

## MINUTES

### Tennessee Board of Examiners for Land Surveyors

The Tennessee Board of Examiners for Land Surveyors met on Thursday, October 25, 2012 at 9:00 a.m. in the 2<sup>nd</sup> 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 9:03 a.m.

The agenda was then reviewed. Galyon Northcutt made a motion to adopt the agenda as written; Sue Braly seconded the motion. The motion carried unanimously.

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 #201200446 –***

This case was referred to a contracted complaint reviewer for analysis because of the allegation of incompetence in the Respondent's professional practice of land surveying, in possible violation of Tenn. Code Ann. § 62-18-116(a)(1)(B) [Denial, suspension or revocation of certificate – Disciplinary action] and Tenn. Comp. R. & Reg. 0820—04—.03(a) [MALPRACTICE] for producing a plat which proved unusable for the purpose for which it was intended. Specifically the allegation is that the Respondent included enough inaccuracies that should have been discovered previously that Complainants had to hire and pay for another land surveyor to provide a correct plat. This caused a significant delay in the Complainants' ability to obtain a building permit and to build a house on their property.

The case materials were forwarded to a complaint reviewer for analysis to identify probable cause for discipline, if any. He found one, which doesn't seem to be of much consequence to the allegation:

Tenn. Comp. R. & Reg. 0820—04—.07(1)(h)(1): [SURVEY TYPES AND REQUIREMENTS] –  
“A notation on the Survey Map of Survey Plat shall state whether the monuments were found or set, and in addition, the statement shall include the material and size of the monument found or set.”

The case reviewer states that the real problem was that the Respondent provided a site drawing showing an incorrect building setback of 25' instead of the correct 50' from the rear property line. The Respondent admits this mistake, which caused the Complainants' architect to redesign the house for the site. The replacement surveyor's plat is dated November 10, 2011, but as of March 16, 2012, the Complainants' still didn't have electrical power routed to the site.

The other allegation seems to involve the differences between the Respondent's prepared plat and the replacement surveyor's. The differences on the common lines range from 0.43 to 1.63. NOTE: This matter was litigated in General Sessions Court earlier this year in which the court dismissed the entire case, finding that the Complainants were not damaged by the Respondent.

Recommendation: The reviewer recommends that the Board take no action and close (dismiss) the case.

**ANALYSIS: The matter warrants recognition that the matter would never have arisen if the Respondent has conducted all professional activities in strict conformance to the applicable authorities.**

**Galyon Northcutt made a motion to issue a Letter of Caution; Sue Braly seconded the motion. The motion carried unanimously.**

**RULING: Issue a Letter of Caution outlining this analysis.**

#### ***Complaint #201201052 –***

This case was referred to a contracted complaint reviewer for analysis because of the allegation of incompetence in the Respondent's professional practice of land surveying, in possible violation of Tenn. Comp. R. & Reg. 0820—04—.07(a) [MISCONDUCT] for accepting a down-payment for services and not completing the survey. The Complainant wants the down-payment returned, to which the Respondent answers that the deed never closed and that because of the time spent in the field and the work already performed that he is entitled to keep the down-payment.

The case materials were forwarded to a complaint reviewer for analysis to identify probable cause for discipline, if any. Upon analysis, the reviewer concluded that this is a contract matter and that the details of the contract are not known, or even whether or not the contract was written or oral. At any rate, the proper venue for the dispute is the chancery court (court of equity, which enforces contracts) or the civil courts (court of law, to seek perceived damages).

It must be noted that the Respondent was issued a Consent Order for a civil penalty in 2010 which was ignored. As is our practice, we should consider this in the new matter.

Recommendation: The reviewer recommends that the Board close this case, but issue a Consent Order for indefinite suspension until the entire amount owed on the previous Consent Order (\$850 outstanding) is paid, for which proof must be provided to the Board of payment and that the Respondent should complete 8 hours of professional ethics courses. The reviewer also states that the Board may wish to consider additional ethics courses, additional suspension time and/or additional civil penalties for ignoring the first Consent Order.

**ANALYSIS: Close the matter as it pertains to the instant matter, but the unanswered Consent Order needs to be addressed.**

Galyon Northcutt made a motion to issue a consent order to pay the outstanding civil penalty of \$850 immediately upon execution and complete an eight hour ethics course within three months of the execution date or the respondent's license will be suspended until all requirements are met. If and when all requirements are met, the respondent's license will be reinstated at that time with no further administrative action. Sue Braly seconded the motion. There being no further discussion, the motion carried unanimously.

**RULING: Issue a Consent Order to pay the outstanding civil penalty immediately upon execution of the Consent Order and to complete 8 hours of ethics within 3 months of the execution date or license will be suspended until such time as all requirements are met; Respondent's license will be reinstated at that time with no further administrative action.**

***Complaint #201201157 –***

This case was referred to a contracted complaint reviewer for analysis because of the allegation of incompetence in the Respondent's professional practice of land surveying, in possible violation of Tenn. Code Ann. § 62-18-116(a)(1)(B) [Denial, suspension or revocation of certificate – Disciplinary action] and chapter Tenn. Comp. R. & Reg. 0820—03 [STANDARDS OF PRACTICE] for producing a number of plats that fell below the Board's standards of practice. A total of nineteen plats were involved. There is no complaint history for this Respondent.

The case materials were forwarded to a complaint reviewer for analysis to identify probable cause for discipline, if any. Of the nineteen, eleven were found to be acceptable, even though in the reviewer's opinion they all appeared unprofessional. As far as the other ones, the following was observed:

Tenn. Comp. R. & Reg. 0820—03—.07(1)(b)(5): [SURVEY TYPES AND REQUIREMENTS] – One plat failed to include a graphic scale.

Tenn. Comp. R. & Reg. 0820—03—.07(1)(e): [SURVEY TYPES AND REQUIREMENTS] – On five of the plats, along the curved streets, rather than constructing a curve, the Respondent used bearings and distances to define the property at the right-of-way.

Tenn. Comp. R. & Reg. 0820—03—.07(1)(b)(1): [SURVEY TYPES AND REQUIREMENTS] – On three of the plats, there is no tie to (a corner of a subdivision), (a tract from which property is carved), (a permanent identifiable corner) or (a nearby permanent identifiable reference point). The case reviewer did not make a recommendation for discipline for this matter, but seems to prefer that the Board discuss the findings and find an appropriate action.

Recommendation: Board discussion.

**ANALYSIS: There is no complaint history for the Respondent and no harm has been done to the public; these violations will be considered as a single violation.**

**Galyon Northcutt made a motion to consider each violation as a single event and issue a Consent Order of \$1000.00. Sue Braly seconded the motion. There being no further discussion, the motion carried unanimously.**

**RULING: Issue a Consent Order for a civil penalty of \$1,000.00.**

***Complaint #201102846 –***

The complaint alleges professional misconduct on the part of the Respondent in possible violation of Tenn. Code Ann. § 62-18-116(a)(1)(B). Specifically, the allegation is that the Respondent, a licensed land surveyor, made a number of either untrue or inappropriate statements to the Complainant. An investigation was requested, which was conducted and a report returned to this office. From that report, the following seems to be the situation: The Respondent was contracted to survey some property for the Complainant. In conversations with the Complainant, the Respondent discovered that the filed plat had been done by the Complainant, an unlicensed individual, upon which the Respondent informed the Complainant that such conduct is not allowed by law. This caused some friction between the parties. The Respondent communicated with the adjoining landowner and reached an agreement on where to set the boundary, which was favorable to the Complainant. Nothing in the complaint alleges a problem with the Respondent's preparation of the land survey.

Recommendation: Either close the case or issue a Letter of Caution to the Respondent to maintain professional relationships with clients at all times.

**ANALYSIS: Respondent has violated rule 0820—04—.02(2) when he did not inform the Board of a violation of the Board's law and rules.**

**Tim Lingerfelt made a motion to issue a Consent Order to the respondent to provide evidence to the board of the allegations of unlicensed practice against the complainant, along with a civil penalty of \$1000.00. Galyon Northcutt seconded the motion. There being no further discussion, the motion carried unanimously.**

**RULING: Issue a Consent Order to provide evidence to the Board of the allegations against the Complainant and a civil penalty of \$1,000.**

***Complaint #201200569 –***

The complaint alleges professional misconduct on the part of the Respondent in possible violation of Tenn. Code Ann. § 62-18-116(a)(1)(B). Specifically, the allegation is that the Respondent, a licensed land surveyor, made inappropriate statements to the Complainant. An investigation was requested, which was conducted and a report returned to this office. From that report, the whole situation appears to be a dispute over a fee payment and what services were contracted for, hence the allegation by the Complainant of "unfair business practices." Nothing in the complaint alleges a problem with the Respondent's preparation of the land survey.

Recommendation: Issue a Letter of Warning to the Respondent to maintain professional relationships with clients at all times.

**ANALYSIS: The Board agrees with this assessment.**

Galyon Northcutt made a motion to accept the staff attorney's recommendation and issue a Letter of Warning to the respondent reminding him to maintain professional relationships with his clients at all times. Sue Braly seconded the motion. There being no further discussion, the motion carried unanimously.

**RULING: Approved.**

***Complaint #201200805 –***

The complaint alleges unlicensed conduct on a repeat offender in violation of Tenn. Code Ann. 62-18-101(b) [Registration required]. The Respondent is known to continue to provide land surveying services long after the Respondent's expiration date of December 31, 2003. No attempts to contact this person have succeeded, so an investigator was dispatched to personally hand the complaint materials to the Respondent's last known address. This is to verify service so that the matter can be referred to the local District Attorney's Office to obtain criminal prosecution services pursuant to Tenn. Code Ann. § 62-18-115 [Investigations and prosecutions]. Once a serviceable address is determined, the local D.A. will be forwarded the file to act accordingly.

**Recommendation: Approve this plan.**

Galyon Northcutt made a motion to accept the staff attorney's plan to forward this respondent's file to the D.A.'s office to obtain criminal prosecution services. Sue Braly seconded the motion. There being no further discussion, the motion carried unanimously.

**RULING: Approved.**

***Complaint #201201053 –***

***Complaint #201201055 –***

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.

**Recommendation 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].**

**Recommendation 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)**

[MISCONDOUCT] 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.”

**ANALYSIS: The licensed Respondent should be required to take 8 hours of ethics courses in addition to the recommended discipline.**

**Respondent #1 (unlicensed respondent) – Galyon Northcutt made a motion to accept the staff attorney’s recommendation to issue a Consent Order of \$1000 for unlicensed conduct. Sue Braly seconded the motion. There being no further discussion, the motion carried unanimously.**

**Respondent #2 (licensed respondent) - Galyon Northcutt made a motion to accept the staff attorney’s recommendation to issue a Consent Order in the amount of \$2000 for violating Rule 0820-04-.07(2) MISCONDUCT and Rule 0820-04-.09 RESPONSIBLE CHARGE OF SERVICE. After further discussion, Mr. Northcutt amended his motion to require the Tennessee licensed respondent to take eight hours of ethics courses in addition to the recommendation to the recommended discipline. Sue Braly seconded the motion. There being no further discussion, the motion carried unanimously.**

**RULING: Recommendation 1 is approved; recommendation 2 is approved as amended.**

A meeting was scheduled for Robert Rowsey, at his request, to meet with the board to discuss his application that was denied in August 2012. Mr. Rowsey did not appear at the meeting to discuss this matter with the board. Therefore, Galyon Northcutt made a motion to recommend upholding the previous denied status of Mr. Rowsey’s application. Sue Braly seconded the motion. There being no further discussion, the motion carried unanimously.

***Request for Board Opinion*** – In late September, the administrative office for the Board of Examiners for Land Surveyors received a letter from an attorney requesting a “formal opinion” from the board. This item was added to the October 2012 meeting agenda by Ms. Moulder . Upon additional review of this letter, it has been determined that additional information from the requesting attorney will need to be gathered before the board can give an accurate response to this request an opinion based on all available relevant information. Following this meeting, Robert Herndon will be communicating a letter to the requesting attorney to request additional information.

The board then discussed the Board’s policy regarding the 10-year rule. Galyon Northcutt made a motion to accept the policy. Sue Braly seconded the motion

Galyon Northcutt made a motion to be allowed to send a letter to TAPS explaining the Board’s soliciting suggestions to the continuing education rule changes. Sue Braly seconded the motion. There being no further discussion, the motion carried unanimously.

There being no further business, the meeting adjourned at 3:55 pm.

**FRIDAY, OCTOBER 26, 2012 –**

The Tennessee Board of Examiners for Land Surveyors met on Friday, October 26, 2012 at 9:00 a.m. in the 3<sup>rd</sup> 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 Nikole Avers, Executive Director of the Board. Donna Moulder, Administrative Director for the Board and David Cagle, Board Member, was not present.

The meeting was called to order at 9:00 a.m. by Chairman Lingerfelt.

The members of the board discussed changes to the continuing education rules.

There being no further business, the meeting was adjourned at 12:00 p.m.

Respectfully submitted,

Donna Moulder  
Administrative Director

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Tim Lingerfelt, Chairman

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Galyon Northcutt, Vice-Chairman

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Sue Braly

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David Cagle