



**TENNESSEE BOARD OF EXAMINERS FOR LAND SURVEYORS
500 JAMES ROBERTSON PARKWAY
NASHVILLE, TENNESSEE 37243
615-741-1831**

**Board Meeting Minutes for July 25, 2019
First Floor Conference Room (1-B)
Davy Crockett Tower**

The Board of Examiners for Land Surveyors met on July 25, 2019 in the first floor conference room of Davy Crockett Tower in Nashville, Tennessee. Mr. Tim Lingerfelt, Board Chairman, called the meeting to order at 9:00 a.m. and the following business was transacted:

BOARD MEMBERS PRESENT: Tim Lingerfelt, Jed McKeegan, Jackie Dillehay, and Jay Caughman

BOARD MEMBERS ABSENT: None

STAFF MEMBERS PRESENT: Roxana Gumucio, Erica Smith, Stuart Huffman, Jamye Carney, Angela Nelson

NOTICE OF MEETING

Mr. Lingerfelt called the meeting to order and then read the notice of meeting into the record as follows: "Notice of the July 25th, 2019 meeting of the Board of Examiners for Land Surveyors was posted to the Board of Examiners for Land Surveyors website on July 17th, 2019."

ADOPT AGENDA

Mr. Lingerfelt made a motion to adopt the agenda as written, but to allow for flexibility. This was seconded by Mr. McKeegan, and the motion passed unanimously.

MINUTES

After a brief review of the minutes from the board's May meeting, Mr. Dillehay put forth a motion to adopt them as written. Mr. Caughman seconded the motion, and the motion passed unanimously.

ROLL CALL

Director Gumucio took roll noting those board members who were present, and stated that Mr. Caughman was present via telephone. There were no absent members.

ELECTION OF OFFICERS

Mr. Lingerfelt notified the board that officers needed to be elected. Mr. Caughman motioned that Mr. Lingerfelt be elected Chairman and Mr. Dillehay be elected Vice Chairman. Mr. McKeegan seconded the motion, and the motion passed unanimously.

APPEARING BEFORE THE BOARD

Mr. Bill Thompson appeared before the board via telephone to discuss recent denial of his proposed continuing education courses and credits. Mr. Lingerfelt explained the board's reasoning for the denial and all board members stood by the decision. Mr. Thompson sent a follow-up email requesting that the Standards of Practice course be increased from one (1.0) PDH hour to two (2.0) PDH hours and the board agreed to this request.

****Mr. Caughman exited the meeting****

The board took a 10 minute break and reconvened at 10:23 a.m.

Mr. Mario Forte, Vice President of TAPS, appeared before the board to discuss ideas for educating members about ethical violations concerning courses being reported as completed when they had not been and courses that had not been properly paid for. There were no items that were discussed which were actionable or required a vote.

Mr. Johnny Kerr appeared before the board to discuss the reasons for his continuing education course renewals being denied. Mr. Kerr discussed the merits of his courses and his approach to instruction. Mr. Lingerfelt stated that they had made an error in their decision and the board would approve the courses as part of the Education Report.

EDUCATION REPORT

Mr. Dillehay made a motion to approve the education report as amended to approve Kerr Seminars, which was seconded by Mr. McKeegan. The motion passed unanimously.

COURSE	COURSE PROVIDER	BOARD APPROVED/DENIED PDH's
"Health and Safety in Surveying-Field and Office"	Alabama Society Professional Land Surveyors (ASPLS)	Approved 4.0
"ALTA/NSPS Land Title Surveys-A Field Perspective"	Alabama Society Professional Land Surveyors (ASPLS)	Approved 4.0
"Expert Witness Testimony for Surveyors and Engineers"	Alabama Society Professional Land Surveyors (ASPLS)	Approved 4.0
"Land Surveyors as Equity Judge"	Alabama Society Professional Land Surveyors (ASPLS)	Approved 4.0
"Floodplains and FEMA/NFIP"	Geomatics Workshop-Bill Tingle	Approved 8.0
"2019 Ethics and Standards of Practice"	Kerr Seminars-Johnny Kerr	Approved 2.0
"Dangers to Surveyors-Part 2"	Kerr Seminars-Johnny Kerr	Approved 4.0
"Situations Surveyors Encounter-Part 1"	Kerr Seminars-Johnny Kerr	Approved 4.0
"Situations Surveyors Encounter-Part 2"	Kerr Seminars-Johnny Kerr	Approved 4.0
"Surveyors Leading by Example and Dealing with Difficult People"	Kerr Seminars-Johnny Kerr	Approved 4.0
"CFS Biennial Exam"	TAPS Annual Conference-Mario Forte-52 nd Annual 2020-2021	Approved 1.0

"Intro to the Certified Floodplain Surveyor (CFS)"	TAPS Annual Conference-Mario Forte-52nd Annual 2020-2021	Approved	4.0
"Certified Floodplain Surveyor Program-Certification Renewal"	TAPS Annual Conference-Mario Forte-52nd Annual 2020-2021	Approved	4.0
"Ethics"	TAPS Annual Conference-Mario Forte-52nd Annual 2020-2021	Approved	1.0
"Fundamental Elements of Geodesy"	TAPS Annual Conference-Mario Forte-52nd Annual 2020-2021	Approved	4.0
"The History of Geodetic Datums of the United States"	TAPS Annual Conference-Mario Forte-52nd Annual 2020-2021	Approved	4.0
"Mapping from Point Clouds"	TAPS Annual Conference-Mario Forte-52nd Annual 2020-2021	Approved	4.0
"Riparian Rights in Tennessee"	TAPS Annual Conference-Mario Forte-52nd Annual 2020-2021	Approved	4.0
"TDOT-Research, Maps, Tips & Best Practices"	TAPS Annual Conference-Mario Forte-52nd Annual 2020-2021	Approved	4.0
"Principles & Practice II"	Lucas & Company, LLC	Denied	
"Ethics-Webinar Version"	Southeast Chapter of TAPS - (Forte)	Approved	1.0
"TN Standards of Practice-Webinar Version"	Southeast Chapter of TAPS - (Forte)	Approved	1.0
"Eminent Domain & Adverse Possession"	SURVEYPDU.COM - (Tuftes)	Approved	4.0
"Principles & Practices III"	Lucas & Co, LLC	Approved	1.5
"Ethics XIX"	Lucas & Co, LLC	Approved	1.5
"Ethics"	William Thompson	Approved	2.0

LEGAL REPORT (Presented by Erica Smith)

1. 2019043111

Respondent:

License Status: – ACTIVE, NOT APPLICABLE

First Licensed: 5/23/2012

License Expiration: 12/31/2019

Disciplinary History: None

Summary: Complainant's parents hired Respondent to survey five acres of land adjoining the parents' property which they wanted to purchase from their neighbor in the fall of 2018. Respondent performed the survey and was paid \$600. Complainant claims that her parents have tried for over six months to obtain the two paper plat copies allegedly promised by Respondent. Respondent had emailed the digital plats to the Complainant and the closing attorney after the survey was complete. Respondent has since provided the paper plats to Complainant for her parents as requested. There is no evidence of any violations therefore Counsel recommends dismissal of this complaint.

Recommendation: Dismiss

BOARD DECISION: The Board accepted counsel's recommendation.

2. 2019053111

Respondent:

License Status: – ACTIVE, NOT APPLICABLE

First Licensed: 7/24/2001

License Expiration: 12/31/2019

Disciplinary History: None

Summary: Complainant hired Respondent to survey a property on 3/31/19 after Respondent had “performed excellent work for [Complainant’s] home property in 2006...”. Respondent was quick to perform the requested survey but Complainant claims they did not receive the promised sealed/stamped original version showing the survey results which Complainant needed to take to their county agency to register. Respondent provided an email with a sketch of the survey on 5/24/19. Complainant requests assistance in obtaining the original survey from Respondent. Respondent and Complainant confirmed that this matter was resolved immediately after this complaint was filed and Respondent has provided everything that Complainant needed and requested. Counsel recommends dismissal of this complaint because there is no evidence of any violations.

Recommendation: Dismiss

BOARD DECISION: The Board accepted counsel’s recommendation.

Re-Presents

3. 20150215801

Respondent:

License Status: – ACTIVE, NOT APPLICABLE

First Licensed: 4/25/1980

License Expiration: 12/31/2019

Disciplinary History: 2007 Consent Order, 2011 Consent Order, 2011 Consent Order

*This complaint was filed by a consumer and alleged that the respondent inserted an easement into a legal description and survey that he knew was false because he created it as part of scheme to sell lots on false pretenses. The complaint alleges that the respondent along with the owner of an adjacent property worked together to erase an easement that had been granted in perpetuity, once in 1999 and again in 2015. This easement shall be called **X Lane**. The complainant who is a realtor caught this mistake in the 1999 survey and questioned the respondent before the sale of land. The respondent allegedly threatened to draw a road through the middle of the property for sale if he didn’t back down. IN the 2015 survey the easement was completely erased. The respondent and the other land owner suggested the respondent buy a tract of land so as to have road access, despite the easement that should have been available to him. The respondent has never replied to the department regarding this complaint.*

This complaint was sent to an expert reviewer along with all maps, deeds, contracts and photos provided by the complainant. The reviewers overall conclusion was that the Surveyor had violated standards of practice and exhibited a clear lack of general surveying knowledge/law. He found him to be overall, incompetent.

Specific violations included:

Monumentation

Violation by ignoring call for X Lane (Critical Monument Location) and indicating a 24" Red oak tree for a 10" Gum tree (called out in deed). No evidence provided by surveyor, about any marking located on 24" red oak tree given credence for using the red oak vs locating a.:Gum tree that would be larger diameter now closer to X Lane. X lane location verified by Reviewer based upon review of USGS Maps dated 1936 and 1950 copies attached.

Incompetence

- 1. Original deed description calls for property to edge of Y River-Survey signed and dated by Respondent (not signed) appears to indicate the center of Y River. No text call indicating whether line is centerline of river or edge of river as called for in deed.*
- 2. Surveyor attempted to place property lines on ground using exact distances called for in deed apparently not considering the differences of old surveying methods as compared present day surveying technology.*
- 3. Existing X Lane (Critical Monument Location) ignored easily verified by examining USGS maps. Ignoring calls in deed for X Lane and Named trees indicate lack of surveying law knowledge or incompetence. Concur with Respondent property should border road known as X Road by deed.*
- 4. Moving property line from X Road location land locks Complainant's property.*
- 5. No response about complaint provided by surveyor. Indication of incompetence not willing to defend his actions.*

Accuracy Of Survey

Survey states a Category 1 Survey and that the ratio of precision of the unadjusted survey as 1:10,000. This is a direct violation of Standards of Practice. Impossible to be exactly 1:10,000. He must show precision of unadjusted survey.

Seals

- 1. (Three Surveys provided by Complainant do not bear the registrant's seal required by TCA 62-18-119.*
- (8) Three surveys bearing the same date each different without a revision note.*

Recommendation: Authorize for formal hearing. Allow authority to settle by consent order assessing Revocation.

Board Decision: Concur.

New Information:

The Respondent is 75 years old and has informed Counsel that he is retired. Respondent has also been diagnosed with cancer which he is being treated for.

The reviewer who completed the original expert review for this matter is no longer performing expert services for this Department. Therefore, Counsel sent this matter to a new expert who reviewed this matter and provided a new expert review. Additionally, the Respondent was never provided a chance to respond to this matter until recently. Respondent provided a response immediately upon Counsel's request and his response was provided to the expert reviewer.

The new expert provided a land surveying review report after reviewing the documents related to this matter. The expert noted that although the Complainant seemed to have several good points in his argument, the Respondent provided explanations in his response that were believable to the new expert. The expert prepared an overlay of Respondent's survey with the 1950 USGS Map. The overlay reasonably lines up with Respondent's survey but the expert cannot render an opinion on this alone and states that the Complainant must get the property surveyed again in order to get a clear view of any discrepancies alleged. The expert is unable to form an opinion without a new survey and we cannot use the prior expert review if Respondent were to contest this matter further.

No complaints have been filed against the Respondent since this 2015 complaint at issue. Considering the Respondent's age and health, the lack of an expert opinion without a new survey and the age of this complaint, Counsel recommends discussing this matter considering the fact that we do not have enough evidence at this point to move forward with a revocation. We can discuss the possibility of requiring the Complainant to get a new survey if the Board wishes to proceed with a revocation.

New Recommendation: Discuss

New Board Decision: The Board requested that legal send this matter to another expert to be reviewed.

New Information: At the request of this Board, this complaint file was recently reviewed in its entirety by a Board member. The complaint focuses on the Complainant's allegations of collusion and deceit by the Respondent and the owner of adjoining property. The new review indicated that there was no evidence that Respondent engaged in collusion or deceit but found the Respondent's actions did contribute to making the issue at hand more complex. Additionally, the new review notes that Respondent appears not to have reviewed and related prior land descriptions (deeds), surveys and historical records in his survey work for Complainant's property and the adjoining property and the lack of professional care perpetuated the situation with Complainant. The new review also notes that Respondent exhibited a lack of general boundary surveying knowledge and meets a level of incompetence. Respondent did not meet the accepted standard of care for this industry and committed multiple violations as follows:

- ***Rule 0820-04-.02(3) Proper Conduct of Practice* – Respondent failed to respond to correspondence from the Board**

- **Rule 0820-04-.03(5) Service in Areas of Competence** – Respondent failed to use the proper standard of care
- **Rule 0820-03-.06(4) and (7) Maps and Mapping** – Plat lacks statement about lines not actually surveyed (river); and Respondent did not show visible and apparent items in crossing property
- **Rule 0820-03-.07(1)(a) and (1)(h)(4) Survey Types and Requirements** – Plats are not sealed by Respondent; and no offset monument was placed as a reference where line entered river
- **Rule 0820-04-.08(2) and (8) Seals** – A seal was not placed on the plats; and multiple plats were reviewed and only one had a revision date.

New Recommendation: Discuss new findings and civil penalty for violations committed – void Consent Order for revocation and authorize new discipline in the form of a civil penalty

NEW BOARD DECISION: The Board elected to authorize a formal hearing with permission to send a consent order with a civil penalty of \$6000.00 for the above violations or in the alternative voluntary surrender of license.

DIRECTOR'S REPORT

Budget

Director Gumucio provided a detailed accounting of revenue and expenditures for the current fiscal status. Director Gumucio explained that while funds are low, that is normal for the time of year and they will go up during the renewal period, beginning in October.

2019 Renewal Form Update

Director Gumucio went over the updates made to the 2019 Renewal Form and the board discussed them. The board made several recommendations for changes to streamline the form. Director Gumucio stated that she will make those changes and submit the form back to the board for review.

NEW BUSINESS

Comity Applicants

Mr. Lingerfelt requested that the ongoing discussion regarding comity applicants be deferred due to the absence of Mr. Caughman at this point in the meeting.

Application Review Process

Mr. Lingerfelt presented to the board some concerns he had about recent applications the board has received, including issues regarding plat consistency and adherence to Tennessee standards. The board discussed these concerns at length and determined that in order to address them, a change to the application rules may be needed. Director Gumucio suggested that the board provide proposed language changes for the rules regarding the application process that can be submitted for legal review. Director Gumucio stated that she would follow up with the board via email for a redline rules review and to add the topic to the October meeting agenda.

Expert Reviewers

Mr. Lingerfelt requested the discussion regarding expert reviewers be deferred due to the absence of Mr. Caughman at this point in the meeting.

NCEES Annual Meeting – Washington, D.C.

The NCEES Annual Meeting will be taking place August 13th-17th, 2019 in Washington, D.C. Director Gumucio stated that she and Mr. Huffman would be attending beginning on August 14th. Mr. Lingerfelt, Mr. Dillehay, and Mr. Caughman will also be in attendance.

Board Meeting Dates 2020

Director Gumucio relayed to the board the meeting dates for 2020. The board agreed the meeting scheduled for April 23rd, 2020 needed to be rescheduled. Mr. Dillehay made a motion to have the meeting moved to April 16th, 2020. Mr. McKeehan seconded the motion, and the motion passed unanimously.

The board broke for lunch at 11:42 a.m. and returned at 12:58 p.m.

APPLICATION REVIEWS

****Mr. McKeehan exited the meeting during application reviews****

<u>Name</u>	<u>Board Decision</u>
Jonathan David Smith	Approved
David Robert Boblitt, II	Deferred – plats do not meet standards
Roy Lamar Bullock	Denied

ADJOURNMENT

Mr. Dillehay made a motion to award the board four (4.0) PDH hours for the day’s meeting. This was seconded by Mr. Lingerfelt, and the motion passed unanimously. There being no other new business, Mr. Dillehay made a motion to adjourn. Mr. Lingerfelt seconded the motion, and the meeting was adjourned at 1:23 p.m.