

The Guam Board of Registration for Professional Engineers, Architects and Land Surveyors
PEALS Board Regular Meeting
Tuesday, March 26, 2019, PEALS Board Conference Room Suite 208 3:00 PM - 5:12 PM

Present: Gabriel A. Jugo PE SE, Chairman H. Mark Ruth, RA, Vice Chair
Maria Elizabeth V. Cristi, PE/Sec & Treas. Paul L. Santos, PLS, Member
Liza J. Provido, RA Jesse Garcia, DPW Interim Director
Philip Villanueva, Public Member Raymond C. Borja, Exec. Board Adm.
Nixon Isaac, Board Investigator

Absent: Atty. Tom Keeler, AAG Marie Villanueva, Adm. Asst

Guest: None

Item 1, Call to Order

Board's mission statement was announced. The meeting was called to order at 3:00 pm, as a quorum was present.

Item 2, Review January 22, 2019 – Board Regular Meeting Minutes

2.A Review November 27, 2018 – Regular Meeting Minutes

An unsigned copy of Meeting Minutes, page 7 of 9, Complaint Garden Inspirations/Maria San Nicolas vs. Steven Kim, PE (ME1295/FPE1906) Case #2018-005 was commented on. EBA confirmed No Merit on 9/27/2018. Date with notation of correction from BI Isaac Investigative report was originally given to the EBA on 9/18/2018. BI Isaac's date of 10/16/2018 originally stated on Complaint list was based on a letter received from Mr. Kim in response to the complaint.

BM Provido joined the Board Meeting with her arrival.

2.B Review January 22, 2019 – Regular Meeting Minutes

It was moved by VC Ruth and seconded by Sec. & Treas. Cristi to approve minutes of January 22, 2019, as written.

Motion: Sec. & Treas. Cristi

2nd: VC Ruth

Vote: 5/0 Motion Passed (DPW Interim Director Jesse Garcia and BM Villanueva arrived late and were not present during the time motion was called.)

Item 3, EBA Reports and Updates

3.A Board Administrative Activities: January 11, 2019, through March 15, 2019

Executive Board Administrator reported PEALS FY19 Revenue & FY18 Revenue previous year in comparison. AS400 breakdown of Year-To-Date Expenditures are at \$109,418, and Current Revenue collected at \$126,855.

Bank of Hawaii statements for January and February 2019 were presented. The balance of \$3,810.45 respectively. Only one check was written, Check #173, \$45.00.

The first of Bi-Annual OPA Requirements of a Fiscal year-end reconciliation revenue reported data for 10/1/2017 – 09/30/2018 was presented to the Board. EBA was able to report revenue received and COA breakdown but will work on Individual Registrants breakdown in the next two weeks. BC Jugo noted to submit a formal report to the OPA, once completed, and to note a second report is due by year's end to fulfill bi-annual OPA requirement.

DPW Interim Director Jesse Garcia joined the Board Meeting with his arrival.

Item 4, Complaints

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

BI Isaac noted he was called to a meeting, Thursday, March 28, 2019, to the Attorney General's office by the Assistant Attorney General, Monty May. Mr. Blas Atalig would also be present at the meeting. This case was referred to the AG's office for collection per decision made on #2017-002 and Mr. Blas Atalig has contested it through the AG's office. Assistant Attorney General May has been tasked with filing an action to collect said fine. AAG Keeler and BI Isaac will follow up with AAG May on the status of this case and report to the Board.

BM Villanueva joined the Board Meeting with his arrival.

4.B Christopher F. Fryling, N15 Architects proposal prior to Board Approval of COA Case #2018-004 – Status: Closed

At the January 22, 2019, Board Meeting BC Jugo moved to ratify the results of the hearing held with Christopher F. Fryling, RA#356 on January 10, 2019. Board results were 4 in favor and 1 opposed. (VC Ruth Abstained) Motion Passed.

Mr. Fryling RA #356 made full payment of the administrative fine on 2/13/2019. This case is now Closed.

4.C Jose C. Benavente vs. Paul L. Santos, PLS #053 Case #2018-006

BI Isaac reported three candidates: 1) Gavino Aguilar Estur, PLS 085/TG Engineers, 2) Elmer M. Pineda, PLS #082, and 3) Ray Cruz PLS 073/ControlPoint Surveying, Inc. were interested in assisting the Board on this endeavor. Mr. Jose C. Benavente selected Elmer M. Pineda, PLS #082 to perform an independent consultation of this case.

BM Santos removed himself from the presence of the Board Meeting.

BM Provido states entertaining this case will set a precedent for all No Merit Cases. BC Jugo states this is a different situation as Case #2017-002 calls out for alleged bias between Board Member Santos and EBA Borja. BM Provido citing the PEALS Board only has jurisdiction on registrants and not the EBA. Alleged bias of the EBA should be addressed by the Attorney General's Office. BC Jugo stated the Board reviewed case #2016-010 and found the case to have No Merit. The decision was made, and another complaint was filed with a grievance to the EBA and BM Santos.

VC Ruth moved to agree with the selection and proceed with Elmer M. Pineda PLS #082, selected surveyor of Mr. Benavente.

Motion: VC Ruth
2nd: BM Villanueva
Vote: 3/3 Motion Failed

BC Jugo moved to have the Board select a surveyor, and proceed with one of the surveyors presented by BI Isaac. The Board is to evaluate the three, reject and select a candidate to review technicality of the case.

Motion: BC Jugo
2nd: BM Provido
Vote: 3/3 Motion Failed

Sec. & Treas. Cristi moved to select Gavino Aguilar Estur, PLS 085/TG Engineers.

Motion: Sec. & Treas. Cristi

2nd: BM Provido

Discussion: Conflicts of interest were immediately noted for the selections of either Mr. Estur, who is employed by the same company as BC Jugo, and Mr. Cruz as having worked with Mr. Santos in the past at the Department of Land Management.

Vote: 3/3, Motion Failed

BM Provido motioned to revisit complaint of Case Number #2018-006 and determine if the complaint is applicable to the EBA or should it be forwarded to the Attorney General's Office. Stating the EBA had acted within his authority. His decision is being challenged, noting alleged bias instead of evidence, and should be addressed by the AG's office. BM Provido requests a Special Meeting based on the solicited advisement from our Legal Attorney, AAG Keeler before our next scheduled meeting. BC Jugo to send a letter to Mr. Benavente of Special Meeting Date should motion pass.

Motion: BM Provido

2nd: VC Ruth

Vote: 6/0, Motion: Passed

Tentative Selected Special Meeting Date: Friday, April 26, 2019 - 3:00 PM

4.D List of Complaints

Board reviewed the list of complaints. PB2019-001 APC Construction LLC (Thomas San Nicolas) vs. Jerry B. Estrella, PE ME1485/FPE 1680 was noted as a pending investigative report due to Mr. Estrella "Jerry is no longer on island." BI Isaac was encouraged to do his due diligence to investigate further and conclude his investigative report for EBA review and determination. PB2019-001 APC Construction LLC (Thomas San Nicolas) vs. Jerry B Estrella PE ME 1485/FPE1680 complaint was received on 1/18/2019. Mr. Estrella, PE holds a valid license until April 30, 2019. After that time, if Mr. Estrella does not renew, the Board will have no recourse should a decision be made with Merit. BI Isaac acknowledged the Board's concern.

Others Cases listed on Complaint List with open dates of either EBA Report, Board Decision and Status should clearly note the disposition of the respective cases. BI Isaac to clarify and update the list accordingly.

Item 5, Old Business

5.A PEALS Rules and Regulations

EBA noted per the list of instructions given to him by AAG Keeler, the next step is to assign a hearing date and announce to the Public our intent to update Rules & Regulations.

As advised by AAG Keeler, the PROCESS is as follows:

- 1st - Public Hearing (10 Day Notice to the Public is Required)
- 2nd - Governor's Office
- 3rd - Attorney General's Office
- 4th and Final Step – Legislature

EBA Borja to submit a letter of advisement to PEALS Legislature Chair, Senator Jose "Pedro" Terlaje and be invited accordingly.

Mr. Jesse Garcia, DPW Interim Director, was excused from the meeting.

BC Jugo suggests the date of June 2019, to schedule the Public Hearing.

5.B PEALS Code of Ethics¹

VC Ruth reviewed Guam PEALS Board dilemma regarding the Sherman Act, as it applies to Guam, at the National Council of Architectural Registration Boards (NCARB) Regional Summit held on March 7-9, 2019 at Nashville. NCARB's general consensus stands that there is an Ethics Commission on Guam and, to refer it to them for this decision on whether it applies.

VC Ruth moved to follow through with NCARB's suggestion: to be reviewed by the Ethics Committee. EBA Borja confirms second decision from the AG's office stating, "The PEALS Code of Ethics is not enforceable." The AG's office had written a reply and was not dissimilated to PEALS registrants or professional societies as of this meeting.

¹ AAG Memo dated May 25, 2018, from Karl P. Espaldon, Deputy Attorney General concerning the prohibition on competitive price bidding as an unlawful restraint of trade and in violation of Section 1 of the Sherman Antitrust Act. Stating, "It therefore is unenforceable". A second and Final Decision on the opinion of PEALS prohibition on competitive price bidding was given by the AAG Elizabeth Barrett Anderson, reiterating the same conclusion as "unenforceable".

Motion: VC Ruth

2nd: BC Jugo

Vote: 6/0 (DPW Interim Jesse Garcia was not present during this vote as he had left the meeting) Motion Passed

5.C Discussion with OPA on accounting procedures and use of Bank of Hawaii (BOH) Revolving Fund

A memorandum from the Office of the Governor, Bertha Duenas, Chief Advisor of Fiscal Discipline, dated March 1, 2019, addressed to BC Jugo, addressing pending OPA Audit No. 17-03, Open Audit Recommendations(s) was received. EBA Borja to address concerns with a reply of status on each item.

1. Guam PEALS Funds and Financial Practices:
 - a. Periodic reconciliation of publicly reported data;
 - b. Quickbooks receipt printing, saving and closing
 - c. Full utilization of Quickbooks to record all PEALS Fund and PEALS Board Revolving Fund Checking Account Revenues and Expenses; and
 - d. Document these procedures in the PEALS Board Standard Operating Procedures
2. PEALS Fee Structure – Simplify to avoid confusion
3. Coordinate with the Compiler of Laws to update their rules and regulations

Item 6, New Business

6.A Blair, Roger Lewis PE #1913 – CE Renewal Disclose Disciplinary Action

Upon renewal of Mr. Blair's Guam registration CE #1913 in FY18, he disclosed disciplinary action with the Texas Board on November 16, 2017. On December 6, 2018, a letter from Mr. Blair enclosed his Stipulated Agreement to said action. Since then, other Boards from the jurisdictions of North Carolina, Arizona, Colorado, Illinois, Nevada, and Florida had imposed actions of either a fine or request for voluntary relinquish of license forever.

At the PEALS Regular Board Meeting held on January 22, 2019, the Guam PEALS Board did not make any decisions in this matter until the folder is available for individual Board member's review. Blair's file to be complete with an original letter of Stipulated Agreement by the Texas Board as well as other states mentioned above, as the original verdict stood as the foundation for additional adverse actions were not included in the agenda packet. EBA Borja was to circulate Mr. Blair's folder for individual Board review and recommendation.

Registrant folder was updated and re-circulated to the Board prior to today's meeting. After thorough discussion, it was moved to allow renewal of registration with no further concerns and to monitor his registration accordingly without prejudice. A letter of stern warning is to be issued.

Motion: VC Ruth

2nd: BC Jugo

Vote: 6/0 (DPW Interim Jesse Garcia was not present during this vote as he had left the meeting) Motion Passed

6.B KHLG & Associates, Inc. - COA Application

Original Certificate of Authorization application for KHLG & Associates, Inc., was circulated using Mr. Kent C. Hsieh PE CE1073 as the Main Responsible Managing Employee (RME) which is in violation per PEALS Law §32123(e) *Certificate of Authorization (COA)*. Mr. Kent C. Hsieh PE CE was advised and a letter of resignation from LYON ASSOCIATES INCORPORATED, in which he was listed as the Main RME as well, was presented to the PEALS office on February 18, 2019. Thus allowing approval of KHLG & Associates, Inc. COA.

Item 7, Open Discussion, Information and Announcements

7.A PEALS FY2019 Proposed Board Meeting Schedule

April 26th, Special Meeting

May 30th, Next Proposed PEALS Meeting

7.B Upcoming Council Meeting:

NCEES Southern/Western Zone Meeting on May 16-18, 2019 in Boise, Idaho
[Funding extended up to 3 Members]

NCARB Southern/Western Zone Meeting June 20 – 22, 2019 in Washington, DC.
[Funding extended up to 4 Members]

NCEES Annual Meeting August 14-17, 2019, in Washington DC
[Funding extended up to 3 Members]

7.C Community Engineering Corps (CE Corps) a subsidiary program of Engineers without Borders

EBA requested Board guidance on receiving an email from Mr. Austin Riley, Community Engineering Corps Intern, Engineers Without Borders, USA., on February 20, 2019, requesting verification that their organization does not need an engineering business license.

VC Ruth moved, to send a reply indicating a direct violation of the PEALS Law and a license is required to do business on Guam.

Motion: VC Ruth

2nd: BM Provido

Vote: 6/0 (DPW Interim Jesse Garcia was not present during this vote as he had left the meeting) Motion Passed

Item 9, DPW Permit & DLM Survey Map Review

- A. Department of Land Management – January and February 2019
- B. DPW Building Permits – December 2018 thru February 2019
 - a. BI Isaac to look into excessive seal stamps generated by
 - i. Francisco Z. Diamzon, RA 320

Item 8, Public Comment

EBA Borja announced his retirement effective June 7, 2019, from the Government of Guam. EBA Borja will take vacation leave and be off island from May 10th, through the last of days of employment.

EBA Borja to release current job description to Board members, and request the Governor's office in hiring a temporary EBA for the transition.

