

The Guam Board of Registration for Professional Engineers, Architects and Land Surveyors
PEALS Board Regular Meeting

Thursday, June 7, 2018, PEALS Board Conference Room Suite 208 3:10 PM - 5:35 PM

Present: Gabriel A. Jugo PE SE, Chairman H. Mark Ruth, RA, Vice Chair
Maria Elizabeth V. Cristi, PE/Sec & Treas. Philip I. Villanueva, Public Member
Paul L. Santos, PLS, Member AAG, Atty. Tom Keeler
Liza J. Provido, RA, Member Raymond C. Borja, Exec. Board Adm.
Glenn Leon Guerrero, DPW Director Nixon Isaac, Board Investigator
Marie Villanueva, Adm. Asst.

Guest: Andrew Ashburn/N15 Architecture, Inc. R.O. Martinez/N15 Guam Inc.
Inna Wiese/Rim Architects
Perry Pangelinan/ Self
Betty Gayle/Setiadi Architects
Cedric Cruz/Self
Christopher Fryling/N15 Architecture, Inc. (Via Phone)

Item 1, Call to Order

Board's mission statement was announced. The meeting was then called to order at 3:10 pm.

AAG Keeler announced his presence in the room at 3:11PM.

Item 2, Review of Meeting Minutes of March 27, 2018

No comments were noted.

It was moved by BC Jugo, seconded by Sec. & Treas. Cristi and unanimously carried to approve meeting minutes as written.

Item 3.A, EBA Reports and Updates

Board Administrative Activity from March 21, 2018, thru May 31, 2018, were reviewed and acknowledged by the Board members. Present revenue as compared to last year's figure, notes we have exceeded by \$13,125. We are tracking pretty good due to staff AA Villanueva's continued reminders to registrants.

Expenditures, Revenues, FE Exams revenue decreased as we are no longer charged those expenses. BOH Statements for March and April 2018 were reviewed noting a check #170 for \$49.76 was issued to FedEx Express for the delivery of the Attorney General's approved and

signed California Seismic Contract. Approval of funds to be released was given by Board Chair and Sec. & Treas. and concurred by BM Provido, and BM Santos on 3/29/2018. BM Provido noted that on the receipt of payment received from FedEx indicates Amor Pakingan/PEALS BOARD as receiving payment name. EBA Borja to advise FedEx Express that Pakingan is no longer with the PEALS Board and to remove her name and place his. BC Jugo wants a corrected receipt for record purposes. EBA acknowledged.

3.B OPA Follow-up audit of PEALS

In compliance to OPA audit recommendations submitted to the Board; a bi-annual report showing the reconciliation of revenue with registration numbers will be due in July 2018 and improvement to the PEALS Board accounting infrastructure were noted. BM Provido released to EBA newly proposed specifications (rough draft) for a Request for Proposal to acquire contractual accounting services to assist with these recommendations. VC Ruth noted to implement requisition through General Services Agency (GSA) as soon as specifications are finalized without delay.

3.C File/Record Keeping, Office Expansion

3C.A A given formal written request to AAG Keeler to review and comment on the File/Record Keeping, as this will be part of the Rules and Regulations to be submitted to the Legislature, could not be confirmed by EBA Borja. Status remains pending. VC Ruth noted to eliminate §20608 Disposal of Records in its entirety to eliminate possible misunderstanding from outside entities.

3C.B Office Expansion: Is officially on hold due to government austerity measures. BC Jugo questioned the possibility to have the Guam PEALS office relocate to the DPW Compound. DPW Director Leon Guerrero requested EBA Borja to submit a letter for office specification requirements to see if space ability (square footage with breakdown of space, e.g. conference room -shared or exclusive-, reception area, number of offices, bathrooms, etc.), maintenance, power and water billing inclusion, upgrade of facilities to be at the expense of DPW and offset by rent and similar conditions, would allow the move. To assist EBA, AAG Keeler noted he would forward a copy of existing MOA contract(s) from other agencies holding space in the compound for his review for specifications submittal.

Motion to have EBA submit a letter to the Director of Public Works indicating PEALS Board space requirement and request DPW to do research on availability and/or flexibility where possible.

Motion: VC Ruth

2nd: BM Santos

All in Favor: 7/0

Motion: Passed

4.A Complaints: Case #2017-002 Lorette T. Guerrero vs. Blas Atalig/Meliton S. Santos, PLS #053

Mr. Atalig's letter received April 13, 2018, in non-response on his original letter dated March 23, 2018, to the Board, was replied on April 20, 2018. Mr. Atalig is not in agreement with the Board's fine and has decided to appeal with the Superior Court for judicial review of penalty received. EBA Borja noted that no payment had been received from Mr. Atalig as of this date.

BC Jugo moved:

- 1) A letter is drafted stating:
 - a. Notice Matter is in Collections
 - b. Deadline for payment
 - c. Advise him to seek legal counsel on the activity

Motion was amended by Sec. & Treas. Cristi:

- 2) Depending on the decision that the letter from come the Attorney General's Office:
 - a. This letter would come from AAG Keeler (preferred as a higher authority) and not the PEALS Office

Motion was amended by VC Ruth:

- 3) Said letter to Mr. Atalig to be sent out within the next 15 days

Motions 2nd: Sec & Treas. Cristi

All in Favor: 6/7 (BM Santos abstained)

Motion: Passed

4.B R.O. Case #2018-001 Martinez Architects LLC premature permit prior the Board approval of COA

Renato "Tato" Osmena Martinez RA 441 currently with N15 Guam Inc., presented himself to the Board. BC Jugo cited where this case was left off at the previous meeting regarding his disciplinary action. There was a previous motion in the meeting held on February 20, 2018, that was voted down. At the March 27, 2018 Board meeting, the Board moved to extend decision due to new evidence that involved a case with the Marianas Variety Business/Mayor of Chalan Pago.

EBA Borja directed the Board to Page 33 and Page 34 as what was printed on in the Marianas Business Journal issue. Corresponding to Page 35 which contains BI Isaac's report.

On Page 36 is Mr. Martinez's response to the allegation of using his COA firm R.O. Martinez Architects LLC, prior to Board approval of COA once again. EBA Borja noted no determination of new evidence having Merit or No Merit at this point. As he understands it as just more evidence to Case#2018-001.

BC Jugo opened discussion regarding this information to the Board. VC Ruth noted that the past Board had a policy, where people could do preliminary design (e.g. off-island company) and then when it needed to be stamped for permit clearances, a registered individual would be called upon. VC Ruth questioned what the difference between Tato and another construction firm/design firm? EBA Borja noted the article states R.O. Martinez Architects LLC as the designer and not Tato.

BC Jugo called upon Mr. Martinez for clarification to the allegation. Mr. Martinez noted it was stated in the last meeting that he had nothing to do with this article. He advised, whatever was printed, whether it violated any laws, had nothing to do with him. Mr. Martinez continued to question why was he being punished for this? Noting, "It's been six (6) months now since this has come before the Board and a decision has yet to be made. This last allegation was brought out at the last meeting, a couple of months ago. To find out that we are still not clear on where we are heading is frustrating."

BM Provido noted that it is clear that Mr. Martinez offered services to the Mayor's office without a COA. VC Ruth cited that Mr. Martinez's letter dated May 10, 2018, indicated that your services were offered to the Mayor's Office in October. PEALS COA was given in November 2017. Mr. Martinez stated his services to the Mayor's Office were given as an individual architect and not under the PEALS COA.

BM Provido states two incidences have come before the Board, not just one, and such, must be considered. VC Ruth noted the penalty stage is still on the table. VC Ruth moved to disregard this new allegation as stated with the Marianas Variety Business/Mayor's Office article and only focus on the original incident in which Mr. Martinez admitted to the error of premature signing as a design firm.

Motion: VC Ruth
2nd: BM Santos
All in Favor: 7/0
Motion: Passed

Penalty if any to be given to Mr. Martinez was discussed. BC Jugo motioned to propose the original penalty from previous meeting:

- *\$500 fine for the oversight

- *Place a probation period of three years. Once the third year has expired, with no Additional charges, the Board will expunge said fine from PEALS disciplinary records with a notion for the PEALS Board to not advise NCARB Records or any other state at this time.

Motion: BC Jugo

2nd: DPW Director Leon Guerrero

All in Favor: 6/1 (VC Ruth - Abstained)

Motion: Passed

4.C Letters Sent out to Roberto R. Ventura, PLS #054 Customers

EBA Borja sent letters to the CLTC complainants on May 31, 2018, advising them of Mr. Ventura's passing and thus closing the file on their complaint. EBA Borja noted other complainants that had listed Mr. Ventura on their complaint are still pending notification of passing and file status.

A sample of what was mailed is on page 37 and 38 for Board review.

BM Villanueva questioned the time frame from the closure of case date of February 20, 2018, to written release of the letter on May 31, 2018. Noting it is a disservice if we are closing cases and not advising the complainants in a timely manner. And questioned EBA why so late?

EBA Borja stated he feels BM Villanueva is attacking him personally and feels harassed. EBA Borja did not reply with a statement.

VC Ruth reiterated the question and cited the January, February and March 31, 2018 meeting, as it was agreed each time letters would be sent. EBA Borja noted taking responsibility for not releasing it in a timely manner. Then, apologized to the Board.

VC Ruth noted, as document was released, it should state closed on May 31, 2018 date and not February 20, 2018. EBA concurred.

BM Villanueva noted that when a Decision (e.g., Merit or No Merit cases) is made, the complainant should be advised in writing by reason why it has merit/no merit and letter must be with registered mail or hand delivered per Administrative Adjudication Law section 9232. BC

Jugo states it is not in our law. AAG Keeler advised BM Villanueva, stating the PEALS Board does not follow the Administrative Adjudication Law and only follows the PEALS Law which has its own procedures. AAG Keeler noted the Administrative Adjudication Law only governs Government of Guam Employees only, not the registrants of the PEALS Board and is separate and apart from the AAL.

BM Villanueva noted what his concern was that there was an issue brought up in the Chamorro Land Trust Commission Public Hearing citing that testimony was given by Mr. Camacho stating he had never received any action or any response from the Board of his complaint. BM Villanueva asked, so in making a decision on their complaints, why aren't the complainants informed?

AAG Keeler stated there have been four complaints regarding the CLTC and were customers of Mr. Ventura; all of which were responded to. BC Jugo questioned BM Villanueva as to knowledge of a Ventura Hearing in 2016 in regards to these four complaints? BM Villanueva stated no, he did not know a hearing was done regarding Ventura cases. AAG Keeler cited a hearing was conducted. In which, Mr. Ventura agreed to cooperate with the Board. Although, due to his passing was not able to complete the task.

DPW Director Leon Guerrero questioned if there had been any adverse or negative damage to the four because of the delay in advise, if at all? VC Ruth noted it would be hard to say as the letters were just released a week ago. DPW Director Leon Guerrero stated this situation could be used as a learning process.

VC Ruth wanted to ask one more question; on the list of the people who did not renew, Ventura's license was not on that list and questioned if he had an active license? EBA noted yes, Mr. Ventura was current at the time prior to his passing.

BM Santos noted in regards to the CLTC pending cases, they are presently coming to the Department of Land Management, and DLM are working with TG Engineers as TG Engineers have devoted a lot of time and energy trying to clean up Mr. Ventura's pending surveys. BM Santos noted that a list from TG Engineers was released yesterday via email and through DLM files and completion time of those surveys; it would be completed soon. As far as damages, he does not think there would be any repercussions.

AAG Keeler said to understand the purpose of this letter was to notify the individuals in regards to the passing of Mr. Ventura. Of the four individuals that filed a complaint have already been responded to with regards to management and what they could be doing, it is assumed their cases were already notified.

VC Ruth moved that we take the four cases: #PB2014-003 Kathleen S. Mikel vs. Robert R. Ventura, PLS, #PB2014-015 Ricky F. Santos vs. Roberto R. Ventura, PLS, PB2016-003 Juan C. Camacho vs. Roberto Ventura PLS, and #PB2017-003 Kenneth Quidachay Ursua vs. Roberto R. Ventura to officially close the matter if it had not been officially closed in the previous minutes.

And when passed, to note the closed date of May 31, 2018.

Motion: VC Ruth

2nd: BM Santos

All in Favor: 7/0

Motion: Passed

Discussion: BM Villanueva stated that he thought the PEALS Board, being a regulatory board, was governed to follow the Administrative Adjudication Law, which was his bases of questioning date and delivery procedures of Decisions to complainants. BC Jugo cited there are processes in our Rules & Regulations that exempt the Board from doing AAL procedures.

Betty Gayle/Setiadi Architects LLC, Perry Pangelinan, and Inna Wiese, RA entered into the meeting at 4:18pm.

4.D Christopher F. Fryling RA#356 N15 Architects proposal prior to Board approval of COA Case #2018-004

The following individual announced their presence in today's meeting:

- Andrew Ashburn/N15 Architecture, Inc.
- R.O. Martinez/N15 Guam, Inc.
- Christopher Fryling/RME for N15 Guam, Inc (Via Phone at 4:27pm)

BC Jugo summarized, per the March 27, 2018 Board meeting, N15 Guam, Inc. application was circulated with instructions to ignore comments made by VC Ruth at the March 27, 2018 Board meeting regarding alleged proposal. N15 Guam Inc. PEALS COA was approved by the Board on April 20, 2018.

Information was brought to the attention to the Board after the Board Meeting of March 27, 2018, and prior to the COA being approved, N15 Guam Inc., advertising on the Google internet website to a possible project. BI Isaac was assigned to investigate. EBA Borja stated they were not able to recreate internet website posting. EBA Borja finding was No Merit.

Since then, additional information was then submitted to the Board in the form of a written proposal from N15 Architects (Saipan) stating Permitting & Design Service for a new commercial

building on Marine Drive Guam, signed by Christopher F. Fryling, AIA, Principal, N15 Architects, Inc. BC Jugo ordered an investigation.

Mr. Fryling was presented to the Board via phone, stating his name and company Christopher Fryling, N15 Architects (Saipan) and member of the Board of N15 Guam, Inc.

Mr. Fryling stated he has seen page 1 & 2 of the document (missing the last page) in question via email and replied to BI Isaac, noting essentially we submitted a proposal. N15 Guam Inc., filed for incorporation on Guam in December 2017, in January, we were advised we needed a PEALS COA in order to operate on Guam. We immediately contacted the client and canceled the proposal and placed N15 Guam, Inc. out of it completely.

BC Jugo questioned if Mr. Fryling recalls at the March 27, 2018, meeting being asked if he had sent a proposal for work done on Guam. Fryling recalls the questioned as being, "had we sent a proposal for work on Guam under N15 Guam Inc.", to that question, he had answered, "No." Mr. Fryling noted, all the meetings for this proposal took place on Saipan.

BC Jugo noted it's a violation of our law, but since the case is under investigation, we are not in a position to determine whether the case holds Merit or No Merit. BC Jugo cited, if it was to be an offense, it would be against the holder of the COA and not an unlicensed professional. BC Jugo requested the name of the individual whom Mr. Fryling sent the proposal too? Mr. Martinez answered Mr. Dave Burger, of Burger Comer and Magliari LLC of their Saipan office. Mr. Fryling requested that when sending notice of violation to cite the section of the law being violated as there was no citation indicated from the PEALS Board email received.

5.A, B Old Business, (A) PEALS Rules and Regulations & (B) Second Round to Amend PEALS Law

BM Provido noted will only need one more session to complete the update to the Rules & Regulations. Once completed, it will be forwarded to AAG Keeler's review, then professional societies, and finally through the Administrative Adjudication Law.

Cedric Cruz entered the meeting at 4:37pm.

5.C AG Information and Guidance on PEALS Competitive Bidding/Code of Ethics

A letter of response dated May 25, 2018, was received from the Office of the Attorney General of Guam, Mr. Karl P. Espaldon, Deputy Attorney General, regarding to a request for legal guidance from the Office of the Attorney General concerning the prohibition on competitive price bidding found in the Guam Board of Registration for Professional Engineers, Architects, and Land

Surveyors' (PEALS) Rules of Professional Conduct. Which in its CONCLUSION paragraph notes, "The PEALS Board's Rules of Professional Conduct which forbids registrants from submitting proposals based upon competitive bidding is an unlawful restraint of trade in violation of Section 1 of the Sherman Antitrust Act. It therefore is unenforceable".

BM Provido stated the examples cited in the letter are limiting and requested AAG Keeler return decision for further review. AAG Keeler acknowledged.

BC Jugo open floor to public comments or on behalf of their professional societies. BC Jugo noted you are all welcome to submit your letters of concerns or endorsement to the Guam PEALS Board office no later than ten days before the next PEALS Board meeting tentatively scheduled to be held on July 31, 2018.

6.A New Business – UOG Request for Proposal UOG-P16-18

UOG Request for Proposal for Technical and Administrative Services, RFP NO. UOG P16-18 was released. VC Ruth noted bid opening date has passed, and as long as they follow their multi-step procedures in keeping determination of Technical and Priced Proposals separately, it remains within the scope of the law. Any protests should be handled by UOG.

BC Jugo noted it is related to Item 5.C above, which is pending AAG Keeler's action as of today's request.

Cedric Cruz, Perry Pangelinan, and Inna Wiese, RA left the meeting at 4:18pm. BM Santos step out of the meeting at 5:01pm.

6.B Blair, Roger Lewis PE #CE1913 – Annual Renewal Disclosed Disciplinary Action

Mr. Blair submitted his annual renewal application and disclosed Action taken against his license by the Texas Board. VC Ruth motioned EBA request from the Texas Board to confirm the final requirement of Mr. Blair to complete the Texas Tech University Engineering Ethics Basic Course by May 17, 2018, was met. If so, that there would be no further objections to renewal.

BM Santos returned to meeting at 5:05PM.

Motion: VC Ruth

2nd: Sec & Treas. Cristi

All in Favor: 6/1 (BM Santos –Did not vote, as he stepped out of the meeting)

Motion: Passed

7.A Legislature FY2019 Budget Hearing for PEALS

At the Legislative PEALS Budget Hearing, the following concerns were noted based on the PEALS Board's mandates "Promoting Licensures" by Senator B.J. Cruz, Speaker of the House, and Senator Frank Aguon Jr. :

1. What is the PEALS Board doing to help with the issue of impending shortage of Professional Land Surveyors?
2. What is the Board doing with its generated excess revenues?

The Board is advised.

7.B Meliton S. Santos & Associates, Inc., letter copied to the PEALS Board

Letter from Meliton S. Santos to Atty. Anita Arriola regarding Court Distribution of Lot 2307-03-1 is a matter of the Department of Land Management. BM Santos noted a response would be issued and the PEALS Board will be provided a copy.

7.C, 7.D, & 7.E ANNOUNCED ON PAGE 11

8.0 Public Comment

BC Jugo wanted to take this time to address "Behavior of Board Members towards Staff," citing emails generated by BM Villanueva to EBA Borja questioning procedures of cases, noting Bullying in the form of "Tone" as being inappropriate. BM Provido agreed that it is Bullying.¹

BM Villanueva noted initial email was generated regarding methods of notifying the public of case status, according to the AAL. Therefore, conveying the need of accountability through written acknowledgment to the public in a timely manner as evidenced by the inactivity of case files. BM Santos advised that as a matter of protocol, issues regarding the deficiencies of the EBA be brought to the chair as the EBA's supervising officer. BM Provido supports EBA Borja because of his tenure in position stands with the traits of "honesty and transparency."

VC Ruth advocated for the validity of concerns raised by BM Villanueva by citing improvements needed by the Board. BM Villanueva discussed the implementation for written consent and

¹ Revisions approved by the Board after listening to the audio recording of the meeting during the 9/27/18 PEALS Board Regular Meeting.

acknowledgment of case status by the plaintiff as stated as a requirement of the AAL. BM Villanueva only requested as the status of follow up and case files as brought to attention by the public hearing that cited Mr. Camacho's lack of written acknowledgment of case closed.

BM Villanueva cited redundancy of repetitive tasks not done in a timely manner. Sec. & Treas. Cristi noted that she and BC Jugo remind EBA of tasks often.

BC Jugo noted the Office of Public Accountability's (OPA) concern of BM Villanueva's appointment to the Board expressed at meetings with Board Officers citing a conflict of interest with his wife, Marie Villanueva, on Board Staff. BC Jugo noted that BM Villanueva behavior has resulted in a negative impact on the EBA and staff has become a conflict of interest as the OPA had warned.

VC Ruth motioned that we do not give a "vote of no confidence" in BM Villanueva. BC Jugo noted he was not sure if the Board could do that.²

DPW Director Leon Guerrero interjected stating that the Board is making an assumption of conflict and the issue here is tone. And, we are always looking for ways to improve.

BM Santos cited that complaints will be handled by CLTC.

Apologies were exchanged by both EBA and BM Villanueva.

AAG Keeler was excused from the meeting at 5:33PM.

7.C NCARB Annual Meeting on June 28-30, 2018 in Detroit, MI: NCARB funding Liza J. Provideo, Glenn Leon Guerrero, Philip Villanueva and Ray C. Borja to attend

7.D NCEES Annual Meeting on August 15-18, 2018, in Scottsdale, AZ: NCEES Funding Gabriel A. Jugo, Paul L. Santos, and Ray C. Borja to attend

7.E PEALS FY 2018 Proposed Board Meeting Schedule - Next Board Meeting will be held on July 31, 2018, unless rescheduled or canceled

9. DPW Permit & DLM Survey Map Review

² BC Jugo stated he remembered the statement of VC Ruth as being said that a "possibility" of a No Vote of Confidence, although VC Ruth reiterated he did not use the word of possibility and audio recording reviewing by the Board on 9/27/2018 PEALS Board Meeting confirms that VC Ruth did not state that. Additional comments are continued on PEALS Board Meeting 9/27/2018, Item 9 Public Comments.

- A. Department of Land Management – February 2018
- B. DPW Building Permit – February 2018

Board members are to review on their own and if any comments or suggestions to bring it to the attention of BC Jugo.

10. Adjournment

It was moved by BM Provido and seconded by BM Santos and unanimously carried by all to adjourn the meeting with no further comments; the meeting adjourned at 5:35 PM.

/mnv

(A)Folder/#84

Approved by:

	<u>12/17/18</u>		<u>12/20/18</u>
Gabriel A. Jugo, PE SE Board Chair	Date	Maria Elizabeth V. Cristi, PE Board Secretary/Treasurer	Date

() Minutes approved as is.

(x) Minutes approved with changes; see minutes July 31, 2018, September 27, 2018 and November 27, 2018