



STATE OF TENNESSEE  
**BOARD OF EXAMINERS FOR LAND SURVEYORS**  
500 JAMES ROBERTSON PARKWAY  
NASHVILLE, TENNESSEE 37243-1166  
615-741-3611

**April 9- 10- 11, 2014 Minutes**  
**First Floor Conference Room (1-A), Davy Crockett Tower**

**Day One, April 9, 2014**

**MEETING WITH THE ENGINEER COMMITTEE**

The Board of Examiners for Land Surveyors met with the Engineering Committee April 9, 2014 in Nashville, Tennessee, at the Davy Crockett Tower in the first floor conference room. Mr. Hal Balthrop, A&E Board Chairman called the meeting to order at 1:00 p.m. and the following business was transacted.

**BOARD MEMBERS PRESENT**

Tim Lingerfelt  
Galyon Northcutt  
Sue Braly  
Jay Caughman; attended April 11, 2014

**STAFF MEMBERS PRESENT**

Day One: Donna Moulder, Robert Herndon, Eman Youssef  
Day Two: Donna Moulder, Robert Herndon, Eman Youssef  
Day Three: Donna Moulder, Robert Herndon, Eman Youssef

The Board of Examiners for Land Surveyors discussed with the Engineering Committee the plans for 2016 NCEES Southern Zone Meeting. They also discussed the Expedited Licensure for Military Spouses and Veterans.

**Day Two, April 10, 2014**

The Board of Examiners for Land Surveyors met April 10-11, 2014 in Nashville, Tennessee, at the Davy Crockett Tower in the first floor conference room. Chairman Tim Lingerfelt called the meeting to order at 9:00 a.m. and the following business was transacted.

**ADOPT AGENDA**

Vote: Mr. Galyon Northcutt made the motion to accept the agenda. It was seconded by Ms. Sue Braly. The motion carried unopposed.

Mr. Lingerfelt read the public meeting statement into the record, indicating that the agenda was posted to the Land Surveyor website on March 28, 2014.

## **MINUTES**

The minutes of the previous meeting held on January 30-31, 2014 were reviewed.

Vote: Mr. Galyon Northcutt made a motion to approve the minutes as written. Ms. Sue Braly seconded the motion. The motion carried unopposed.

In addition, the minutes of the 2014 TAPS Conference Surveyors Roundtable, held on March 22, 2014, were reviewed.

Vote: Ms. Sue Braly made a motion to approve the minutes as written. Mr. Galyon Northcutt seconded the motion. The motion carried unopposed.

## **CONTINUING EDUCATION CONFERENCE:**

### **MICHAEL BURNS –**

Mr. Burns was requested to appear before the board to discuss continuing education courses that were preapproved for Tennessee land surveyors with his father, William Burns, as the course instructor under the company name CEU Suite. The elder Mr. Burns passed away in April 2013. The younger Mr. Burns contacted the board office in October 2013 to notify us that his father passed away and asked what he needed to do to keep giving the courses that had been approved under his father. Mr. Burns was wrongly told that he would not have to do anything until the courses expired. Mr. Burns was issued a letter, per the board's direction, on February 4, 2014, "to cease and desist offering any continuing education courses until he has submitted his applications and met with the member of the board to discuss the applications."

Mr. Burns had a scheduled appointment and did not attend the meeting.

### **WILLIAM THOMPSON –**

The board office received a letter from Mr. Thompson on February 10, 2014 voicing his dissatisfaction with the board's decision to cut PDH hours (per the CE Advisory Committee's recommendation) on the seminars in which he recently applied. He asked that the board reconsider the PDH hours awarded to the seminars.

Vote: Mr. Galyon Northcutt made a motion to leave it as is with no change to the board decision. Ms. Sue Braly seconded the motion. The motion carried unopposed.

## **APPLICANT CONFERENCES:**

**BUDDY CURTIS** – request to retake the PS exam denied on January 31, 2014 due to the fact that Mr. Curtis is not licensed to practice surveying in any other state nor does he have a four-year college degree. Mr. Curtis has an Associates of Engineering degree with a major in Civil Engineering Technology from Nashville State Community College received on August 5, 1992. He has approximately 236 months of land surveying experience. Mr. Curtis's application was originally approved on September 6, 2002. Mr. Curtis is informed that he can reapply when the new law passes.

**BRET FERGUSON** – request to retake the PS exam denied on January 31, 2014 due to the fact that Mr. Ferguson is not licensed to practice surveying in any other state and he **applied** under TCA 62-18-109(c) (the "10 year rule"). He applied under TCA 62-18-109(c) on December 28, 2011 and the application was approved on February 2, 2012. Mr. Ferguson took the FS exam on April 4, 2012 in Tennessee and PASSED and took the TS exam on April 12, 2013 and PASSED. Mr. Ferguson originally applied for licensure in Tennessee on February 8, 2007 under Category C and was denied on

March 14, 2007 because “according to course list I, must have 24 hours. Could only find 5 hours. Needs to show us additional 19 hours. Course list II (12 hours) is complete.” Mr. Ferguson is informed that he can reapply when the new law passes.

**CHRISTIAN SHURTER** – request to retake TS exam denied on January 31, 2014 due to the fact that Mr. Shurter has no four-year degree and has only been licensed in NC since June 2009. Mr. Shurter’s application was originally approved on August 2, 2012. Mr. Shurter took TS exam on October 26, 2012 and FAILED with a score of 38. Mr. Shurter is informed that he can reapply when the new law passes.

**ROBERT MATTHEW GOODRUM** – request to retake the PS exam denied on January 31, 2014 due to the fact that Mr. Goodrum does not have a four-year degree nor is he licensed to practice land surveying in any other state. Mr. Goodrum applied under TCA 62-18-109(c) on July 29, 2011 and his application was approved on February 3, 2012. He took and PASSED the FS exam and FAILED the PS and TS exam in Tennessee on October 26-27, 2012. He took and FAILED the PS exam and PASSED the TS exam in Tennessee on October 25, 2013. Mr. Goodrum is informed that he can reapply when the new law passes.

**JOHN COKE SMITH IV** – request to retake the TS exam received in the board office on January 3, 2014 and request was denied on January 31, 2014 due to the fact that Mr. Smith has no four-year degree and has only been licensed in SC since June 17, 2008. Mr. Smith applied under TCA 62-18-109(c) on January 11, 2012. Mr. Smith’s application was originally approved on February 2, 2012. Mr. Smith took and FAILED the TS exam in Tennessee on April 13, 2012. He has not taken the exam in Tennessee since that date. Mr. Smith is informed that he can reapply when the new law passes.

**PHILLIP TAYLOR MICHAEL JONES** – requested to retake the PS AND TS exams on July 12, 2013. Mr. Jones’ retake request approved on August 2, 2013 for the October 2013 exams. Mr. Jones was scheduled for the exam but did not show up. He phoned the board office on November 12, 2013 regarding retaking the PS and TS exams. His request was denied because he does not have a four-year degree nor does he have a license to practice land surveying in any other jurisdiction. Mr. Jones has an Associates of Science degree from Pellissippi State CC received on May 20, 2001 with a major in “General Assoc of Science.” He has approximately 167 months of land surveying experience. Mr. Jones sent a letter to the board on March 31, 2014 requesting that the board members reconsider his denial. Mr. Jones is informed that he can reapply when the new law passes.

#### **DIRECTOR’S REPORT**

1. The Board needs to vote on whom to send to the 2014 Annual NCEES meeting in Seattle, WA August 20-23, 2014.
2. Rules of Professional Conduct – These rules are back at the Attorney General’s Office, having been reviewed once, corrected and returned.
3. Continuing Education – These rules are at the Attorney General’s Office for the first review, and we have not had any comments returned yet.
4. Received approval from the Assistant Commissioner to join the Colonial States on April 1, 2014. An email was sent to Doyle Allen, president of the Colonial States, requesting an invoice for payment, on April 2, 2014. Mr. Doyle

responded back on April 2, 2014 that he would send an invoice to submit for payment. As of this date, an invoice has not been received from Mr. Allen.

1. The board needs to review the following college courses requests:
  - Jerry Taylor – surveying courses at ETSU  
Mr. Taylor has attended the meeting; Mr. Lingerfelt requested ETSU classes on the Tier I, II & III lists to be sent to Director Donna Moulder, and it will be added to the Director's report for next board meeting, July 31, 2014.
  - Don VanHook – surveying courses at Chattanooga State CC and University of Tennessee-Chattanooga  
The Board requested to indicate in which list the courses will be; will be added to the Director's report for next board meeting, July 31, 2014.
  - Brandon Osbonlighter – surveying courses at University of Tennessee-Chattanooga  
The Board requested that Mr. Osbonlighter indicate in which list the courses will be; will be added to the Director's report for next board meeting, July 31, 2014.
  - Sandy Melhorn – surveying courses at University of Tennessee-Martin  
Moved to next meeting, July 31, 2014, to vote on all courses on one time.

Mr. Tim Lingerfelt requested a list of expired land surveyors/who did not renew, and asked if the administrative staff contact individuals who have expired Tennessee land surveyor licenses, informing them that they need to renew their license and they cannot practice land surveying while their license is in expired status. Director Donna Moulder informed the board that this is part of her daily work to send emails/letters to each individual in the expired list. The board requested a cease and desist phrase to be added to the letter and send the letter via certified mail.

#### **RULES AND PLANNING DISCUSSION ON CHAPTER 0820-1**

They discussed the proposed changes and gave Attorney Robert Herndon their suggested revisions to be written up in a draft for the next Board meeting, July 31, 2014

#### **REPORT OF SURVEY:**

Mr. Lingerfelt made the suggestion that the land surveyor provide the client with a report that identifies what happened in the survey. Mr. Lingerfelt will also discuss this with TAPS.

#### **NEW BUSINESS**

The board suggested creating an advisory committee, to include recommended land surveyors, photogrammetrists, and educators.

Vote: Ms. Sue Braly made the motion to adjourn the meeting. It was seconded by Galyon Northcutt. The motion carried unopposed.

There being no further business for day two, the meeting was concluded at 2:45 p.m.

### Day Three, April 11, 2014

Mr. Lingerfelt called the meeting to order at 9:00 a.m.

#### LEGISLATIVE REPORT:

##### **SB2375/HB2275**

Senate Sponsor: Senator Gardenhire

House Sponsor: Representative Swann

Status: Failed in Committee

Summary: This bill would require a land surveyor to review the property description of any document transferring title of real property prior to such a transfer. The land surveyor must then attest to the quality of the property description, and if the description could be retraced by a survey. The land surveyor must also determine if the description adequately describes or contains the information necessary to locate the real property. The bill limits the liability of the reviewing land surveyor to the cost of his or her professional services in reviewing the documents and does not compel the reviewing land surveyor to provide a survey or to perform a title search regarding the transferred property. Effective Date: July 1, 2014

##### **SB1931/HB2234**

Senate Sponsor: Senator Yager

House Sponsor: Representative Calfee

Status: Passed the House and Senate

Summary: With amendments this bill allows a person to become a licensed surveyor without a college degree if the person has had practical training and experience working under the supervision of a registered land surveyor. The applicant must pass all three fundamental examinations. Effective Date: This takes effect immediately.

#### LEGAL REPORT

Mr. Robert Herndon presented the legal report for review. The recommendations and votes were as follows:

##### **1. Complaint #201400134 -**

This complaint mirrors a previous complaint submitted by the Complainant's sibling (Complaint # 2013023961). The complaint alleges that the Respondent, a licensed land surveyor, committed misconduct by failing to notify interested parties of apparent discrepancies, placing iron rods above ground level, by being influenced by another interested party to the point of a conflict of interest, by failing to divide the property according to the decedent's wishes, and by not supplying and plats. *NOTE: One recent previous complaint has been filed against Respondent with the same facts, and the Board voted to close the case for lack of disciplinary grounds.* The complaint materials were forwarded to a contracted complaint reviewer for analysis to determine if probable cause exists for discipline. The findings of the complaint reviewer are as follows:

This matter is a boundary dispute between heirs of an estate. A review of the court documentation clearly shows that the Complainant is not pleased with the final division of land. Further findings are that the placing of iron pins was adequately explained, and nevertheless at the discretion of the surveyor, that no proof of undue influence is given, and that the correct division of land is defined by the court. The reviewer states that the additional information submitted in the new complaint does not change the findings in the initial review.

**Recommendation: Close the case for lack of disciplinary grounds.**

Vote: Mr. Galyon Northcutt made a motion to approve the counsel recommendation. Ms. Sue Braly seconded the motion. The motion carried unopposed.

**2. Complaint #201400230 -**

The complaint alleges that Respondent, a licensed surveyor, falsely testified to the court in an active lawsuit and falsified documents relating to Respondent's survey. Complainant further asserts that there are additional items in the survey that are incorrect and false. The Complainant states that Complainant is the Plaintiff in a lawsuit against a neighbor ("Defendant"), who is Respondent's client, and others. The lawsuit states that a row of culverts were installed on Defendant's property, which caused Complainant's property to flood. Complainant states that Respondent testified that the Defendant's property had a fifteen foot water easement around it, and the ditch was a drainage ditch for the subdivision. Additionally, Complainant states that the subdivision's drain and row of culverts are located on the Defendant's property. Complainant asserts that Respondent deliberately put these in the wrong place on Respondent's survey to prepare for court testimony. Complainant states that an additional survey was submitted showing the correct location of the drain and culverts, but only handwritten markings to Respondent's survey were submitted. Complainant further asserts that Respondent changed the location of the drainage ditch. Complainant also states that Respondent misled the court into thinking there was a 30 foot easement but there is a 7 ½ foot utility easement, told Complainant there was a 50 foot easement on Complainant's property, misplaced a utility pole on the Defendant's property, and moved the marker on Complainant's property. Complainant also submitted pictures regarding the above allegations.

The Respondent submitted a response through an attorney and stated that the Defendant of the aforementioned lawsuit hired Respondent to perform a survey for purpose of litigation. Respondent was instructed to identify and locate the drainage easements along the lots as established by the subdivision plat and restrictive covenants, and locate any drains, grates, or culverts located within those drainage easements. Respondent admits that Respondent denied completing a survey for Complainant due to a conflict of interest. Additionally, Respondent denies allegations of setting or removing iron pins and that Defendant's corners were already marked by iron pins. Respondent stated that one of Complainant's iron pins was bent and buried and Respondent used a metal detector to find it and uncovered it. Respondent submitted the survey and the subdivision plant showing that the location of the utility and drainage easements are consistent. Respondent stated that the only culvert is located in the area of the utility and drainage easement along the common side lot line. Respondent

states that the survey accurately depicts the boundaries and existing iron pin monuments, the location of the 7 ½ foot utility and drainage easements, the 10 foot utility and drainage easements, the setback lines, a drainage ditch, and utility poles. Further, Respondent denies that any evidence was manufactured in court.

The complaint materials were forwarded to a contracted complaint reviewer for analysis to determine if probable cause exists for discipline. The findings of the complaint reviewer are as follows:

The Reviewer did not find any problems with Respondent's survey and verified that it matches the plat of record. Respondent followed a request from client (Defendant) and showed additional information such as setbacks, easements, poles and drainage locations. Additionally, Complainant references an additional survey, but Reviewer did not find any additional surveys in the complaint, only Respondent's survey that is marked in red ink. It is not clear if this is the survey that Complainant refers to. Reviewer also found that due to a conflict of interest, Respondent refused to survey for Complainant, which is the correct thing to do according to industry practice.

**Recommendation: Close the case for lack of disciplinary grounds.**

Vote: Mr. Jay Caughman made a motion to approve the counsel recommendation. Mr. Gaylon Northcutt seconded the motion. The motion carried unopposed.

**3. Complaint #201302351 -**

This complaint alleges that the Respondent's firm (of which Respondent, a licensed surveyor, is one of the principals) committed misrepresentation or fraud and breach of duty in violation of in violation of TENN. CODE ANN. §§ 62-18-116(a)(1)(B) (Denial, suspension or revocation of certificate – Disciplinary action) and 62-18-126 (Nonmonumentation procedures authorized as closing or loan surveys).

The complaint was submitted in addition to a complaint submitted by Complainant's sibling to Consumer Affairs. The Complainant states that Complainant hired the Respondent's firm to survey and divide the inherited estate property. In March or April 2011, a survey was completed and physical monuments (iron pins and ribbons) were placed to indicate the boundary line between the inherited properties. In August 2013, Respondent's firm performed a survey for the new owners of the property and placed new iron pins away from the original iron pins, leaving the original ones in its place. After speaking with the Complainant's sibling, Respondent's firm returned to the properties and removed the original iron pins and moved the new iron pins, an act which the Complainant protested. Additionally, Complainant states there are discrepancies between overall land area and right-of-way dedication which was addressed by the Respondent in the Respondent's answer to Consumer Affairs. The Complainant states that the Respondent told the Complainant's sibling that two surveys were done because the first partition survey would not pass according to the local planning commission, and the Complainant states that the plat in question represents a mixture of the two surveys.

A letter was submitted to Consumer Affairs by the Respondent stating that the Complainant hired the Respondent's firm to divide the property equally by area so that each sibling would acquire an equal share of the property. The Respondent's firm

determined and advised the Complainant and the Complainant's sibling that the property is governed by the local planning commission, which requires roadway dedications during the subdivision process. Respondent's firm performed a survey, calculated and represented the required roadway dedications, and equally divided the property by area after roadway dedications. Respondent's firm also placed property pins at each end of the divisional line at the time. Respondent stated that the roadway dedication created multiple building setbacks and issues in excess of the existing setback issues, and the planning commission would require the firm to contact the Board of Zoning Appeals to acquire variances associated with the setback violations. The Respondent asserts that this would be difficult to do, so the planning commission advised the firm to process the plat through "Exempt Plat for Estate Purposes" which would not require roadway dedications or variances. The Respondent admits that the firm processed the "Exempt Plat for Estate Purposes" by producing the plat, addressing the planning commission's comments, acquired all signatures, and recorded the plat. The Respondent admits that the firm failed to relocate the property pins associated with the new property lines, but upon discovery of the oversight, the firm reset the property pins according to the recorded plat. The Complainant's sibling contacted the Respondent, and the Respondent researched the discrepancy and stated that the newly staked property lines were correct according to the plat of record. Further, the Respondent states that the Complainant and the Complainant's sibling met with the firm and afterward were comfortable that the firm divided their property per their requests.

The Respondent's attorney submitted a response to the complaint denying that the Respondent did anything wrong, and the Complainant's sibling simply wants a monetary settlement from the Respondent's firm. The Respondent's attorney submits that the Complainant's sibling signed off on the final plat after the Respondent's firm explained the discrepancies with the plat, which the attorney asserts gave the Complainant's sibling more land. The Respondent's attorney further affirmed the Respondent's comments as outlined in the response to Consumer Affairs above.

In response, the Complainant's sibling submitted additional information to the Board stating that the Complainant's sibling intended to file the complaint with Consumer Affairs sooner but needed to gather the documentation and was waiting on the results from an additional survey that was done about August of 2013. The Complainant's sibling states that the new survey could not be matched up to the plat with all the physical monuments on the property. The Complainant's sibling also states that the sibling was advised by an attorney to try to settle outside of court, that the money was to reimburse the Complainant for monies paid to the Respondent's firm, and that recouping the survey price is the only recourse available with a Consumer Affairs complaint. The Complainant's sibling stated the sibling never spoke with the Respondent's firm officially regarding the change of divisional lines and the two surveys until September of 2013. At that time, the Complainant's sibling did not agree to do anything except drop the Consumer Affairs complaint. Complainant's sibling re-asserts that sibling protested to the removal of the original pins. Complainant's sibling also states that the complaint was not submitted to receive money but instead requests that the plat and physical monuments be re-done. The Complainant's sibling also states that a mistake was made at the time of signing. Further the Complainant's sibling states that because the Respondent admitted to Consumer Affairs that there was an error made when the original pins were not removed, that the Respondent was negligent.

The complaint materials were forwarded to a contracted complaint reviewer for analysis to determine if probable cause exists for discipline. The findings of the complaint reviewer are as follows:

With regard to TENN. CODE ANN. § 62-18-116(a)(1)(B) (Denial, suspension or revocation of certificate – Disciplinary action), the Reviewer concluded that when conducting the first division of the property, the Respondent did not have proper knowledge about the division of inherited property being exempted from local planning requirements. After the plat had been submitted to Planning Commission Agency and after monumentation, the Respondent was advised by the local planning that the division of property would meet the requirement of “Exempt Plat for Estate Purposes.” The Respondent then advised the Complainant about the new plat process. However, during the new division process, the Respondent failed to remove the old division corners and establish new property corners, which created confusion for the Complainant. With regard to TENN. CODE ANN. § 62-18-126 (Nonmonumentation procedures authorized as closing or loan surveys), this statute does not apply because the pins and ribbons were staked. The Reviewer found that the Respondent lacked knowledge about division of property and did not replace property corners in a timely manner, which is in violation of TENN. COMP. R. & REG. 0820—04—.03 [SERVICES IN AREAS OF COMPETENCE]. The Reviewer also found that the survey does not show actual unadjusted ratio of precision in violation of TENN. COMP. R. & REG. 0820—03—.07(1)(b)(7) [SURVEY TYPES AND REQUIREMENTS]. There is no complaint history for this Respondent.

**Recommendation: Board discussion to determine adequate discipline.**

After discussion; Vote: Mr. Jay Caughman made a motion to close the case with no further action. Mr. Gaylon Northcutt seconded the motion. The motion carried unopposed.

**4. Complaint #201302220 -**

This complaint was brought against the Respondent, a licensed land surveyor, for conviction in court of competent jurisdiction of a felony in violation of TENN. CODE ANN. § 62-18-116(a)(1)(E) (Denial, suspension or revocation of certificate – Disciplinary action). The Respondent was convicted of “Theft of Services-\$10,000 - \$60,000.” The case alleged misconduct of the Respondent, who is an elected highway commissioner, with respect to projects under the Respondent’s supervision.

The Respondent answered the complaint after the fourteen (14) day requirement and stated that the Respondent had never pled guilty to any offenses. The Respondent was indicted on 7 charges, but was only found guilty of 1 (after an appeal). The Respondent states that the charge was assessed because the Respondent knew the developer who bought the land after the work was completed. The Respondent states that the Respondent is currently awaiting a second appellate decision for the conviction.

**Recommendation: Authorize a formal hearing with authority to settle with a Consent Order for revocation of license if the appeal fails and for dismissal if the appeal is successful and all charges are vacated.**

Vote: Mr. Jay Caughman made a motion to approve the counsel recommendation. Ms. Sue Braly seconded the motion. The motion carried unopposed.

## 5. Complaint #201302614 -

The Complaint alleges that the Respondent, a licensed land surveyor, failed to notify the Complainants regarding a disputed boundary line in violation of TENN. CODE ANN. § 62-18-124(d) (Right-of-entry – Liability – Notice to landowners – Injunctions). Specifically, the Respondent was hired to provide a survey by the Complainant's neighbor with adjoining property. The Complainant states that during the survey, a pin was placed inside the Complainant's chicken lot. The Complainant states that he/she had no knowledge that a survey was being performed, and that the Respondent had to cross an old fence line to place the pin. The Complainants hired a surveyor, who disagreed with the Respondent's survey. A lawsuit was filed in court, and the Complainants state that the judge rejected both surveys.

The Respondent answers that the survey performed in 2007 was based on information from deeds, former property owners, current property owners and monuments. The Complainants didn't notify the Respondent of their disapproval of the survey until April, 2012. The Respondent states that the Respondent was not negligent in performing the survey and stated the cross fence was pointed out by the Respondent's client and was not a boundary line. The Respondent believes that TENN. CODE ANN. § 62-18-124(d) on "right of entry" is being misapplied. The Respondent does not agree with the survey performed by the Complainant's surveyor and stated that the new survey was completed after their discussions and after the court ordered it to be completed. The Respondent states that four other surveys contradict the new survey provided by the Complainant's surveyor. The Respondent believes that the Complainant's surveyor was trying to acquire an aggregate amount of 40 acres for the Complainant in order to meet state requirements to drill a gas well. The Respondent believes this is misconduct pursuant to TENN. CODE ANN. § 62-18-116(a)(1)(B), (C), (D) (Denial, suspension or revocation of certificate – Disciplinary action) and TENN. COMP. R. & REG. 0820—04—.02(1) [PROPER CONDUCT OF PRACTICE]. The Respondent agrees with three surveys previously recorded, which were presented at trial, and disagrees with the new survey performed by the Complainant's surveyor.

The complaint materials were forwarded to a contracted complaint reviewer for analysis to determine if probable cause exists for discipline. The findings of the complaint reviewer are as follows:

The complaint was reviewed with regard to TENN. CODE ANN. § 62-18-116 (a)(1)(B) regarding Respondent's "incompetency, misconduct or gross negligence" and TENN. CODE ANN. § 62-18-126 (Nonmonumentation procedures authorized as closing or loan surveys). The reviewer noted that the court decided in favor of Complainant's neighbor and concluded that there was no evidence presented indicating the Respondent was negligent.

**Recommendation: Close the case for lack of disciplinary grounds.**

Vote: Mr. Jay Caughman made a motion to approve the counsel recommendation. Mr. Gaylon Northcutt seconded the motion. The motion carried unopposed.

## **6. Complaint #2013026191 –**

This complaint references the above complaint, where Complainants stated that the Respondent, a licensed surveyor, was negligent and fraudulent in conducting a survey in order to protect the previous Respondent.

The Respondent answered the complaint by stating that the Respondent conducted a survey for one of the neighbors re: adjoining property of the Complainant, which was the subject matter of a lawsuit. The Respondent rejects allegations of being negligent or committing fraud. The Respondent used evidence gathered in the field, documentation, deeds, testimony, and statements from residences familiar with the history of the property and three surveyors involved in the litigation to conduct the Respondent's survey. The Respondent states that the judge agreed with the Respondent's placement of the east property line and rejected the Complainant's surveyor's placement. The Respondent states that the judge accepted the Complainant's surveyor's placement of the northern property line and rejected the Respondent's placement. The Respondent further states that the Respondent gathered information from the previous Respondent's survey but independently reviewed the subject deed of record; however, the change in dimension line did not change the eastern boundary line which the Respondent placed and which was accepted by the judge. The Respondent further states that the adjoining boundary or property lines were not adjusted or relocated by the Respondent's revision of the "dimension line." Further, the Respondent states that the Complainant is mistaken in the Complainant's statement that the judge "completely rejected" the survey performed by the Respondent. Further, the Respondent denied that the northeast corner was placed in error and contrary to the decree of the Court. The Respondent attached the court exhibits showing photographs with the plat as found by the court. Finally, the Respondent states that a final survey has not been submitted to the court for approval.

The complaint materials were forwarded to a contracted complaint reviewer for analysis to determine if probable cause exists for discipline. The findings of the complaint reviewer are as follows:

The complaint was reviewed with regard to TENN. CODE ANN. § 62-18-116 (a)(1)(B) (Denial, suspension or revocation of certificate – Disciplinary action) regarding Respondent's "incompetency, misconduct or gross negligence" and TENN. CODE ANN. § 62-18-126 (Nonmonumentation procedures authorized as closing or loan surveys). The Reviewer noted that the court decided in favor of the Complainant's neighbor and concluded that there was no evidence present indicating that the Respondent was negligent.

**Recommendation: Close the case for lack of disciplinary grounds.**

Vote: Mr. Jay Caughman made a motion to approve the counsel recommendation. Mr. Gaylon Northcutt seconded the motion. The motion carried unopposed.

7. **Complaint #201400233 –**
8. **Complaint #201400234 –**

The Complainants are related and filed two (2) separate complaints against the same Respondent and with the same facts. The complaints were filed against the Respondent, a licensed surveyor, for failure to research common boundaries in violation of TENN. CODE ANN. § 62-18-127 (Duty to research common boundaries), failure to notify adjoining regarding a discrepancy in violation of TENN. CODE ANN. § 62-18-124 (Right-of-entry – Liability – Notice to landowners – Injunctions), failure to provide an accurate survey in violation of TENN. COMP. R. & REG. § 0820—03—.05(2) [ACCURACY OF SURVEYS], and providing inaccurate testimony in violation of TENN. COMP. R. & REG. 0820—04—.04(2) [PUBLIC STATEMENTS].

The Complainants hired a land surveyor to survey their land (Lot # 4) in 2009. In 2012, the Respondent surveyed the same land as an expert witness in a lawsuit the Complainants were involved in. The Complainants state that the Respondent testified in court that the Respondent could not find any pins, except one at the corner of Lot 6. The Complainants also state that the Respondent testified that the Respondent re-created a survey. Further, the Complainants state that the Respondent moved the corner pin between Lots 1, 2, and 4 and attached a photo. Further, the Complainants state that the Respondent's survey does not match the initial survey done by their surveyor, which reduces the land from 96 ft. to 85.78 ft. Further, the Complainants state that the original deed for the Respondent's client's land shows 205.65 ft., that another deed shows 209, and finally 214 ft. Finally, the Complainants' state that the Complainants were in the process of replacing a fence according to the original property line, but that the Respondent's client removed the wood post, claiming the property was not the Complainants.

The Respondent answered the complaints stating that the Respondent was hired by client who has adjoining property to Complainants. The Respondent discovered discrepancies between the existing iron pins and fencing and title distances in client's deed and the Complainant's deed. The Respondent made his client aware of these discrepancies, which led to trial regarding disputes over property lines, fencing, and storm water run-off problems, where the Respondent served as an expert witness. The Respondent states that the plat was produced for litigation purposes to show the court the relation between existing pins, fencing and deed dimensions. The Respondent denies setting any pins or stakes the mark the subject boundary lines. The Respondent further states that the person in the photographs submitted is not the Respondent. The Respondent's client requested the Respondent to mark the boundary lines in accordance with the court ruling, which would require the Respondent to go inside the Complainants' fenced and gated yard, the fencing of which had not been removed per court order. The Respondent states that the Respondent contacted the Complainants, but that the Complainants were not willing to let the Respondent in the yard. The Respondent also states that the Respondent was unable to locate the recorded copy of the original subdivision plat and created a worksheet based on the deed descriptions, but the Respondent states that the Respondent never re-created a survey as alleged.

The complaint materials were forwarded to a contracted complaint reviewer for analysis to determine if probable cause exists for discipline. The findings of the complaint reviewer are as follows:

The complaint was reviewed with regard to TENN. COMP. R. & REG. § 0820—04—.04 [PUBLIC STATEMENTS], TENN. CODE ANN. § 62-18-127 (Duty to research common boundaries), and TENN. CODE ANN. § 62-18-124 (Right-of-entry – Liability – Notice to landowners – Injunctions) and noted that no evidence was provided regarding the three (3) aforementioned claims. With regard to TENN. COMP. R. & REG. § 0820—03—.05 [ACCURACY OF SURVEYS], reviewer found that the certificate class and accuracy of survey does not show actual unadjusted ratio of precision.

**Recommendation: Close the case for lack of disciplinary grounds.**

Vote: Mr. Gaylon Northcutt made a motion to approve the counsel recommendation. Mr. Jay Caughman seconded the motion. The motion carried unopposed.

Vote: Mr. Gaylon Northcutt made a motion to send Tim Lingerfelt and Jay Caughman to the 2014 Annual NCEES meeting. Ms. Sue Braly seconded the motion. The motion carried unopposed.

Vote: Mr. Gaylon Northcutt made a motion to adjourn the meeting. Mr. Jay Caughman seconded the motion. The motion carried unopposed.

There being no further business, the meeting was adjourned at 11:20 a.m, April 11, 2014.