

MINUTES

Tennessee Board of Examiners for Land Surveyors

The Tennessee Board of Examiners for Land Surveyors met on Thursday, January 31, 2013 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; Galyon Northcutt, Vice Chairman; Sue Braly, Board Member; Robert Herndon, Staff Attorney; and Donna Moulder, Administrative Director for the Board. David Cagle, Board Member, was not present. Nikole Avers, Executive Director of the Board, was also present.

The meeting was called to order by Chairman Tim Lingerfelt at 9:15 a.m. A formal hearing was held and the board meeting began immediately after the hearing.

The agenda was then reviewed. The agenda was amended to add Tommy Young and Marian Young's continuing education to be reviewed, as well as discussing the "roundtable meeting" to be held at the TAPS conference on March 9, 2013. Galyon Northcutt made a motion to adopt the agenda as amended; Sue Braly seconded the motion. The motion carried unanimously.

Galyon Northcutt made a motion to accept Robert's Rules of Order for conducting the board meetings. Sue Braly seconded the motion. The motion carried unopposed.

The minutes of the previous meeting were then reviewed. Sue Braly made a motion to accept the minutes as written; Galyon Northcutt seconded the motion. The motion carried unanimously.

Robert Herndon then presented the following legal report for review:

COMPLAINT #201201055 –

This matter was presented at the October 25, 2012 Board meeting as a companion (Respondent 2) to a case that was settled through a Consent Order as follows: *The complaint alleges unlicensed conduct on the part of Respondent 1 (unlicensed, located in Alabama) by using Respondent 2's (licensed, located in Florida) seal and caps, and alleges misconduct on the part of Respondent 2 for taking part in this venture. An investigation was ordered and a report received by this office detailing the arrangement. The investigation reveals that the two are not employed with each other and that the Respondent 2 is never located in Respondent 1's offices, and that all reviews were conducted at a distance. Although the investigation has the unlicensed Respondent stating that "approximately six land surveys in the State of Tennessee over the last twenty-four months were prepared under the licensed Respondent's seal, the file does not contain any documentation bearing that Respondent's seal.* The recommendations were: For UNLICENSED Respondent – A Consent Order for a civil penalty of one thousand dollars (\$1,000.00) for unlicensed conduct in violation of Tenn. Code Ann. § 62-18-101

[Registration required]. As noted, this settlement offer was accepted and the matter closed as it related to Respondent 1. For LICENSED Respondent – A Consent Order in the amount of two thousand dollars (\$2,000.00); one thousand for violating Tenn. Comp. R. & Reg. 0820—04—.07(2) [MISCONDUCT] for “furnishing limited services in such a manner as to enable unregistered persons to evade federal, state and local surveying and planning laws and regulations, or registration requirements of T.C.A., Title 62, Chapter 18” and one thousand dollars for violating Tenn. Comp. R. & Reg. 0820—04—.09 [RESPONSIBLE CHARGE OF SERVICE] by not being employed and present at the office providing land surveying services.” The Board’s analysis was to approve the recommendations with the additional requirement that Respondent 2 should be required to take 8 hours of ethics courses in addition to the recommended discipline. UPDATE: Respondent 2 has reacted to the settlement offer by informing the Board that his financial situation would not support the settlement offer and has returned his wall certificate with a request that the Board accept his voluntary surrender of his license.

RECOMMENDATION: Rescind the Consent Order and issue a new Consent Order accepting the surrender as if revoked and that the Respondent will have to re-apply to obtain a valid license in Tennessee.

ANALYSIS: The Board agrees with the assessment.

Galyon Northcutt made a motion to accept the attorney’s recommendation. Sue Braly seconded the motion. The motion carried unopposed.

DETERMINATION: Approved.

COMPLAINT #201201086 –

This complaint alleges that the Respondent, a licensed land surveyor, displayed incompetence and/or committed misconduct in the practice of land surveying. Specifically, the Respondent may have caused or significantly contributed to a land dispute in connection with his preparation of a plat in possible violation of Tenn. Code Ann. § 62-18-116(a)(1)(B) [Denial, suspension or revocation of certificate – Disciplinary action] and rule Chapter 0820—03 [STANDARDS OF PRACTICE]. There is no previous complaint history for this Respondent.

The case materials were forwarded to a complaint reviewer for analysis to identify probable cause for discipline, if any. In general, the reviewer finds cause to believe that Tenn. Code Ann. § 62-18-116(a)(1)(D) has been violated; this statute states that a land surveyor may be discipline by this Board for “any failure to comply with the minimum acceptable standards of practice” properly established by rule. Following are the results of his analysis of the Respondent’s work product:

Tenn. Comp. R. & Reg. 0820—03—.07(1)(b)(7): [SURVEY TYPES AND REQUIREMENTS] – “A Land Surveyor shall comply with the minimum requirements provided below for all surveys and Survey Plats or Survey Maps prepared therefrom. (1) General Property Surveys. (b) A Survey Map or Survey Plat shall have a title and contain the following information. (7) A certification on the face of the final Survey Map or Survey Plat as to the category of the survey and the ratio or precision of the unadjusted survey, which shall have the following minimum content: Certification as to Category I, II, III, or IV, ratio of precision of the unadjusted survey,

statement that the survey was done in compliance with current Tennessee Minimum Standards of Practice, signature, and registration number.”

The case reviewer states that the certification on the face of the survey shows the precision ratio of the unadjusted survey as “exactly” 1:10,000. The reviewer has concerns that a land surveyor conducting a boundary survey matches an unadjusted closure of exactly “1:10,000.” The Respondent’s prepared survey matches land descriptions in Deed Book 706C, Page 53 (dated October 12, 1974) exactly for bearings and one distance. In light of this, the reviewer requested and was provided the Respondent’s field data in order to determine how this ratio was obtained. Upon review, the data provided by the Respondent seemed to be insufficient for this purpose. It was submitted in ASC format and only contained point numbers, Northing, Easting, Elevations and descriptions. Tie numbers 30-33 provided are assumed by the reviewer to be traverse points for closure. A sketch shows tie point number 34, however that point is not included in the ASC file. Without raw field data, which apparently doesn’t exist due to the failure to provide it when requested, the closure can’t be determined.

Tenn. Comp. R. & Reg. 0820—03—.07(1)(h)(3): [SURVEY TYPES AND REQUIREMENTS] – “A Land Surveyor shall comply with the minimum requirements provided below for all surveys and Survey Plats or Survey Maps prepared therefrom. (1) General Property Surveys. (h) Monumentation requirements: (3) “The type of monument (old or new) shall be indicated on the Survey Map or Survey Plat along with the size and type of material. No monument should be placed if, in the opinion of the Land Surveyor, the existing monument, whether original or not, is found undisturbed and adequate to perpetuate the position and can be reasonably made to conform to the angle point in the boundary. Large or indefinite monuments which cannot be measured to within the positional accuracy requirements contained herein, such as trees, rocks piles or fence corners, will be marked with witness monuments as deemed necessary by the Land Surveyor.”

The case reviewer states that the survey does not show the type of monuments located. Two points are shown only as “fence intersection.” After acquisition of the requested additional data, the reviewer says that the indication is that points 110 CP and 113 CP are fence intersections; however no field-located points match the CP points. Points 110 and 113 are assumed by the reviewer to be calculated points per deed calls.

Tenn. Comp. R. & Reg. 0820—04—.08(3): [SEALS] – “The registrant shall superimpose his signature (not a rubber stamp) and date of signature across the face and beyond the circumference of the seal on documents to which his seal is affixed.”

The case reviewer states that Respondent did not, on the sealed survey provided, show the date of signature across the face of the seal.

Recommendation: Issue a Consent Order for a civil penalty of \$500.00 for each of the rules allegedly violated for a total civil penalty of \$1,500.00, with the additional requirement to prove to the Board that the Respondent has completed a number of hours determined by the Board in continuing education on the subject of standards of practice.

ANALYSIS: The Board does not feel that there are currently classes available that would address standards of practice.

Galyon Northcutt made a motion to accept the attorney's recommendation of \$1500.00 penalty with NO continuing education on the Standards of Practice. Sue Braly seconded the motion. The motion carried unopposed.

DETERMINATION: Approved for a formal hearing and a Consent Order for a the civil penalty (\$1,500.00) as discipline.

COMPLAINT #201201781 –

This complaint alleges that the Respondent, a licensed land surveyor, committed misconduct in the practice of land surveying. Specifically, the Respondent either failed to comply with the Board's minimum standards of practice and/or failed to complete a plat in possible violation of Tenn. Code Ann. § 62-18-116(a)(1)(B) [Denial, suspension or revocation of certificate – Disciplinary action] and rule Chapter 0820—03 [STANDARDS OF PRACTICE]. There is no previous complaint history for this Respondent.

A review of the complaint materials identified the allegations as involving incompetence and starting work on a plat and never completing it. An investigation was ordered to collect details on the events surrounding the complaint, and it was found that the matter involved an estate probate among seven descendants, one of whom is the originator of the complaint. The first issue involves a description in either 2006 or 2007 of a lot for a house inside the Complainant's sibling's farm tract made for the sibling's daughter. This lot does not front on a public roadway and is accessed by a private right-of-way; the access requirement to front on a public road is not a survey issue, but is rather one involving planning codes and is not enforced locally.

The second issue is that the Respondent never completed a plat that he started. Court probate activity indicates that the survey was actually never started, as it was unnecessary because a previous survey existed and the Respondent agreed with its conclusions. The complaint information does not reveal that there was ever a contract to produce a new plat. Once probate began in earnest, the Respondent referred whatever matters requiring surveying to another land surveyor due to the Respondent's lengthy past involvement with members of the family, particularly the deceased owner whose property is at issue, and perceived conflicts of interest at worst and charges of bias at best.

To be thorough, the matter was referred to a complaint reviewer for any indication of misconduct on the part of the Respondent, and the opinion returned was that the entire matter is an issue for the courts and that there is no evidence in the materials that the Respondent did anything improper or violation of the Board's law and rules.

Recommendation: Close the case for lack of probable cause for discipline.

ANALYSIS: The Board agrees with this assessment.

Sue Braly made a motion to accept the attorney's recommendation to close this complaint. Galyon Northcutt seconded the motion. The motion carried unopposed.

DETERMINATION: Approved.

COMPLAINT #201202007 –

NOTE: This complaint involves a boundary dispute with the Complainant/owner of the same property as the following complaint L12-SUR-RBS-2012025681. This complaint alleges that the Respondent, a licensed land surveyor, displayed incompetence and/or committed misconduct in the practice of land surveying. Specifically, the Respondent may have caused or significantly contributed to a land boundary dispute in connection with his preparation of a plat in possible violation of Tenn. Code Ann. § 62-18-116(a)(1)(B) [Denial, suspension or revocation of certificate – Disciplinary action] and rule Chapter 0820—03 [STANDARDS OF PRACTICE]. The plat prepared adjoins the Complainant's property. There is no previous complaint history for this Respondent.

This complaint includes evidence of an adversarial relationship with the adjoining landowner who employed the Respondent, including the swearing out of restraining orders. The Complainant claims that the Respondent did not consult the previous survey done on the Complainant's property while determining the common boundary, along with claims that there are errors and omissions and date changes on the Respondent's plat that contributed to the boundary dispute. The matter is currently in litigation.

The materials were forwarded to a complaint reviewer to determine if there is any probable cause for discipline due to any misconduct or incompetence on the Respondent's part. The reviewer identified violations of Tenn. Comp. R. & Reg. 0820—03—.07(1)(b)(1) [SURVEY TYPES AND REQUIREMENTS/GENERAL PROPERTY SURVEYS] in that the Respondent did not reference "a descriptive location of the property, or vicinity map, and a corner of the property must be tied by bearing and distance to either...a corner of a subdivision or to a tract from which property is carved to a permanent, identifiable corner or a nearby permanent, identifiable reference point," or "a road intersection." Otherwise, the reviewer does not identify any other violations of the Board's minimum standards of practice.

Recommendation: Close with a Letter of Caution to include all required information in all prepared plats.

ANALYSIS: The Board agrees with this assessment.

Galyon Northcutt made a motion to accept the attorney's recommendation to close this complaint with a Letter of Caution. Sue Braly seconded the motion. The motion carried unopposed.

DETERMINATION: Approved.

COMPLAINT #201202568 –

NOTE: This complaint involves a boundary dispute with the Complainant/owner of the same property as the previous complaint L12-SUR-RBS-2012020071. This complaint alleges that the Respondent, a licensed land surveyor, displayed incompetence and/or committed misconduct in the practice of land surveying. Specifically, the Respondent may have caused or significantly contributed to a land boundary dispute in connection with his preparation of a plat in possible violation of Tenn. Code Ann. § 62-18-116(a)(1)(B) [Denial, suspension or revocation of certificate – Disciplinary action] and rule Chapter 0820—03 [STANDARDS OF PRACTICE].

The plat prepared adjoins the Complainant's property. There is no previous complaint history for this Respondent.

This complaint includes evidence of an adversarial relationship with the adjoining landowner who employed the Respondent, including the swearing out of restraining orders. The Complainant claims that the Respondent did not consult the previous survey done on the Complainant's property while determining the common boundary, along with claims that there are errors and omissions and date changes on the Respondent's plat that contributed to the boundary dispute. The matter is currently in civil litigation.

The materials were forwarded to a complaint reviewer to determine if there is any probable cause for discipline due to any misconduct or incompetence on the Respondent's part. In this particular case, the reviewer did not identify any noticeable violations of any of the Board's minimum standards of practice after a careful review of the Respondent's prepared plat and other work products.

Recommendation: Close the case for lack of probable cause for discipline.

ANALYSIS: The Board agrees with this assessment.

Galyon Northcutt made a motion to accept the attorney's recommendation and close this complaint for lack of probable cause for discipline. Sue Braly seconded the motion. The motion carried unopposed.

DETERMINATION: Approved.

COMPLAINT #201202175 –

This complaint alleges that the Respondent, a licensed land surveyor, committed misconduct in the practice of land surveying. Specifically, the Respondent is alleged to have created an incorrect boundary survey in which a new fence was constructed encroaching on property owned by a home owners' association buffer easement. The Complainant was charged a large fee to relocate the fence due to its placement based on the incorrect boundary survey that the Respondent prepared in possible violation of Tenn. Code Ann. § 62-18-116(a)(1)(B) [Denial, suspension or revocation of certificate – Disciplinary action] and rule Chapter 0820—03 [STANDARDS OF PRACTICE].

The material was first sent to Investigations to gather details on the events leading to the complaint and then to a complaint reviewer to determine if there were any violations of the standards of practice involved. The reviewer identified at least one specific rule which seems to have been violated.

Tenn. Comp. R. & Reg. 0820—03—.02(1): [STANDARDS OF PRACTICE] – [GENERAL] “The proper execution of land surveying and mapping procedures and all other details of a land survey shall be the direct responsibility of the Land Surveyor whose stamp or seal and/or signature appear on the map, plat or other newly original survey documents,” and Tenn. Comp. R. & Reg. 0820—04—.02(1): [PROPER CONDUCT OF PRACTICE], “the registrant shall at all times recognize the primary obligation to protect safety, health and welfare of the public in the performance of the registrant's professional duties.” The reviewer reasons that these rules are potentially violated due to the fact that a land surveyor must follow standards of practice even

without the issuance of a survey plat. When conducting a survey for any construction, stakes must be marked clearly indicating the area for the appropriate construction. The recorded plat obtained by the Respondent clearly indicates the location of a 25-foot landscape, pedestrian access, public utility and entry easement. The Respondent stated that he left a copy of the recorded subdivision plat on a second trip, so he must have had it in his possession upon producing the boundary survey. Additionally, the Respondent has the professional responsibility to inform the client (or any involved party) or any recorded easements that may affect any intended construction.

Additionally, there seems to be indications of either misconduct or incompetency in the fact that the Respondent has given contradictory information in that: Respondent first states in writing that he was requested (by the Complainant) “to find and/or reset the property corners for the lot.” In the interview with the investigator, he then says that “if he (the Complainant) has asked me to stake for building his fence at the proper location, I would have done so on the first trip.” Finally, in the Respondent’s letter to the Complainant, the Respondent stated that “as I was looking back at my call log request from (the Complainant’s spouse) in December, I have recorded that he was requesting me to locate and stake the lot so his builder could build ‘a fence’.” At the least, there are indications of either faulty recollections of events or faulty record-keeping, either of which could negatively impact client relations.

Recommendation: Issue a Consent Order for a civil penalty of five hundred dollars.

ANALYSIS: The conduct may be corrected without formal discipline against the Respondent’s license.

Galyon Northcutt made a motion to close this complaint with a Letter of Warning. Sue Braly seconded the motion. The motion carried unopposed.

DETERMINATION: Close with a Letter of Warning.

COMPLAINT #201202133 –

The complaint alleges professional misconduct on the part of the Respondent in possible violation of Tenn. Code Ann. § 62-18-116(a)(1)(B) [Denial, suspension or revocation of certificate – Disciplinary action]. In this case, the allegation rests on the fact that the Respondent failed to pay for services rendered by the Complainant, which was the preparer of a Storm Water Pollution Prevention Plan (SWPPP) for the Respondent’s use. After the complaint was filed, the Respondent paid the Complainant in full and the Complainant has since notified the Board in writing that he wishes to withdraw the complaint. There is no complaint history with this Respondent.

Recommendation: Issue a Letter of Caution to instruct the Respondent to be more diligent in business dealings with other professionals and clients.

ANALYSIS: The Board agrees with this assessment.

Galyon Northcutt made a motion to accept the attorney’s recommendation. Sue Braly seconded the motion. The motion carried unopposed.

RULING: Approved.

Donna Moulder then gave the Director's Report. Conflict of Interest statements were signed by the board members.

The board members reviewed all current policy statements.

A discussion was then held on the continuing education process.

The board then reviewed the following in continuing education –

Randall Orr – Galyon Northcutt made a motion to approve four hours of continuing education only. Sue Braly seconded the motion. The motion carried unopposed.

James Snyder – It was determined that until Mr. Snyder submits the proper background information to support the requested continuing education, NEC-RTS Real-Time Stage and Flow Forecasting for Mill Creek and Watershed Advisor Refresher Training, that this board not do anything. Galyon Northcutt made a motion to have Donna Moulder send Mr. Snyder a letter requesting this information. Sue Braly seconded the motion. The motion carried unanimously.

Jerry Taylor – ask Mr. Taylor to provide the board with number of hours invested in the article “The Education/Experience Partnership at ETSU” that he wrote for the Professional Surveyor magazine and the board will revisit this matter. Galyon Northcutt made a motion for Donna Moulder to send Mr. Taylor a letter requesting this information. Sue Braly seconded the motion. The motion carried unopposed.

Ken Beckwith – Galyon Northcutt made a motion to deny the vendor hour (1 hour) and the attendance at the membership meeting (1 hour) and approve the rest of the hours obtained at the Arkansas Society of Professional Surveyors 2012 Convention for a total of 15 hours. Sue Braly seconded the motion. The motion carried unopposed.

Tommy Young – Galyon Northcutt made a motion to accept eight of the hours that were submitted, which were “Great Surveyors and Their Surveys” for six hours and “Illinois Ethics/Professional Conduct” for two hours. Sue Braly seconded the motion. There being no further discussion, the motion carried unanimously.

Marian Young – Galyon Northcutt made a motion to have Donna Moulder send Dr. Young a letter requesting descriptive information about the courses for which she is seeking approval. Sue Braly seconded the motion. There being no further discussion, the motion carried unopposed.

The board then discussed the possible licensing of photogrammetrists. Galyon Northcutt made a motion to give Tim Lingerfelt approval to contact Bobby Tuck regarding photogrammetrists and to follow up with a letter. Sue Braly seconded the motion. There being no further discussion, the motion carried unanimously.

The board then discussed the “Roundtable Q&A Session” to be held at the TAPS annual convention on March 9, 2013.

FRIDAY, February 1, 2013 –

The Tennessee Board of Examiners for Land Surveyors met on Friday, February 1, 2013 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; Galyon Northcutt, Vice Chairman; Sue Braly, Board Member; David Cagle, Board Member; Robert Herndon, Staff Attorney Nikole Avers, Executive Director of the Board; and Donna Moulder, Administrative Director for the Board.

The meeting was called to order at 9:05 a.m. by Chairman Lingerfelt.

Bill Mowles of Precision Products and Frederick Bulger of Trimble Navigation Limited met with the board to discuss continuing education courses given through Missouri University of Science and Technology for Trimble and how to go about getting them preapproved.

A discussion was held on the changes to the Continuing Education rules.

The board continued reviewing applications for the April 2013 exam. The following applications were approved:

Britton Elmore (PLSIT)
Nicholas Haberman (PLSIT)
Grayson Smith (PLSIT)
Michael Ravon Maness
James Matthew McCrory
William Shane Ball
Michael Trevor Gorman
Christopher Scott Kneram
Jacob Daniel Schaffner
Jeffrey Tyler Vick

Craig B. Davenport
Patrick Steven Finn
Benjamin Avery Hardin
Ronnie Jackson Joiner
Brian Kelly Lovan
Wayne Alan Powers
Travis Norman Pruitt, Jr.
William Seabrook Sanders
David Eugene Simmons
William Thomas Smith

The following applications were denied:

Nicholas Lester Mansfield – does not qualify under 10 year rule per board policy

David Cochran - does not qualify under 10 year rule per board policy

Derek Scott Wagner - does not qualify under 10 year rule per board policy

Shane David Snoderly - does not qualify under 10 year rule per board policy nor does he meet the 24 hour requirement under Category B

Jason Lee Harris - does not qualify under 10 year rule per board policy

James M. Cherry, Jr. - does not qualify under 10 year rule per board policy

Troy Allen Ollar - does not qualify under 10 year rule per board policy

Jason Forsberg - does not qualify under 10 year rule per board policy nor does he have a four-year degree

William Robert Murphy - does not qualify under 10 year rule per board policy

Jason M. Barry - does not qualify under 10 year rule per board policy

There being no further business, the meeting was adjourned at 10:30 a.m.