

MINUTES

Tennessee Board of Examiners for Land Surveyors

The Tennessee Board of Examiners for Land Surveyors met on Thursday, October 27, 2011 at 9:00 a.m. in the 3rd Floor Conference Room of the Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, TN.

Those present were: Tim Lingerfelt, Chairman; Sue Braly, Vice-Chairman; David Cagle, Board Member; Jackie Dillehay, Board Member; Robert Herndon, Attorney for the Board; and Donna Moulder, Administrative Director for the board.

Sheila Piper, Kimberly Whaley, and Nikole Avers were also present.

The meeting was called to order at 9:15 a.m. by Chairman Lingerfelt.

The agenda was then reviewed. David Cagle made a motion to amend the agenda by moving the Legal Report to be presented after lunch, starting Friday's meeting at 9:30 am instead of 9:00 am and adding a letter from Ronald Mackie. Sue Braly seconded the motion. The motion carried unopposed.

The minutes of the previous meeting were then reviewed. David Cagle made a motion to accept the minutes as written. Sue Braly seconded the motion. The motion carried unopposed.

NEW BUSINESS –

The following meeting dates were set for 2012:

February 2-3, 2012
April 12-13, 2012
August 2-3, 2012
October 25-26, 2012

David Cagle made a motion to approve the meeting dates. Sue Braly seconded the motion. The motion carried unopposed.

The members of the board then reviewed the application of James Robert Woodham, TLS #2252 (expired). Mr. Woodham's Tennessee license expired on December 31, 2007. Following the receipt of requested continuing education and residence information, the board will address this request at the February 2012 meeting.

Adam Schmeing – Mr. Schmeing met with the members of the board to discuss his denied application. After reviewing the application, the board determined that Mr. Schmeing needs at least two more hours of surveying related coursework.

Chairman Lingerfelt then gave a report on the August 2011 NCEES Annual Meeting held in Providence, RI.

The board then determined that the next rule chapter to review will be the Rules of Continuing Education.

GPS Standards – Mr. Lingerfelt suggested that the board adopt the FCGG Regulations as our standard.

There being no further business, Sue Braly made a motion to adjourn. David Cagle seconded the motion. The motion carried unopposed and the meeting was adjourned at 2:06 pm.

FRIDAY, OCTOBER 28, 2011 –

The Tennessee Board of Examiners for Land Surveyors met on Friday, October 28, 2011 at 9:00 a.m. in the 2nd Floor Conference Room of the Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, TN.

Those present were:; Tim Lingerfelt, Chairman; Sue Braly, Vice Chairman; David Cagle, Board Member; Jackie Dillehay, Board Member; Robert Herndon, Attorney for the Board; and Donna Moulder, Administrative Director for the board.

The meeting was called to order at 9:37 a.m. by Chairman Lingerfelt.

Robert Herndon, Attorney for the Board, presented the following complaints for the board's review:

The following cases were reviewed by a Board member prior to this meeting:

1. Case No.: L11-SUR-RBS-201101555 –

This case was referred to a Board member for review because of the allegation of misconduct in the Respondent's professional practice of land surveying, in possible violation of Tenn. Code Ann. § 62-18-116(a)(1)(B), specifically performing acts that would constitute a motive of self-interest rather than servicing the client. An investigation was ordered, with the report submitted to Legal on October 3, 2011, to collect details of the events surrounding the incident(s) due to the fact that a previous case was considered by the Board involving the same two parties and there was a need to determine if the facts of this current complaint are identical to the former. The events generating the

complaint occurred in East Tennessee, and the reviewing Board member was West Tennessee Board member Mr. CAGLE.

Recommendation: Accept the reviewing Board member's proposal.

FINDING: This is a re-packaging of a previous complaint. The parties ended up in litigation, with the Respondent prevailing and collecting the professional fees owed by the Complainant. This complaint follows.

RULING: Dismiss with prejudice.

2. Case No.: L11-SUR-RBS-201101743 –

This case was referred to a Board member for review because of the allegation of incompetence in the preparation of land survey documents, in possible violation of Tenn. Code Ann. § 62-18-116(a)(1)(B). An investigation was ordered to determine details of the circumstances and the report was submitted to Legal on August 19, 2011. The events generating the complaint occurred in West Tennessee, and the reviewing Board member was East Tennessee Board member Mr. LINGERFELT. Upon review, the Board member requested an informal conference to establish more definite details. That informal conference was held on October 26, 2011.

Recommendation: Accept the reviewing Board member's proposal.

FINDING: The Respondent violated Tenn. Code Ann. § 62-18-127 (duty to research common boundaries) by not comparing the plat for the adjoining property that the Respondent himself prepared 14 years ago; and also violated Tenn. Comp. R. & Reg. 0820-04-.02(1) [PROPER CONDUCT OF PRACTICE] by requesting payment for survey services performed on adjoining property, the owner of which did not request such a survey.

RULING: A Consent Order for a civil penalty of \$1,500; a letter in the form of a sworn statement from the Respondent stating that the claimant property owner will not be charged for the surveying services rendered, such letter to be produced within 30 days of receipt of the Consent Order; and complete 6 hours of continuing education in ethics within 90 days, the credit for which may not be claimed for license renewal purposes.

3. Case No.: L11-SUR-RBS-201102219 –

This case was referred to a Board member for review because of the allegation of incompetence in the preparation of land survey documents, in possible violation of Tenn. Code Ann. § 62-18-116(a)(1)(B) and elements of Tenn. Comp. R. & Reg. 0820—03—.07(1)(h) [SURVEY TYPES AND REQUIREMENTS] relative to "general property surveys." The events generating the complaint were reviewed by Board member Mr. CAGLE for evidence of probable cause.

Recommendation: Accept the reviewing Board member's proposal.

FINDING: The Respondent allowed a subordinate under his responsible charge to prepare two plats that did not mark several of the corners and generally fell below the minimum standard of care

RULING: A Consent Order for \$500 (\$250 for each plat); and submit to the Board copies of the corrected plats showing that they comply with the minimum acceptable standards.

4. Case No.: L11-SUR-RBS-201102590 –

This case was referred to a Board member for review because of the allegation of incompetence in the preparation of land survey documents, in possible violation of Tenn. Code Ann. § 62-18-116(a)(1)(B); specifically, the Respondent issued two certified plats that showed the contour line to be in two different places on the same parcel of land. The events generating the complaint were reviewed for probable cause by Board member Mr. CAGLE.

Recommendation: Accept the reviewing Board member's proposal.

FINDING: The Respondent committed a common error among practitioners by mislabeling a contour line; however, in this case the result was litigation to settle a dispute between two private parties.

RULING: Issue a Letter of Caution to be more careful.

5. Case No.: L11-SUR-RBS-201102717 –

This case was referred to a Board member for review because of the allegation of misconduct in the preparation of land survey documents, in possible violation of Tenn. Code Ann. § 62-18-116(a)(1)(B); specifically, the Respondent altered the property line for a neighboring client in order to provide the client with more

lake access. The events generating the complaint occurred in East Tennessee and were reviewed for probable cause by Board member Mr. DILLEHAY.

Recommendation: Accept the reviewing Board member's proposal.

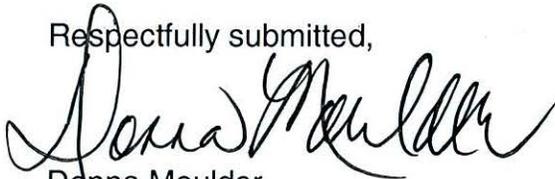
FINDING: There are no determinable violations of the standards of care, but there is a least an indication that the Respondent may not have communicated a perceived boundary discrepancy with an adjoining landowner in violation of Tenn. Code Ann. § 62-18-124.

RULING: Issue a Letter of Instruction to make every effort to comply with any and all relevant licensing authorities.

Dan Birdwell – Mr. Birdwell met with the board to discuss the expert witness contract and the exam contract .

There being no further business, Jackie Dillehay made a motion to adjourn. Sue Braly seconded the motion. The motion carried unopposed and the meeting was adjourned at 12:23 p.m.

Respectfully submitted,



Donna Moulder
Administrative Director

TIM LINGERFELT

Tim Lingerfelt, Chairman



David Cagle



Sue Braly, Vice-Chairman

Jackie Dillehay