

**Minutes of  
The Florida Board of Professional Engineers  
October 14, 2009 beginning at 1:00 p.m. and  
October 15, 2009 beginning at 8:30 a.m., or soon thereafter  
Ponte Vedra Beach, Florida  
Part I**

- A. Call to Order, Invocation, and Pledge of Allegiance to the Flag
- B. Roll Call, Determination of Quorum, and Address Absences.

**Board Members Present:**

John Burke, P.E., Chair  
David O. Charland, P.E., Vice Chair  
Paul Tomasino, P.E.  
Dann Wallis, P.E.  
Zafar Hyder, Ph.D., P.E.  
Bijay Panigrahi, Ph.D., P.E.  
Paul Halyard, P.E. (present first day only)  
Nola Garcia, Public Member  
Mary Young, Public Member

**Board Members Absent:**

Christian S. Bauer, Ph.D., P.E.  
Jonathan F. K. Earle, Ph.D., P.E.  
Mary Young (absent first day only)

**Board Counsel Present:**

Michael T. Flury, Assistant Attorney General

**Staff Present:**

Carrie A. Flynn, Executive Director  
Zana Raybon, Assistant Executive Director  
John J. Rimes, III, Senior Prosecuting Attorney  
Wendy Gregory, Interim Executive Assistant/Complaints Analyst

Upon motion by Mr. Tomasino seconded by Ms. Garcia, the absences of Dr. Bauer, Dr. Earle, and Ms. Young were excused. The motion passed.

- C. Introduction of guests and announcements as to presentations at a time certain

Charlie Geer, FES  
Dennis Barton, Engineering Educators

Bill Bracken, P.E.  
Robert Hosay, FEMC

Mr. Burke advised the Board of a scheduled presentation by Tasha Buford, Attorney representing FES in the Stormwater Task Force study. Ms. Buford will be requesting this Board to review and adopt the legislative recommendations which will be coming from the task force. Mr. Burke reaffirmed Mr. Rimes having represented this Board with the withdrawal of participation by Mr. Tomasino due to travel reimbursement issues. Most of the meetings were in Tallahassee and Mr. Rimes was able to attend and further he has extensive knowledge of the issue.

D. Approval of the Agenda

- #1. Approval of the Consent Agenda  
(Items denoted with an asterisk are included in the Consent Agenda\*)

Upon motion by Mr. Charland seconded by Ms. Garcia the Consent Agenda was approved.

Mr. Tomasino asked for clarification regarding Mr. Flury's presence at the last Board Meeting. The minutes would be corrected with proper title to Mr. Flury.

E. Review and Approval of previous Board meeting minutes

- #1. Minutes from the August 5-6, 2009 Board Meeting\*

Approved under the Consent Agenda

- #2. Minutes from the September 15, 2009 Rules Committee Meeting

Mr. Burke pulled the Rules Committee minutes from the Consent Agenda for discussion under Committee Reports.

Upon motion by Ms. Garcia seconded by Mr. Charland the recommendations of the Rules Committee contained in the Rules Committee minutes were approved with noted corrections. The motion passed.

F. Committee Reports

- #1. Applications Committee (**Next Meeting November 18, 2009**)  
(John Burke, P.E., Chair; David Charland, P.E.; Nola Garcia; Paul Tomasino, P.E.; Paul Halyard, P.E.; H. Dann Wallis, P.E.)

- a. Committee Chair's Report.

Mr. Burke outlined his breakdown of application review teams into Teams A and B. In discussion Ms. Garcia asked how this would affect the quorum. Mr. Flury explained initially it was discussed to have alternates for other teams. Mr. Burke asked how the alternate situation would work. In consideration of Ms. Garcia's concern Mr. Flury suggested three teams consisting of two members for each team.

For application review there will be three teams

Team A: Mr. Burke and Ms. Garcia  
Team B: Mr. Charland and Mr. Halyard  
Team C: Mr. Tomasino and Mr. Wallis

Mr. Burke revised the changes to two teams of three members:

Team A: Mr. Burke, Ms. Garcia and Mr. Tomasino  
Team B: Mr. Charland, Mr. Halyard and Mr. Wallis

For the Educational Committee the teams are as follows:

Team A: Dr. Bauer and Dr. Hyder  
Team B: Dr. Earle and Mary Young

Dr. Panigrahi will serve either team.

- #2. Educational Advisory Committee (**Next Meeting November 18, 2009**)  
(Christian Bauer, Ph.D., P.E., Chair; Dr. Jonathan Earle, Ph.D., P.E.; Zafar Hyder, Ph.D., P.E.; Bijay Panigrahi, Ph.D., P.E., Mary Young; Melvin Anderson, Ph.D., P.E. [Consultant]; R. Gerry Miller, Ph.D., P.E. [Consultant])
  - a. Committee Chair's Report.

Discussed in F#1., above.

Mr. Burke advised the members of Dr. Earle's concerns with CLEP and his recommendation to allow only lower level courses to be satisfied through CLEP. This will be discussed in the next educational committee meeting and a final report will be submitted to the Rules Committee.

- #3. Probable Cause Panel (**Next Meeting November 17, 2009**)  
(David O. Charland, P.E, Chair, Henn Rebane, P.E., Paul Halyard, P.E.)  
(Alternate: John Burke, P.E.)
  - a. PCP Memo from September 15, 2009 Meeting\*

Approved under the Consent Agenda

#4. **FBPE Rules Committee (Next Meeting to Be Determined)**

(John Burke, P.E., Chair; David Charland, P.E.; Paul Tomasino, P.E.; Jonathan F. K. Earle, Ph.D., P.E., H. Dann Wallis, P.E.)

a. Committee Chair's Report.

Mr. Burke has not set a date for the next Rules Committee. Ms. Flynn did not believe a rules committee meeting would be necessary for November. She would coordinate with Mr. Burke for a date after December.

Mr. Burke called attention to specific discussions appearing in the rules committee minutes. Mr. Burke noted correspondence received from Mr. Haage. The rules committee discussed the questions and directed Mr. Rimes to respond. The response is included under Board correspondence for information purposes.

Mr. Burke outlined minor revisions to the fire protection rules with the final version to be forwarded to individuals in the industry for review. The language is an attempt to make sure when the Engineer of Record delegates fire protection design or installation it is done as a contractual arrangement with specifics to the project. Mr. Flury is continuing to work on these rules.

The Committee determined to hold action relating to the change in the Structural examination for future consideration. The present structural examinations will cease and eventually a 16 hour examination will be offered by NCEES.

Mr. Flury noted a correction to the minutes listing Dr. Earle as maker and second on a motion.

Mr. Burke advised the Board of Mr. Flury's comments to the committee on new language in Chapter 455 which requires engineers and other licensed professionals who commit a crime to notify their licensing Board. This requirement was reviewed and the penalty range added to the disciplinary rule. Mr. Rimes confirmed receipt of several notifications mostly DUI's, etc. Mr. Rimes suggested a forgiveness clause be added to the Notice of Non-Compliance rule. In his opinion a complaint should not be opened. He suggested acknowledging receipt and thanking the licensee for complying with the notification. The letter should also address the right to review and reserve a decision on substantive issues in the notification. Mr. Flury noted there is a proposed change in Rule 61G15-19.051, FAC. Mr. Rimes advised this is how these types of reports are currently being resolved.

Mr. Burke restated his understanding of the law and asked what happens if the licensee doesn't report? Mr. Rimes responded with an explanation. If FEMC becomes aware of a conviction which is not reported, we would be forced to charge them for non-disclosure. Mr. Tomasino noted this could create a lot of internal paper work. Mr. Burke inquired

whether it could be resolved with the issuance of a citation. Mr. Rimes responded in the affirmative, however, it would require a rule change.

The revised structural rules were being revised for consistency with the remaining set of responsibility rules.

Mr. Burke explained several applications for licensure were being reviewed and amended to comply with new rules. He further noted since ELSEES, LLC has become NCEES Exam Administration Services, other rules, forms, etc., may also need to be changed. Mr. Rimes and Mr. Flurry concurred with this being a technical change.

Mr. Burke asked Mr. Barton for an update on his problems with downloading continuing education hours. Mr. Barton indicated it is a tremendous improvement to allow providers to input information. He noted, however, the reporting tool is very difficult to use and he expects most providers will complain. Mr. Burke asked whether there was anything that the Board could do. Ms. Flynn indicated staff could contact the Department, explain the problems and ask if they plan to address the concerns. Ms. Raybon asked Mr. Barton to send her the information related to the issues surrounding reporting and she would work with the Department to resolve those issues.

Mr. Burke briefly discussed the rule on threshold inspections. There is no resolution at this time as to expanding the requirements to allow persons to qualify as designated representatives. He noted Mr. James Schock, Jacksonville Building Official appearance before the committee to express concerns with any change that lessens the qualification for designated representative. The item will remain on the list for future consideration.

#5. FBPE Legislative Committee (**Next Meeting to Be Determined**)  
(Paul Tomasino, P.E., Chair; Christian Bauer, Ph.D., P.E.; Mary Young)

a. Committee Chair's Report.

Mr. Burke asked for an update from Mr. Geer regarding any proposed legislative changes for the upcoming session. Mr. Geer advised the Board of the possibility of having changes to Chapter 471, F.S. regarding limitations on civil litigation against licensed professionals and specifically engineers. Two court decisions, created a dangerous situation for licensed professionals in Florida. FES has not determined their final stance on the matter.

Mr. Geer will keep the Board updated.

#6. Joint Engineer/Architect Committee  
(John Burke, P.E., Chair; Zafar Hyder, Ph.D., P.E., Nola Garcia)

a. Committee Chair's Report.

No report.

#7. Structural Rules Committee  
(David O. Charland, P.E., Chair)

a. Committee Chair's Report.

Mr. Charland explained his continuing work on the Structural Rules as well as the threshold inspection rules. Mr. Charland advised he would contact staff in the next few weeks to discuss changes.

#8. Landscape Architect/Engineering Task Force  
(Paul Tomasino, P.E., John Rimes, Chief Prosecuting Attorney)

a. Committee Report

Mr. Rimes stated the intent of this task force to address a 1988 agreement establishing a concept on certain levels of projects acceptable for designing by and permitting by Landscape Architects if possessing limited background and experience to perform the design. This agreement although not official has worked for some time.

The issue is drainage and stormwater management and ability of landscape architects to design. The task force was engaged to conduct hearings in order to reach some sort of agreement. Bill Palm attended the last two meetings due to Mr. Rimes' schedule. The next meeting is set for October 23<sup>rd</sup>. There will be some sort of resolution and recommendation to be pushed to the legislature by November 1. Mr. Rimes asked for direction from the Board on how to vote. Mr. Rimes' noted that Tasha Buford will be attending this meeting and will explain in detail FES position on the matter.

Ms. Buford confirmed the Task Force was managed by facilitators with Florida State University. They were hoping to have an agreement between both the Board of Architect and Board of Professional Engineers. This does not seem feasible. The FES representatives believe landscape architects are clearly educated and tested to perform some stormwater systems, the more complex stormwater systems should be designed by engineers. They are working on language to define systems any design professional could perform and those systems which a professional engineer should be required to design.

Ms. Buford provided the following proposed language for Board review and approval:

403.0877 Certification by professionals regulated by the Department of Business and Professional Regulation.—

- (1) ~~Nothing in this section shall be construed as specific authority for a water management district or the department to require certification by a professional engineer licensed under chapter 471, a professional landscape architect licensed under part II of chapter 481, a professional geologist licensed under chapter 492, or a professional surveyor and mapper licensed~~

~~under chapter 472, for an activity that is not within the definition or scope of practice of the regulated profession.~~

(21) If an application for a permit or license to conduct an activity regulated under this, chapter 373, Chapter 376, or any permitting program delegated to a water management district by a state agency, or to undertake corrective action of such activity or program ordered by the department or a water management district, requires the services of a professional as enumerated in subsection (1), the department or governing board of a water management district may require, by rule, in conjunction with such an application or any submittals required as a condition of granting a permit or license, or in conjunction with the order of corrective action, such certification by the professional as is necessary to ensure that the proposed activity or corrective action is designed, constructed, operated, and maintained in accordance with applicable law and rules of the department or district and in conformity with proper and sound design principles, or other such certification by the professional as may be necessary to ensure compliance with applicable law or rules of the department or district. The department or governing board of a water management district may further require as a condition of granting a permit or license, or in conjunction with ordering corrective action that the professional certify upon completion of the permitted or licensed activity or corrective action that such activity or corrective action has, to the best of his or her knowledge, been completed in substantial conformance with the plans and specifications approved by the department or board.

(2) Notwithstanding any other provision of this section, a landscape architect duly licensed under Chapter 481, Florida Statutes, may prepare and design stormwater management systems regulated under this Chapter or Chapter 373 for submission to a water management district or the department provided that the preparation and design:

(a) are in accordance with design manuals and all applicable standards required or accepted by the state and governing local authorities; and

(1) do not require a hydraulic or structural design of system components;

(2) involve only the use of natural systems to address drainage; or

(3) are otherwise incidental to the practice of landscape architecture.

(3) The cost of such certifications by the professional shall be borne by the permittee or the person ordered to correct the permitted activity.

(4) A permitted or licensed activity or corrective action that is required to be so certified upon completion of the activity or action may not be placed into use or operation until the professional's certificate is filed with the department or board.

Upon motion by Mr. Charland seconded by Ms. Garcia the FBPE will support the proposed legislation from FES as qualified in paragraphs 1, 2, and 3, including some qualification on the size or number of the natural systems for receiving water runoff. The motion passed.

Mr. Burke advised Ms. Gregory to add F#9 to the next FBPE Agenda titled Nominations Committee. He appointed Ms. Garcia and Dr. Panigrahi to committee and Ms. Garcia will Chair. Nominations are to be presented in December.

G. NCEES  
(John Burke, P.E., FBPE Liaison)

- #1. Email from Doug McGuirt – “NCEES Approves New PE Exam in Software Engineering”

Mr. Burke explained this item appeared for informational purposes and confirmed plans by NCEES to develop a software engineering examination.

- #2. Memo from Jerry Carter regarding Listing of Services

This memo was addressed earlier in the meeting.

- #3. Memo from William L. Carr, P.L.S., regarding Nominations for NCEES National Awards

The Board determined no candidates for special awards this year.

- #4. Letter from Davy McDowell, P.E., Associate Executive Director, NCEES regarding the 2009 NCEES Engineering Award Book

Provided for informational purposes

H. Advisory Attorney's Report

- #1. Proposed Changes to Rule 61G15-22.0010 Application for Licensure by Examination with attached forms

Mr. Flury outlined changes to Chapter 455, F.S. which in turn affects the application process in Chapter 471, F.S. One major change is elimination of the notary seal on application forms.

Upon motion by Mr. Charland seconded by Ms. Garcia the rule changes and changes to the applications were approved.

- #2. Proposed Changes to Rule 61G15-20.0015 Application for Licensure by Endorsement with attached forms

Mr. Flury noted that this rule and application were also affected by the changes to Chapter 455, F.S.

Upon motion by Mr. Charland seconded by Ms. Garcia the rule amendments and changes to the application forms were approved.

- #3. Letter to Marjorie Holladay and letter from Marjorie Holladay regarding Rule 61G15-19.004

Mr. Flury explained that this letter was a request for status. He further noted that the Board voted on this rule when it approved the Rules Committee minutes.

- #4. Letter to Marjorie Holladay and letter from Marjorie Holladay regarding Rule 61G15-20.001

Mr. Flury explained that this letter related to a technical change and did not require Board action.

- #5. Comments to Rule 61G15-23.001, F.A.C.

Mr. Flury received a number of comments regarding the seal rule amendment authorizing use of rubber seals. The vast majority are positive with others expressing concern over possible fraud with use of rubber stamps. The comments were provided for information purposes.

- #6. Rules Report

**BOARD OF PROFESSIONAL ENGINEERS  
RULES REPORT  
September 29, 2009**

| Rule No. | Title | Develop. Published | Notice Published | Adptd. | Effective |
|----------|-------|--------------------|------------------|--------|-----------|
|----------|-------|--------------------|------------------|--------|-----------|

The following rule has been **TOLLED**:

|              |                         |        |        |  |  |
|--------------|-------------------------|--------|--------|--|--|
| 61G15-19.004 | Disciplinary Guidelines | 3-7-08 | 8-8-08 | (Notice of Change 4-3-09)<br>(Tolled 10/28/08) |  |
|--------------|-------------------------|--------|--------|--|--|

The following rules are **IN PROCESS**:

|               |                        |        |         |         |  |
|---------------|------------------------|--------|---------|---------|--|
| 61G15-20.001  | Definitions, Appl. For | 8-1-08 | 7-24-09 | 9-25-09 |  |
| 61G15-20.0015 | Lic. By Endorsement,   | 8-1-09 | 7-31-09 | 9-25-09 |  |

|  |   |         |                                  |                    |
|--|---|---------|----------------------------------|--------------------|
| 61G15-20.007                                   | Dem. Of Subs. Equiv   | 8-1-08  | 7-24-09                          | 9-25-09            |
| 61G15-22.0105                                  | Approv. of CE Courses<br>in Laws and Rules  | 2-6-09  |                                  |                    |
| 61G15-23.001                                   | Seals Acceptable to<br>the Board  | 7-24-09 | 8-28-09 (Waiting on JAPC review) |                    |
| 61G15-23.002                                   | Seal, Signature and<br>Date Shall Be Affixed                                      | 7-31-09 |                                  |                    |
| 61G15-31.001                                   | General Responsibility  | 8-7-09  |                                  |                    |
| 61G15-31.002                                   | Definitions   | 8-7-09  |                                  |                    |
| 61G15-31.003                                   | Design of Structures Utilizing<br>Prefabricated Wood Trusses                      | 8-7-09  |                                  |                    |
| 61G15-31.004                                   | Design of Cast-in-Place Post-<br>Tensional Concrete Structural<br>Systems         | 8-7-09  |                                  |                    |
| 61G15-31.005                                   | Design of Structures Utilizing<br>Precast and Pre-stressed<br>Concrete Components | 8-7-09  |                                  |                    |
| 61G15-31.006                                   | Design of Structures Utilizing<br>Open Web Street Joists And<br>Joists Girders    | 8-7-09  |                                  |                    |
| 61G15-31.007                                   | Design of Pre-Engineered<br>Structures  | 8-7-09  |                                  |                    |
| 61G15-31.008                                   | Design of Foundations   | 8-7-09  |                                  |                    |
| 61G15-31.009                                   | Design of Structural Steel<br>Systems   | 8-7-09  |                                  |                    |
| The following rules have been <b>ADOPTED</b> : |   |         |                                  |                    |
| 61G15-18.011                                   | Definitions   | 1-30-09 | 2-20-09                          | 6-02-09            |
| 61G15-22.010                                   | Qualifying Activities for<br>Laws and Rules Req.                                  | 2-20-09 | 5-29-09                          | 7-21-09<br>8-10-09 |
| 61G15-22.011                                   | Bd. Approv. of CE Prov.   | 8-1-08  | 6-5-09                           | 7-21-09<br>8-10-09 |
| 61G15-37.001                                   | Perform. Stds. and<br>Meas. Outcomes  | 8-1-08  | 7-10-09                          | 8-24-09<br>9-14-09 |

I. Executive Director's Report

#1. Final Count for October 2009 Examinations

Ms. Flynn confirmed scheduling of 772 candidates for the Principles and Practice examination and 1182 for the Fundamentals of Engineering examination.

#2. 2010 FBPE Board Meetings – Proposed Calendar

The proposed calendar for 2010 was presented. Each member is to review and be prepared to adopt the calendar in the December Board meeting.

Ms. Raybon noted there is a Board meeting scheduled at the same time as the NCEES Annual Meeting. Ms. Gregory was directed to revise the calendar.

J. Assistant Executive Director's Report

#1. Google Analytics

Ms. Raybon explained this free service which confirms the number of times the Board's website is accessed and what areas of information are most used.

K. Chief Prosecutor's Report

#1. 300 day report

Mr. Rimes explained a large number of cases have been resolved and additional cases will be resolved. There are around 145 cases now and the number will continue to be reduced. Mr. Rimes noted his goal to have all cases to probable cause before 300 days have passed.

Mr. Rimes announced Shannon McCoy as the replacement for the position formerly held by July Tomasi. Shannon is learning quickly how to handle the probable cause panel meetings. Ms. Gregory will be assuming responsibilities for a complaint analyst position in legal. She will be reviewing cases on unlicensed and non-substantive cases and she will take control of archiving legal files. As training continues she will take more substantive cases. Mr. Beamish continues to work on cases on a part-time basis which works very well.

Mr. Rimes noted there would be limited use of consultants until January due to budget constraints.

L. Chair's Report

#1. Appointment Status

Mr. Burke announced expiration of terms for Mr. Halyard and Mr. Tomasino effective October 31, 2009. Both have indicated willingness to serve until the first of the year. This will require a mechanical and civil engineer to fill these seats. Mr. Burke noted expiration of Dr. Earle's term and confirmed his application for re-appointment.

Mr. Burke briefed the Board on expiration of terms on the FEMC Board. Mr. Jeffery has asked for reappointment to the FEMC Board. If staff can't confirm action by the Board to reappoint Mr. Jeffery, it should be on the December agenda for action. Mr. Hosay and Mr. Combs will have to contact the Secretary of the Department as they are public members.

#2. Christmas Party

The party was discussed at the FEMC meeting. Ms. Head has offered her home again this year for the party. Each member of the FBPE and FEMC are requested to contribute \$100 towards the cost of the party.

Mr. Burke briefed the Board on reorganization of positions and employees in the Board office. He reminded members that in 2008 the FEMC Chair received a climate survey from each employee. This year an outside consultant, Joyce Chastain, performed the climate survey. She was chosen based on her assistance with processing an employee complaint earlier in the year. All employees participated in the survey. Ms. Chastain made a full report on her findings and as a result of that survey, Mr. Burke had discussed with the FEMC Chair Bob Lombardo and Ms. Flynn the results of the survey and the need for certain organizational changes. Frances Ingram resigned her position and Bryan Lynch will not serve as the Manager of Licensure. Aside from the survey, as Mr. Rimes mentioned earlier, Jack Beamish resigned, but continues to work as a consultant for FEMC. Ms. Gregory will transfer to legal and will be assisting Mr. Rimes as a complaint analyst and to execute certain programs as part of update legal.

Mr. Burke discussed Board Meetings for 2010. He noted the Southern Zone Meeting in Tampa in April. He suggested the February meeting be held in Tampa. He further suggested based on staff information if one hotel is selected throughout the year there is a big reduction in overall costs for meetings. He noted staff was going to prepare a report regarding travel costs for the next meeting. Mr. Burke asked the Board members their preference; Tampa the whole year, or Tampa up until April and then move to Orlando. Mr. Burke indicated that travel could be to Tampa in 2010 and perhaps Orlando in 2011.

M. Correspondence to the Board

- #1. Email from Oriol Haage, Chief of Electrical Compliance at Miami-Dade County Building Code Compliance Office requesting clarification on fire alarm drawing requirements to be signed and sealed. Board Reviewed response by John Rimes, III, previously discussed at the FBPE Rules Committee Meeting.

This correspondence was presented for the full Board to review for informational purposes.

An email provided to Board Members at the meeting from Aggregate Interlock regarding Evaluation Entity Business Model and Board Rules was discussed. Mr. Rimes explained this gentleman has questions regarding evaluations to building code in Florida. The gentleman is asking whether an engineering firm must prepare those types of evaluations. Mr. Burke directed this email to the next Rules Committee Meeting. Ms. Flynn confirmed a short application review following the meeting.

**Part II  
Informal Hearing Agenda**

**Description of Educational Committee Process by Christian Bauer, Ph.D., P.E.**

In absence of Dr. Bauer, Mr. Burke called attention to the need to take care of outstanding business from the application review held on October 14, 2009.

Upon motion by Mr. Wallis seconded by Mr. Tomasino the actions of the educational and application committee held October 14, 2009 were approved.

N. Informal Hearings on Denial of Application for Fundamentals Examination

- #1. Jamie Docherty

Mr. Flury outlined Mr. Docherty's educational background. Mr. Docherty holds a BS in Civil Engineering from the University of South Australia and an MS in Environmental Engineering from the University of New South Wales

Mr. Docherty's application for the Fundamentals Examination was denied for educational deficiencies. The Board reviewed the evaluation from Josef Silny and Associates dated June 11, 2009 to determine substantial equivalency to Rule 61G15-20.007, F.A.C. It was determined Mr. Docherty was deficient 14.0 hrs M&BS to include a higher level Calculus, Differential Equations, a higher level Calculus-based Physics and General Chemistry,

Mr. Docherty was present and sworn in prior to addressing the Board. Mr. Docherty outlined his education in Australia. Following conclusion of his presentation the following action was taken.

Upon motion by Ms. Garcia seconded by Dr. Hyder this hearing was continued to allow review of the supplemental information in the November educational committee review.

Mr. Burke advised Mr. Docherty he must cease and desist using the protected title of “project manager” until he is certified as an Engineer Intern with our Board.

#2. Randolph Bell

Mr. Bell was present and sworn prior to addressing the Board.

Mr. Flury outlined Mr. Bell’s educational background. Mr. Bell holds a BS in Industry and Export Engineering from Aalborg University. Mr. Bell applied for the Fundamentals Examination and was denied for educational deficiencies. The Board reviewed the evaluation from Josef Silny and Associates dated April 03, 2009 to determine substantial equivalency to Rule 61G15-20.007, F.A.C. It was determined Mr. Bell was deficient 21.0 hrs M&BS including General Chemistry and 12.50 hrs H&SS

Mr. Bell addressed the Board and upon conclusion the following action was taken.

Upon a motion by Mr. Charland seconded by Ms. Young the denial was upheld. In discussion Mr. Flury advised Mr. Bell of his right to withdraw his application rather than having a denial on record.

Mr. Bell withdrew his application.

The motion to uphold denial was withdrawn.

Staff should correspond with him regarding his educational deficiencies once the list of proposed courses is reviewed.

O. Informal Hearings on Denial of Application for Principles and Practice Examination

#1. Payal Pandya

Ms. Pandya was present and sworn in prior to addressing the Board.

Mr. Flury outlined Mr. Pandya’s educational background. Ms. Pandya holds a BS Civil Engineering – L.D. Engineering College (India) 03/90 and an MS Civil Engineering – S.V.R. College of Engineering (India) 12/93. She passed the fundamentals examination in Michigan in 2004. She has evidenced the four years of experience. Ms. Pandya applied to take the Principles and Practice examination in April 11, 2008.

In review of the application content which includes evaluations from CPEES and Silny and Associates, it was determined Ms. Pandya had satisfied deficiencies in mathematics and basic sciences and humanities and social sciences and her application should be approved.

Upon motion by Mr. Tomasino seconded by Ms. Garcia, Ms. Pandya's application was approved for examination.

P. Informal Hearings on Denial of Application for Licensure as Special Inspector

#1. Luis F. Ortega

Mr. Ortega was not present.

Mr. Charland stated he had reviewed this application and the experience was basically collateral materials. The experience rule on threshold experience was not satisfied.

Upon motion by Mr. Tomasino seconded by Dr. Panigrahi the denial was upheld.

### **Part III Disciplinary Hearings**

#### **Description of Disciplinary Process by John C. Burke, P.E.**

Q. Settlement Stipulations

#1. Gildart, David, P.E.  
PE 57456  
FEMC Case Number: 2006058732  
Represented by: Robert Simon, Esquire  
Probable Cause Panel: Rebane, Seckinger

Mr. Gildart was present and sworn in prior to addressing the Board.  
His attorney, Robert Simon was also present

Mr. Rimes explained the facts of the case.

This investigation is predicated on the receipt of a complaint alleging the subject submitted deficient plans to the City of Winter Park Building Department.

The plans were rejected twice by the Winter Park Building Department and apparently the Subject failed to address those concerns to the satisfaction of the building official involved. FEMC's consultant reviewed the plans and opined they failed to reach a level of acceptable engineering principles. Specifically the deficiencies were failure to evidence plumbing plans shown or designed, no mechanical plans designed or shown,

rational wind analysis designed or shown including no attempt to show how the resisting wind systems provides a complete load path capable of transferring loads from the point of origin to the load resistance elements, a violation of the FBC.

Subject at the time failed to provide a response to the Complainant's allegations and based on the foregoing the Probable Cause Panel found probable cause on January 17, 2008 and a one count Administrative Complaint charging the Subject with negligence was filed on January 25, 2008.

Subsequent to the Administrative Complaint being filed and served, the Respondent, his counsel, Mr. Creehan and Mr. Power had a conference call in which it was determined there were additional documents the FBPE had not received. These documents would have supplied the missing information and would have affected the basis for finding probable cause. The consultant reviewed these additional materials on July 11, 2008 and the expert issued a revised opinion stating the subject is not guilty of violating Chapter 471.033(1) (g), F.S. as originally thought. The case was presented to the meeting of the PCP. The Panel declined to close the case but requested an additional expert review.

FEMC engaged a second consultant who wrote a report on November 10, 2008 addressing those concerns. The second expert found the subject negligent in the practice of engineering including but not limited to the plans lacking adequate information for the delegated truss designer to properly design the trusses involved. FEMC's additional expert reviewed subject's plans and on February 18, 2009 the expert opined the electrical plans were deficient as to the Responsibility Rules for the Design of Power Systems 61G15-33.003(2) as they did not include such items as the load computations, conductor sizes and insulation type, the grounding and bonding and other items. For these foregoing reasons the Consultant found the subject negligent in the practice of engineering.

An Amended Administrative Complaint was authorized by the PCP and was filed on May 21, 2009. After negotiation and review a Stipulation was entered into on July 13, 2009 to resolve this case. The final Probable Cause Recommendation was a Reprimand; \$5,000.00 administrative fine; costs of \$2,537.59; Suspension of licensure, stayed if fine/costs paid within 30 days of Final Order date; Subject will be placed on (2) year(s) probation with plan review at 6 and 18 months; Board approved course in Engineering Professionalism and Ethics; study guide; and appearance before the Board to explain: what continuing education has he taken to improve his qualifications to practice structural, electrical, HVAC, and plumbing.

The Settlement Stipulation entered into called for a reprimand; costs of \$1,837.59; Suspension of licensure, stayed if costs paid within 30 days of Final Order date; Subject will be placed on (2) year(s) PROBATION with plan review at 6 and 18 months; Board approved course in Engineering Professionalism and Ethics; study guide; and APPEARANCE before the Board to explain: what education, experience, and training he has to perform structural and electrical engineering; what impact the Consultants' reports from this case will have on his future designs; what future training and educational courses does he plan to take to improve the quality of his work. The second year of

PROBATION will be terminated early if, at the sole discretion of the Board Consultant and the Board, it is determined that the initial plan review report was “favorable” (defined in the Stipulation as being free of any material deficiencies).

Mr. Rimes explained removal of the fine based on Mr. Gildart’s quick concurrence in the disposition once the issues were clarified and the significant expense was incurred by respondent as a result of having to respond to an initial consultant report that was deficient. Mr. Rimes also deleted the costs relative to the report as it was of no use in the ultimate prosecution of the case.

Upon a motion by Mr. Charland seconded by Mr. Hyder the Settlement Stipulation was adopted. Mr. Tomasino opposed. The motion passed.

#2. Wood, Robert, P.E.  
PE 31542  
FEMC Case Number: 2007062474 & 2008062082  
Represented by: Michael McCabe, Esquire  
Probable Cause Panel: Rebane, Charland

Mr. Wood was present and sworn in prior to addressing the board. He was represented by Mr. Vaughn who was standing in for Mr. McCabe.

This investigation is predicated on the receipt of a complaint alleging that six of eight screen enclosure submittals do not comply with the Florida Building Code, Chapter 20. Two of the eight were issued permits only after Mr. Wood verified the designs as submitted. Permits were not issued in the other six.

Subject was notified of this complaint by Certified Letter dated 11/30/07. A response was received from Subject on 2/5/08, in which he responded that the design is satisfactory and is in accordance with typical design for screen enclosures.

A complete copy of the file and all documentation was forwarded to a FEMC consultant. The consultant opined Mr. Woods had not utilized due care in performing in an engineering capacity and has failed to have due regard for acceptable standards of engineering principles.”

The consultant’s conclusion was based on the issues found with several projects. Review of the projects resulted in a determination of the designs; supporting and implementing documentation were inadequate and evidenced negligence in the practice of engineering. Review of the respondent’s response also resulted in a determination of problems with the calculations submitted.

Probable Cause was found on November 16, 2008 and an Administrative Complaint was issued. During the process of resolving the case, a review of FEMC Case # 2008062082 also filed against Mr. Wood showed that the factual allegations were virtually identical to those in Case # 2007062474 and, had been filed by the same building department

officials, and the acts had occurred during the same timeframe. A cursory review by FEMC Consultant confirmed these facts. As a result, it was agreed that PC would be waived in this case, and both cases would be treated together. A Stipulation was entered into on August 31, 2009.

PCP Recommendation: Reprimand; \$1,000.00 administrative fine (\$1,000.00 per count for (1) count); costs of \$5,179.24; Suspension of licensure, stayed if fine/costs paid within 30 days of Final Order date; subject will be placed on 2 year(s) probation with plan review at 6 and 18 months; Board approved course in Engineering Professionalism and Ethics; study guide; and appearance before the Board to explain: what education, training and experience he has to show his competence to practice structural engineering; how he plans to handle details in his plans in the future; and if he is using manual(s), to bring them for the Board to review at his appearance.

The Settlement Stipulation called for a reprimand; \$500.00 administrative fine; costs of \$5,179.24; suspension of licensure, stayed if fine/costs paid within 30 days of Final Order date; Subject will be placed on 2 year(s) probation with plan review at 6 and 18 months; Board approved course in Engineering Professionalism and Ethics; study guide; and appearance before the Board to explain: what education, training and experience provides Respondent with the required competence to practice structural engineering; how he plans to handle the presentation of engineering details in his plans in the future; and to bring any standard aluminum pool screen design manual(s) which he utilizes for his pool screen designs for the Board to review during his appearance. The second year of probation will be terminated early if, at the sole discretion of the Board Consultant and the Board, it is determined that the initial plan review report was "favorable" (defined in the Stipulation as being free of any material deficiencies).

The Settlement Stipulation follows the PCP recommendation with exception of the fine which was reduced to \$500 as an incentive to finalize these proceedings. Since the problems in Case #2008062082 involve the same issues with pool screen enclosure design, it did not appear appropriate to impose an additional disciplinary action.

In review of this case, the Board expressed concerns with the stipulation as Mr. Wood could continue to practice structural engineering. In further discussion it was determined through project review any problems with area of practice should come to light and if problems are noted appropriate disciplinary action could be taken.

Upon motion by Mr. Tomasino seconded by Dr. Panigrahi the Settlement Stipulation was adopted. The motion passed.

#3. Shalloway, Kemp Daniel, P.E.  
PE 15961  
FEMC Case Number: 2007051700  
Represented by: David Rankin, Esquire  
Probable Cause Panel: Rebane, Seckinger, Halyard, Charland

Mr. Shalloway was present and sworn in prior to addressing the Board. His counsel, David Rankin was also present. Mr. William Gotthelf was sworn in as well.

This investigation was predicated on a complaint filed by Ruth Clements, Land Acquisition & Land Management, at the South Florida Water Management District (SFWMD). The investigation found that for more than four years (1998 to 2003) Kemp Daniel Shalloway, PE, while acting as engineer for Indian Trail Improvement District (ITID) was an active advocate for ITID, SFWMD and other governmental entities to purchase & use certain rock pits owned by Palm Beach Aggregates, Inc. (PBA) for water storage and drought control in Palm Beach County, Florida. During this same period, Shalloway was being paid to provide services to PBA. Most importantly for this investigation Shalloway had also had entered into an agreement with the owner of PBA to be paid a large “success fee” that was contingent upon the purchase of the rock pits by ITID & various related governmental entities. Shalloway did disclose to ITID (by letter dated November 3, 1998) the fact that he would be paid by PBA for “work” done on the rock pits (the L-8 Project) and received ITID’s acquiescence in the conflict (by letter dated December 1, 1998). However, Shalloway never disclosed to ITID that his contract with PBA provided for this “success fee” to be paid by PBA.

During the period at issue SEI was a corporation owned solely by Shalloway and served as the vehicle to perform the matters discussed herein. Since the corporation was, in effect, the alter ego of Shalloway it was treated as coextensive with Shalloway as to all matters addressed by the PCP and the charging documents.

Ultimately, SFWMD along with the State of Florida, Palm Beach County, Indian Trail Improvement District (ITID) and the City of West Palm Beach entered into two cost share agreements to purchase the PBA rock pits. SFWMD now uses the rock pit reservoirs for ITID flood control, diverting runoff of polluted water from reaching the Lake Worth Lagoon, and using stored runoff to replenish the Loxahatchee River and Loxahatchee Slough, and to alleviate drought conditions. The total acquisition price paid by SFWMD (et al.) to PBA for the reservoirs was \$217,581,500.00. PBA paid Shalloway a \$2.4 million success fee for arranging the sale. Certain of these “success fee” funds were later provided to Palm Beach County Commissioner Warren Newall, a planner & also a member of Shalloway’s firm’s (SFRN), through SFRN’s accounts. Newall’s failure to disclose these payments (and others made to him by other parties) later resulted in his federal criminal conviction.

All parties are in agreement that the rock pits are genuinely valuable to the citizens of Palm Beach County and Florida as they are made up of watertight, petrified mud capable

of storing 11 billion gallons. They have already been used to capture runoff from hurricanes and have provided millions of gallons for drought relief.

On July 15, 2008, an Administrative Complaint was authorized and served charging both Shalloway & SEI with failure to disclose a conflict of interest and failure to disclose a gratuity paid by an entity doing business with a PE's client-see Rules 61G15-19.001(6) (f) and (h). The clients were delineated as SFWMD and ITID. A request for a formal administrative hearing was received and the matter was referred to DOAH. Subsequent thereto, additional information was adduced from Mr. Shalloway's counsel, other individuals and as the result of additional investigation. Based upon that information, the case was removed from DOAH's jurisdiction and returned to FEMC. A Supplemental Investigative Report was then produced.

After preparation of the Supplemental Report, this case was represented to the PCP on July 15, 2009. Since the additional information made it clear that the "success fee" was not a gratuity but was payment for services rendered by Shalloway to PBA, the charge relating to Rule 61G15-19.001(6) (h) was dropped. Additionally, and after a final contact post PCP was made with SFWMD, it was clear that Shalloway did not have a contract with SFWMD and was never SFWMD's client within the constraints of Rule 61G15-19.001(6) (f). As a result, SFWMD was dropped as a party to whom Shalloway was required to make a disclosure of the PBA arrangement. Also, while at the time of the July 2008 PCP meeting the Panel was not made aware of the existence of the November 1998 disclosure letter & the December 1, 1998 ITID consent, by the second PCP meeting these facts were apparent.

Therefore an amended Administrative Complaint was authorized and filed. After negotiation, a Stipulation was entered into on September 28, 2009 and is being presented to the BOPE.

The Settlement Stipulation called for a reprimand; \$10,000.00 administrative fine; costs of \$5928.00 to be paid to the Board within thirty (30) days of the date that the Final Order is rendered; Respondent Shalloway will be placed on probation until he successfully completes Board approved course in Engineering Professionalism and Ethics & study guide; appearance before the Board to his discuss his present practice and how he will assure the Board & public that he will not engage in the type conduct that occasioned these proceedings.

Staff recommendation on this case was to accept the Settlement Stipulation.

Mr. Burke confirmed a quorum of the Board. He confirmed Mr. Charland and Mr. Halyard were recused due to serving on the Probable Cause Panel. Dr. Hyder recused himself due to knowledge of the case.

After extensive discussion of the circumstances surrounding this case, the following occurred:

Mr. Tomasino noted he would not approve the Settlement Stipulation. In his opinion, the case may have been mishandled. He recommended the stipulation not be approved and a Letter of Guidance be issued.

Upon motion by Mr. Wallis, seconded by Mr. Tomasino the Settlement Stipulation was rejected. The motion passed.

Mr. Wallis agrees with Mr. Tomasino that the fine is excessive. After discussion the following action was taken:

Upon motion by Mr. Tomasino the penalty should be lowered to a Letter of Guidance. This motion failed for lack of second.

After further discussion the following action was taken.

Upon motion by Ms. Garcia seconded by Dr. Panigrahi, a Counter Stipulation was offered calling for the terms of the proposed settlement stipulation with exception of a reducing the fine from \$10,000 to \$2,000. The motion passed with Mr. Tomasino voting to oppose.

Mr. Rankin consulted with Mr. Shalloway and he stated on record his acceptance of the Counter Stipulation with the reduction of the fine from \$10,000 to \$2,000.

#4. Gonci, Kenneth, P.E.  
PE 61685  
FEMC Case Number: 2007004835  
Represented by: Bradley H. Trushin, Esquire  
Probable Cause Panel: Rebane, Seckinger

This case was pulled from the agenda.

R. Request for 18 Month Project Review Extension

#5. Muller, Carlos, P.E.  
PE 20547  
FEMC Case Number: 2005015397  
Probable Cause Panel: Matthews, Burke, Seckinger

Mr. Muller has requested an extension of his probation as a result of being unable to complete project reviews. Mr. Rimes noted that Mr. Muller indicated his business has not reached a level to allow him to complete project review.

Upon motion by Ms. Garcia seconded by Ms. Young the probation was extended by 18 months. The motion passed.

S. Old Business

- T. New Business
- U. Public Forum
- V. Community Involvement
- W. Adjourn