 5:30 p.m.

/pa