



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

**Meeting Minutes for October 22nd, 2020
Telephonic Meeting**

The Board of Examiners for Land Surveyors met on October 22nd, 2020 Telephonic. Michael Schulz called the meeting to order at 9:05am and the following business was transacted:

BOARD MEMBERS PRESENT: Tim Lingerfelt, Jackie Dillehay, Kevin Martin, Jay Caughman

BOARD MEMBERS ABSENT:

STAFF MEMBERS PRESENT: Michael Schulz, Maria Bush, Stuart Huffman, Morgan Calles, Caleb Darnell, Erica Smith, Carol McGlynn

NOTICE OF MEETING

Jay Caughman called the meeting to order and then read the notice of meeting into the record as follows: "Notice of the October 22nd, 2020 meeting of the Board of Examiners for Land Surveyors was posted to the Board of Examiners for Land Surveyors website on July 26th, 2020."

ROLL CALL

Michael Schulz took roll call; all board members present.

STATEMENT OF NECESSITY

Read by Maria Bush

ADOPT AGENDA

Tim Lingerfelt made a motion to adopt the agenda as is, with the chair having the flexibility to move any items that might be needed to be changed at any time. This was seconded by Jackie Dillehay. This was voted by roll call.

MINUTES

Tim Lingerfelt made a motion to approve the July Minutes. This was seconded by Jackie Dillehay. This was voted by roll call.

LEGAL REPORT

See attached

DIRECTOR'S REPORT

NCEES Report

No discussion

Budget Reports

Michael Schulz went over the budget.

PSI exam statistics

Through October 2020, we have had 25 candidates sent to PSI. 16 of those have passed, 8 failed and 1 was absent.

The TN Board of Land Surveyors have 1,077 licensed Land Surveyors as of October 2020.

Update on 2019 Renewal/CE Audit

As of October 2020, we still have 52 Land Surveyors who have not renewed their license. The Board has sent out multiple renewal reminders on the dates of October 28, 2019, February 21, 2020 and September 30, 2020. Per Caleb Darnell we have had very little response from the ones who are still needing to renew.

Tim Lingerfelt advised, by rule, the board is required to notify the register of deeds in the home county for the individuals whose license expires.

Jay Caughman requested the administrative staff to notify all registrants that have expired.

Discuss Certificates

Michael Schulz brought up the possibly doing digital signatures for new license certificates. Jay Caughman agrees that this would be an idea while we are conducting virtual board meetings. These signatures are to only be used for these certificates only.

New Policy for Course Approval/Credit

Michael Schulz reintroduced the topic of allowing staff to approve surveying courses, without change in the curriculum, from their previous year's submission.

Jay Caughman has requested the courses that are still needing to be reviewed to be emailed to the board members after the board meeting. This way the board members can review them, and then make a vote on these courses.

Jay Caughman agreed that the staff can approve the course renewals, pending no changes to the curriculum. The board requested to be notified of the course list approved by staff, for the purpose of reporting to the public.

Expert Reviewers

Michael Schulz asked if there needs to be a restructure on how expert reviewers are used. Erica Smith believes they are doing a good job with their reviews. She also advised that she spoke with expert reviewers to not make a recommendation on the complaints.

NEW BUSINESS

Minimum Technical Standards Discussion

Tim Lingerfelt wanted to bring this in front of the board and see if staff and legal were interested and going through the rules and laws to either, change, add or remove.

Jay Caughman asked the board members to address items for proposed discussion and possible amendment. Jay Caughman will reach out to the Ashley Rose-Nalin, TAPS president, and see if she has any input on these as well.

Russell Application

Jay Caughman added this to the agenda to discuss with the other board members. Mr. Russell let his license lapse in the past and wants to reactivate his license. He would have to retake the 2-hour Tennessee Specific exam. Discussion related to whether Mr. Russell would be required to take the exam again ensued. Tim Lingerfelt also reviewed the application as well, and felt the application was up to date, except the plats, due to the

standard change in 2014. The plats were not stamped or signed by a current land Surveyor. Tim Lingerfelt requested new plats and legal descriptions. The board has decided that he will be required to take the exam once the application has been approved.

PSI

Tim Lingerfelt requested Michael Schulz to reach out to PSI to see if PSI did an analysis of the exam questions, to see if they need to rewrite some of the questions on the exam.

ADJOURNMENT

Tim Lingerfelt made a motion to award the Board 1.5 PDH hours for the day's meeting. This was second by Kevin Martin. This was voted by roll call.

There being no other new business, Mr. Caughman made a motion to adjourn. Mr. Dillehay seconded the motion, and the meeting was adjourned at 10:44am.



**STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
OFFICE OF LEGAL COUNSEL
500 JAMES ROBERTSON PARKWAY
DAVY CROCKETT TOWER
NASHVILLE, TENNESSEE 37243
TELEPHONE: (615) 741-3072 FAX: (615) 532-4750**

LEGAL REPORT

TO: Tennessee Board of Examiners for Land Surveyors
FROM: Erica Smith – Associate General Counsel
DATE: February 18, 2021 SUR Legal Report
RE: February Legal Report

1. 2020085421
Respondent:
License Status: - ACTIVE
First Licensed: 4/24/1981
License Expiration: 12/31/2021
Disciplinary History: None

Summary: Complainant hired a land surveyor to conduct a survey of their property and that survey was completed in October 2020. This survey showed there is an overlap of 0.39 acres between Complainant's property and their adjoining neighbor's property. Respondent is the land surveyor who conducted the survey of the adjoining neighbor's property in October 2019 which overlaps Complainant's property. Complainant takes issue with the fact that Respondent did not notify them of the 0.39 acre discrepancy when Respondent conducted their 2019 survey of the adjoining property.

Respondent's survey is in line with a previous survey of the adjacent property completed in 2011. However, when the land was deeded to Complainant in 2012, the prior landowner used a description from a prior deed predating the 2011 survey instead of the more recent deed description which is in line with Respondent's survey. An expert review of this matter was conducted. The expert concluded this matter is clearly a property line dispute considering there are two surveys by two different surveyors that show different opinions as to the location of the property lines. In the expert's opinion, Respondent should have disclosed the difference on the survey they prepared to

Complainant. Tenn. Code Ann. § 62-18-124(d) states that a licensed land surveyor shall notify affected adjoining owners when any major apparent discrepancy is discovered during the conduct of a boundary survey. Counsel recommends issuing a Letter of Warning for failing to disclose a boundary line discrepancy to an adjoining property owner. Respondent's detailed response explaining the boundary line discrepancy and dispute is provided below.

Respondent confirms that Complainant called them and claimed Respondent had taken 0.39 acres of their property and demanded that Respondent change their 2019 survey of the adjoining property. Respondent gave a detailed response to this complaint. Respondent was hired in 2019 to conduct a survey of the adjoining property by that property's previous landowner before it was sold to the current neighbor. When the previous landowner purchased the adjoining property in 1979, it was a 124.94 acre tract. That landowner sold some tracts off and the tax office had the remainder of the land listed as 14.74 acres. After Respondent's survey in 2019, it showed there was 15.41 acres in the remaining tract of land adjoining Complainant's property. Respondent gives an overview of the history of the deeds in Complainant's chain of title. In 2009, the previous landowner had acquired Complainant's property and the description in their deed had a substantial error of closure and was ambiguous. That previous landowner had a survey done of Complainant's property in 2011 and deeded it to the landowner who later sold it to Complainant in 2012. This 2011 survey showed there was 1.8 acres in Complainant's tract. It appears that the 2011 surveyor attempted to follow the deed description which was made by a survey in 1979 when all of the land at issue was the entire 124.94 acre tract referred to above. The surveyor found an iron pipe and a square iron pin and tried to incorporate them into their 2011 survey as found monuments. The iron pipe and square pin have unknown origins. The 1979 and 2011 description only calls for a point at these property corners. The 1979 description does call for an iron pin at a northeast corner but the 2011 surveyor never found this iron pin, so they set one there. Respondent does not know what the square pin could have been marking because it was not in the right place to be marking a corner at the road. Respondent states that the iron pin and square pin could have been placed there by anyone and for any purpose. The 2011 survey has the north line of Complainant's property about 13 feet longer than the 1979 survey and has the east line about 10 feet longer. If the 2011 surveyor didn't make the east line longer, then the north line would have passed through a building on Complainant's property in the northwest corner of the property. In effect, what the 2011 surveyor did was to follow the fence line and the possession line on Complainant's north line. This is the same line that Respondent followed with their 2019 survey of the adjoining property. The 2011 surveyor accepted the fence and possession line on the north line but ignored the fence and possession line on the east side of Complainant's property and went to the iron pipe that has unknown origins. The landowner who sold the property to Complainant only owned it for one year and when they deeded the land to Complainant in 2012, they did not use the same description from their deed which was made from the 2011 survey. Instead, they used the description from a previous deed which predates the 2011 survey. Respondent has no idea why this happened but only guesses that the previous landowner who sold the property to Complainant in 2012 did not believe that they owned any land over the fence and out into the adjoining neighbor's pasture land as the 2011 survey showed. Respondent provided the 2010 tax property card of Complainant's land which showed the tract was taxed at 1.00 acre. Respondent understands that the area of a tract has very little, if any weight in determining the location of property boundary lines, but it does support the notion that at no time was 1.8 acres ever occupied by the landowners of Complainant's property. After the 2011 survey, the taxed area went from 1.00 to 1.8 acres. The property

Respondent surveyed was fenced and went around the Complainant's property which Complainant mowed and used up to the fence. When Respondent talked to the adjoining property owner, they stated that to the best of their knowledge, the property line between them and the Complainant was where the fence was and had been used that way since they acquired it back in 1979. Respondent feels if Complainant believes they own some land in the adjoining property owner's pasture, they need to go to court and get a ruling on it.

Recommendation: Letter of Warning

BOARD DECISION:

2. 2020089711
Respondent:
License Status: - ACTIVE
First Licensed: 1/31/2008
License Expiration: 12/31/2021
Disciplinary History: None

Summary: This matter arose out of an anonymous complaint which alleges that a national surveying and mapping business is operating two separate surveying offices in Tennessee. The complaint claims that one of the office locations does not have a licensed surveyor in responsible charge as required. Specifically, the complaint alleges Respondent is the full-time in responsible charge surveyor for one of the office locations but claims the other office location is also operating under Respondent's license without Respondent working the required minimum of 32 hours per week at the location. The General Counsel and Vice President of the business responded to this complaint and first notes that the complaint makes incorrect observations and assumptions. Respondent states they are not operating two land surveying offices in Tennessee. The office which allegedly has no in responsible charge surveyor on site is not staffed with land surveyors and does not provide or produce any professional services for clients. This location is not "operating" under Respondent's license as alleged. Respondent states the location is used only for equipment/supplies storage and as a rest stop for field crews working in that area for projects managed and provided from out of Respondent's office location. Respondent states that, most importantly, no work for any client is accepted out of or directed out of the other office location. The phone number listed for the location at issue automatically rings directly to Respondent's office location. All professional services performed by the business in Tennessee are performed by staff housed in and managed by licensed surveyors in Respondent's office location. Respondent is open to any recommendations on how to better accomplish complete transparency if the Board feels the current limited business use of the office location at issue could be confusing to the public or is a problem. An investigation was conducted to verify Respondent's response. The investigation revealed that the office location at issue was not open to the public and no land surveying services were being offered from the location. The entrance to the building was locked and the lights were off with no one inside, which supports the statements of the Respondent in their response to the complaint. Respondent cooperated with the investigator and provided a sworn statement which reiterated the response to the complaint. Based on the investigative report and its findings, Counsel recommends issuing a Letter of Instruction to Respondent which will instruct

them to remove reference to the office location at issue from their website to avoid any confusion to the public in the future.

Recommendation: Letter of Instruction

BOARD DECISION:

3. 2020092761
Respondent:
License Status: - ACTIVE
First Licensed: 9/14/1968
License Expiration: 12/31/2021
Disciplinary History: None

Summary: Complainant needed a copy of an “original recordable survey” after the Register of Deeds Office told them there was no copy of the survey at issue in their records. Respondent is the licensed surveyor who completed the original survey. This complaint was filed after Complainant was unable to obtain the survey from Respondent after some communication with Respondent. Respondent’s son-in-law responded to the complaint on Respondent’s behalf because Respondent became very ill and was admitted to the hospital for some time. Respondent’s son-in-law reached out to the Complainant and found out Respondent had surveyed some property that Complainant recently acquired. Respondent never worked for Complainant and did not survey the property for them. The survey is dated 8/29/16 and Complainant wanted a full size copy of the survey with the signature and seal so the Deeds Office would record it. The title company or an attorney gave Complainant a 8.5 X 11 copy in PDF form. Additionally, Respondent’s son-in-law found a copy of the survey already made and laying out which made them think Respondent had already told Complainant they could pick it up but probably became ill before it could be picked up. Respondent’s son-in-law mailed a copy of the plat to the Register of Deeds Office and confirmed that it was recorded with their Clerk. Complainant is satisfied and the issue has been resolved. Therefore, Counsel recommends dismissal.

Recommendation: Dismiss

BOARD DECISION:

Cases to be Represented

4. 2019063091
Respondent:
License Status: - EXPIRED
First Licensed: 3/3/1997
License Expiration: 12/31/2019
Disciplinary History: None

Summary: Complainant alleges that after having issues getting in touch with the original surveyor of her property, she reached out to Respondent and he agreed to meet and discuss separating some acreage for Complainant and doing a boundary and division survey. Complainant alleges that she paid Respondent half of the fee, with the rest to be paid upon receipt of the completed survey. Complainant further alleges that Respondent approached her after the initial meeting and requested more money, so Complainant paid the entire fee at that time without a completed survey. Approximately one month later, Complainant alleges that Respondent provided her with an incomplete and inaccurate survey. Complainant further alleges that several months subsequent to receiving this survey, she attempted to contact Respondent and attempted to address the inaccuracies in the incomplete survey. Complainant states that after threatening Respondent with a Board complaint, Respondent came back and walked the property again. Complainant alleges that Respondent acknowledged the mistake, but stated that it was “on paper only” and promised to correct the survey. Complainant also alleges that it is well known that Respondent has a drug problem that has been affecting the way he conducts business.

This complaint was sent for investigation because Respondent has failed to respond to this complaint despite every effort by our office to contact him, as well as by our investigator. This complaint was also sent out for an expert review but Counsel notes that our expert was unable to consider any defense Respondent may have offered considering the lack of any response, and was only able to consider the complaint’s allegations and documentation provided by the Complainant.

Based on the Complainant’s allegations and documentation, it is the opinion of the expert reviewer that Respondent is in violation of:

- Standards of Practice 0820-04.02(1), which states “[T]he registrant shall at all times recognize the primary obligation to protect the safety, health, and welfare of the public in the performance of the registrant’s professional duties.”
- Standards of Practice 0820-04-02(3), which states “[T]he registrant shall respond to all inquiries and correspondence from the Board within fifteen days from the day of receipt and shall timely claim undelivered correspondence from the U.S. Postal Service, or any other delivery service, upon notice thereof.”

The expert considered the fact that it seems Complainant has been led on by the Respondent for many months after payment was made in full, Complainant’s implications that Respondent has been incompetent and unprofessional, and Complainant’s suggestion that Respondent may have a drug problem. The expert was reluctant to list a clear violation of 0820-04.02(1) because we don’t have a response from the Respondent; however, the expert and Counsel find a clear violation of 0820-04.02(3) because of Respondent’s failure to respond to this complaint. Therefore, Counsel recommends a civil penalty of \$1,000 and requiring Respondent to complete an Ethics course above and beyond what is normally required for licensed land surveyors within 180 days.

Recommendation: \$1,000 civil penalty for violation of Standards of Practice Chapter 0820-04-02(3) and completion of an Ethics course above and beyond what is normally required for licensed land surveyors within 180 days

BOARD DECISION: Further Board consideration needed.

New Information: Respondent's license has expired and they have recently submitted a renewal application that was denied as a result of this unresolved complaint. Counsel requests this complaint be placed in monitoring status for further investigation considering Respondent provided a new address with their renewal application. Counsel will represent this matter once the investigation is complete.

New Recommendation: Place in Monitoring

NEW BOARD DECISION: The Board accepted counsel's recommendation.

New Information: On 1/21/20, Counsel reached out to Respondent by mail and email to their new addresses provided in their renewal application asking that they immediately address this complaint. Counsel also made it clear that their renewal application could not be approved unless they addressed this complaint and it was presented to the Board. Respondent responded to the email the following day and stated this was the first time they had seen the complaint, and they claimed the facts were being misrepresented by Complainant but stated they would send an official response and documentation to explain the situation. Respondent followed up with their response stating Complainant contacted them about cutting 10 acres out of a larger tract which Respondent had worked on in the past. Complainant told Respondent what they needed and Respondent told them it would cost \$800 because they had already done a lot of work in the area dating back to 1997. Respondent had surveyed a large tract in which this new 10-acre parcel will be a part of. Respondent did ask for half of the payment up front, which was paid in cash by Complainant. A few days later, Respondent went and located everything they needed to bring back to the office to plot out the new parcel on the computer. Respondent delivered the new drawing to Complainant which showed the division along with the new description. Complainant paid the remainder of monies owed to Respondent at that time. Later, Complainant contacted Respondent with a concern about the remaining acreage after the division. Respondent looked over all the data and at first, admits they did not see the problem. Respondent went back to the job site to set the new corner pins and saw right away that there was an error somewhere. Respondent went back to the office to figure out the issue and found that they had overlooked one bearing and distance when they moved the old data over to the new data. Respondent fixed the problem and printed two new drawings, one of them being just to show Complainant what had happened. Complainant and Respondent met at the property and Respondent explained what happened and all the acreage was accounted for. Respondent further explained that everything was correct on paper at that time but they would need to go back and move one corner pin. Complainant then told Respondent they wanted to make some changes anyway and asked how much it would cost. Respondent told them it would not cost anything because of their prior mistake and they would do it for free as an act of goodwill. Respondent states that they take much pride in their work but admits they are human and admits to this mistake. Respondent corrected the error and further admits they should have communicated with Complainant in a more timely manner. Respondent notes that they have been around the business of surveying for over 40 years and ran their own business for over 20 years. However, since 2016, Respondent has mostly worked as a one-man crew due to their health. Respondent has had Crohn's disease for 23 years and their illness has recently played a big factor in them recently taking a new position with an engineering group in July 2019. The owner and manager of the engineering group who hired Respondent also provided Counsel with a statement and a copy of an

email sent to Complainant. The owner emailed the Complainant and explained that although Respondent was just hired in July 2019 and they had nothing to do with the survey, they were made aware of the complaint and spoke to Respondent about it. Respondent's new employer states that as far as they can tell, Respondent has been trying to provide the services agreed upon to the Complainant. Nevertheless, Respondent's new employer offered to send their survey crew to verify Respondent's prior work done for Complainant and make sure they get the completed survey if they are still unsatisfied with what Respondent has provided. Respondent will compensate their new employer for the work done and if this satisfies Complainant, they will put the job at the top of their schedule. They further stated they could treat the job as a new survey and would not rely on any of Respondent's prior field work to eliminate any chances for error. Complainant never responded to this offer. Complainant's brother did later contact Respondent about this matter and stated everything was taken care of. Additionally, Complainant later confirmed with Counsel that they told Respondent they no longer needed their services because the matter had been resolved. Counsel recommends dismissal of this complaint.

New Recommendation: Dismiss.

NEW BOARD DECISION: The Board elected to authorize a formal hearing and to issue a consent order with a \$1,000.00 civil penalty for failure to update address with the Program.

New Information: The letter and Consent Order that was sent to the last address provided to the Board by Respondent was returned as undeliverable after multiple attempts. Counsel ran a CLEAR Report, which is an investigative tool that reveals a person's addresses and contact information based on public records, utility connections, etc. The letter and Consent Order was resent by certified and regular mail. It was delivered to the Respondent's most recent address revealed on the CLEAR Report on 10/13/20, and was additionally sent by email to Respondent to the email address which they have used to communicate with Counsel in the past. The email showed delivery confirmation. Counsel has also attempted to contact Respondent by phone without success. Respondent has failed to respond to any correspondence and has failed to contact Counsel or the Board about their expired license. Respondent has ceased to pursue renewal of their license for over a year. Counsel has exhausted efforts to communicate with Respondent and recommends closing and flagging this complaint.

New Recommendation: Close and flag

NEW BOARD DECISION: