



STATE OF TENNESSEE  
**BOARD OF EXAMINERS FOR LAND SURVEYORS**  
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**January 30-31, 2014 - Minutes**  
**First Floor Conference Room (1-B), Davy Crockett Tower**

The Board of Examiners for Land Surveyors met January 30-31, 2014 in Nashville, Tennessee, at the Davy Crockett Tower in the first floor conference room. Mr. Lingerfelt called the meeting to order at 9:08 am and the following business was transacted.

**BOARD MEMBERS PRESENT**

Tim Lingerfelt  
Galyon Northcutt  
Sue Braly  
Jay Caughman

**STAFF MEMBERS PRESENT**

Day One: Nikole Avers, Donna Moulder, Robert Herndon

The following were also present: Leonard Tusar, TAPS representative; Jimmy Cleveland, TAPS president; and Keith Brotherton, applicant.

**ADOPT AGENDA**

Jay Caughman made a motion to adopt the agenda as written. Galyon Northcutt seconded the motion. The motion carried unanimously,

Mr. Lingerfelt read the public meeting statement into the record, indicating that the agenda was posted to the Land Surveyor website on January 17, 2014.

**MINUTES**

The minutes of the previous meeting held on October 23-25, 2013 were reviewed. Jay Caughman made a motion to approve the minutes as written. Sue Braly seconded the motion. The motion carried unanimously.

**LEGAL REPORT**

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

**Complaint #201301694, Complaint #201301895 and  
Complaint #201301896**

The complaint alleges that the Respondent, a licensed land surveyor, committed misconduct in his professional practice by making misleading statements in a court proceeding in violation of TENN. COMP. R. & REG. 0820—04—.04 [PUBLIC STATEMENTS], and by associating with a business interest that could constitute a conflict of interest. Specifically, the complainant alleges that the Respondent improperly utilized his professional license to provide misinformation about the subject real property in an unjust manner. This matter involves three landowners who adjoin a fourth parcel that was surveyed by the Respondent. The complaint materials were forwarded to a contracted complaint reviewer for analysis to determine if probable cause exists for discipline. There is no previous complaint history for this Respondent. The findings of the complaint reviewer are as follows:

A single matter involves the three complaints listed above, which comprise issues alleged by the owners of the three parcels adjoining the property surveyed by the Respondent. Each complaint alleges that the Respondent violated TENN. COMP. R. & REG. 0820—04—.04 [PUBLIC STATEMENTS] and TENN. COMP. R. & REG. 0820—04—.05 [CONFLICTS OF INTEREST]. As to the first rule allegedly violated, the Respondent proved to be completely objective and truthful in all professional reports, statements and court testimony. This was established by a review of the court transcript regarding this matter. A review of the materials relative to the second rule that was allegedly violated did not reveal any indication of a conflict of interest on the part of the Respondent. The Respondent was a disinterested third party in this boundary dispute, who had no stake in the outcome.

Recommendation: Close the cases for lack of disciplinary grounds.

ANALYSIS: The Board agrees with this analysis.

DECISION: Approved.

*VOTE: Gaylon Northcutt made a motion to accept the staff attorney's recommendation and close the cases due to lack of disciplinary grounds. Jay Caughman seconded the motion. The motion carried unopposed.*

**Complaint #201301893**

The complaint alleges that the Respondent, a licensed land surveyor, committed misconduct in his professional practice by failing to discover and report any major discrepancy to concerned parties in violation of TENN. CODE ANN. § 62-18-124(d) (Right-of-entry – Liability – Notice to landowners – Injunction) and also by failing to properly research common boundaries in violation of TENN. CODE ANN. § 62-18-127 (Duty to research common boundaries). The complaint materials were forwarded to a contracted complaint reviewer for analysis to determine if probable cause exists for discipline. There is no previous complaint history for this Respondent. The findings of the complaint reviewer are as follows:

Violation(s) of TENN. CODE ANN. § 62-18-124(d) (Right-of-entry – Liability – Notice to landowners – Injunction) – This matter involves a boundary dispute. As such, it is proper to record any contact with the parties involved. In this case, after reviewing the materials, it is clear that the Respondent did not adequately notify the parties involved of any discovered discrepancy. Specifically, the Respondent did not communicate directly with the Complainant about findings concerning major apparent discrepancies between the deed descriptions of adjoining property owners and resolution of the boundary issue. Additionally, the Respondent's field crew set corners across the Complainant's fence without first notifying the Complainant.

Recommendation: Issue a Letter of Warning and close the case.

ANALYSIS: The Board agrees with this analysis.

DECISION: Approved.

*VOTE: Jay Caughman made a motion to accept the attorney's recommendation and issue a letter of warning and close the case. Galyon Northcutt seconded the motion. The motion carried unopposed.*

### **Complaint #201302256**

The complaint alleges that the Respondent, a licensed land surveyor, committed misconduct by stating to several different people that the Complainant's ownership of his land was in question. In particular, this alleged conduct caused the Complainant to lose his timber contract. The Complainant alleges that this conduct is unprofessional and that the Respondent dispensed false information. The complaint materials were forwarded to a contracted complaint reviewer for analysis to determine if probable cause exists for discipline. There is no previous complaint history for this Respondent. The findings of the complaint reviewer are as follows:

The Respondent's alleged false information was supported by information provided by an attorney representing four heirs of the property in question; the true ownership of the property is in doubt to the point of litigation. The Respondent has acted correctly in relationship to the Board's law and rules. Any statements offered as to the ownership of the land would legitimately contain doubts as to who truly has claim to it.

Recommendation: Close the case for lack of disciplinary grounds.

ANALYSIS: The Board agrees with this analysis.

DECISION: Approved.

*VOTE: Jay Caughman made a motion to accept the staff attorney's recommendation and close the case due to lack of disciplinary grounds. Galyon Northcutt seconded the motion. The motion carried unopposed.*

## **Complaint #201302396**

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. The complaint materials were forwarded to a contracted complaint reviewer for analysis to determine if probable cause exists for discipline. There is no previous complaint history for this Respondent. 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.

Recommendation: Close the case for lack of disciplinary grounds.

ANALYSIS: The Board agrees with this analysis.

DECISION: Approved.

*VOTE: Gaylon Northcutt made a motion to accept the staff attorney's recommendation and close the cases due to lack of disciplinary grounds. Jay Caughman seconded the motion. The motion carried unopposed.*

## **Complaint #201302474**

The complaint alleges that the Respondent, currently a licensed land surveyor, practiced land surveying without first obtaining a valid land surveyor license in violation of TENN. CODE ANN. § 62-18-101(b) (Registration requirement). According to the complaint materials, the Respondent affixed his professional seal to documentation dated November 14<sup>th</sup>, 2013, and his registration became active on November 21<sup>st</sup>, 2013 after a lapse of some years. The Respondent states in reply that the submitted documents were not intended to be final, that the anticipated delay between the preliminary submittal and the final documentation was overestimated and that the cause was that he wanted to get the documents to the reviewer while he was out of town and would submit final documents upon his return. There has been only one complaint processed on this Respondent, dated over a decade in the past, and this Respondent was first licensed in 1986.

Recommendation: Approve a Letter of Warning and close the case.

ANALYSIS: The Board feels that this action indicates a lack of concern and/or understanding of the Board's law and rules, and a willingness to bend authorities for advantage.

DECISION: Approve a formal hearing with authority to settle the matter with a Consent Order for a civil penalty of \$1,000.00.

*VOTE: Jay Caughman made a motion to approve for a formal hearing with authority to settle the matter with a Consent Order for a civil penalty of \$1000.00. Galyon Northcutt seconded the motion. The motion carried unopposed.*

### **Complaint #2013025481 and Complaint #201302548**

The complaint alleges that the Respondents, a licensed land surveyor and an unlicensed employee, prepared a land survey plat without professional oversight and submitted an unstamped plat in violation of TENN. CODE ANN. § 62-18-101(b) (Registration requirement). The response indicates that the Respondent registrant's client, who was seeking an easement for a purchased parcel, asked the Respondent to prepare a plat of the property. The Respondent advised an unstamped, preliminary survey to present to the adjoining land owner(s) (Complainant) in order to obtain an easement by agreement without the need for a survey. This was done, but no response was ever received from the Complainant, at which point the purchaser asked for a 100'-wide easement. The preliminary draft of the easement was left with the Respondent's client, and the Respondent provided no further professional services.

Recommendation: Close the case for lack of disciplinary grounds.

ANALYSIS: The Board agrees with this assessment.

DECISION: Approved.

*VOTE: Jay Caughman made a motion to accept the staff attorney's recommendation and close the cases due to lack of disciplinary grounds. Galyon Northcutt seconded the motion. The motion carried unopposed.*

### **LEGISLATIVE REPORT –**

Greer Kelly, legislative liaison for the Department of Commerce and Insurance, presented the following legislative update:

**SB2375** – just filed; not assigned to committee right now. This bill amends Title 66. Land surveyors would be required to review property descriptions before the title is transferred and attest to the quality of that description of that description.

The following two (2) amendments are very similar to one another. **SB2300**, sponsored by Senator McNally and **SB1931, HB 2234**, sponsored by Yager, both amend Title 62 and it would exempt applicants from exam and degree requirements if they could provide evidence that they have at least ten (10) years of supervised practical training under a licensed professional. The only difference in the McNally bill and the Yager bill is the Yager bill requires a notarized affidavit by the supervisor. We believe it is the intent of the sponsor to sunset this rule within the next year so they would have four (4) years to take and complete the exam. The people that currently have ten (10) years have a certain window of time to take this test, but it will no longer be an option after

that. The suggested amendatory language would require the applicants to complete the exam, where the way the bill is currently written, they would not have to complete the degree requirement or take the exam.

Ms. Kelly then asked the board members if they had any questions.

Chairman Lingerfelt asked the following question – From my take of what I have read of the bills, I certainly missed the statement you made about the exam not being a part of the equation. The first question that I have and I'm sure that each of the members have questions for you, is we, as a board, have received a letter from a Representative Susan Lynn that was directed to each member of the board individually. The board would seek your direction as to how to respond, not only to this letter, or speaking to other senators or representatives, would be appropriate from the board because everyone, with the exception of our public member, are all licensees so we are "stakeholders" in legislation relative to our license, so not only would we have not only a personal opinion about the matter, we would likely have a board opinion about the matter, so I guess that we are seeking direction from you as to how we should proceed if a response is in order and if it is, how do we do that and do it correctly?

Mr. Lingerfelt stated that "initially I would have to speak personally because the board has not crafted a stance collectively, so to answer your question, from a personal basis as a registrant, yes, I have issues with the legislation."

Jay Caughman then asked, "Should the board, or can the board, formulate an opinion on this bill, whether it's a 'we support' or 'we don't support', and if we can, as a board, formulate something like that, can we then also express that to the individual legislators, in the form of a letter, with Board of Examiners letterhead, to that effect? Does the board have that ability to express opinions on legislation to the legislators themselves directly?"

Ms. Kelly informed Mr. Caughman that "I think that is absolutely within your rights as citizens and as organizations."

Robert Herndon, staff attorney, stated that the board can certainly take a position on it.

Ms. Powers answered that the board can voice their opinion on pending legislation. The opinion would have to be voted on and agreed on as to the board opinion. She indicated it is early in the legislative session; the bill filing deadline is not until February 5, could drastically change before the end of the session.

Mr. Herndon said that he would write the letter and submit it for the chairman's signature.

Mr. Caughman stated that the two (2) senate bills are very similar.

Mr. Lingerfelt asked Ms. Kelly, "Going to a different venue, what ability does the board have to suggest legislation? For example, we're discussing the possibility of licensing photogrammetrists as land surveyors. Currently, there's not anything in our law that allows that; it would require some legislation. My question is if in our discussion we

found favorableness in that, then legislation would need to be obviously implemented, crafted, whatever, to do that, what abilities do we have as a board to be involved in that process?”

Ms. Kelly answered, “Typically there is a very similar and somewhat different stance between the industry and the department. There are some things that I actually want to check with my supervisor on to see what ways we can represent your interests when we’re over at the legislature in talking to senators and representatives. A lot of times when we take a position, it’s defer with amendments, so with some sort of amendatory language. I don’t know if that amendatory language is something that we could discuss with you all and change these bills in a way that works for the board. I think you could certainly find a sponsor in the house and the senate and have your own legislation drafted.”

Mr. Lingerfelt responded, “Again, my direction here, I sometimes feel like the board should be proactive in a matter of that nature and formulate some opinion about it. If it’s favorable, I think, clearly the board can reach out to the professional associations and seek their approval also and maybe they will step up. But what I was trying to get to was whether or not the board itself has the ability to do the same thing.”

Ms. Kelly answered, “I think that you make a really great point and I’m probably going to go back to the original assumption that you all could vote on something that would be public record and then have your association lobby on behalf of the industry. You all are certainly welcome to take a stance.”

Mr. Herndon replied, “The board itself can’t carry a bill. It would be the professional society that would carry it because it wouldn’t be a departmental bill.”

Mr. Lingerfelt stated, “I guess the direction I was going on, Mr. Herndon, if we sort of foster the concept I guess would be fair and come to some conclusion or direction about that concept then we could have the ability to move that forward. I guess that’s what I’m trying to get at. I don’t feel it’s appropriate for us to have to wait on the association to foster the concept and then start the process.”

Mr. Herndon stated, “Well, the fact that the profession that you’re talking about is not a regulated profession, I think it would be better if anything that was pursued be done as individual members of the profession than the professional society. The board can’t really opine about an unregulated profession that’s not within their jurisdiction. So I don’t think a board opinion is really helpful or useful. It would almost entirely have to go through something that was identified in the profession that they see something that might need to be regulated. The board’s just not set up to regulate something like that, it’s nowhere in the law.”

Mr. Lingerfelt replied, “I certainly don’t want to take the steering wheel and drive legislation.”

Mr. Herndon then stated, “It’s just sort of a nonsequeter. It doesn’t have anything to do currently with land surveying so if it was discussed within the form of the professional society and they collectively determine, and you as members of the professional society

pitched in, not as board members, I think that would be far more effective because the society would be the one identifying a need for it.”

Greer Kelly replied, “The best course of action for you as board members as well as individuals is to foster the idea within your professional association.”

Ms. Kelly then asked if there were any further legislative concerns or questions.

Mr. Lingerfelt asked Ms. Kelly, “So routinely, in the future will you, if there is something like this on the hill, will we be able to see you at our meetings?”

Ms. Kelly answered, “Absolutely. I know you’re not meeting again until April so I will be more than happy to meet with you again.”

Mr. Herndon then told the board, “We need to go through the bills and see what the board feels about them to give me some kind of direction as to write a letter which would be subjective to me drafting and submitting it to the chairman for his signature.”

### **SB1931 and SB 2300 –**

**Jay Caughman** – *“I’ll speak to SB1931 and SB2300 being that they are similar in content. My opinion on it is that I am not in favor of it, to be quite honest with you. I think the current rules and regulations as they stand today are adequate and sufficient. I’m aware that, and I was a part of when this original four (4) year degree education came through, it was certainly endorsed by, strongly endorsed, by the professional society, as I was a part of it during that time. So certainly they endorsed it as it was submitted.*

*In addition, I’ve looked at the surrounding states to see what their requirements are in terms of an experience only route and most of the states, or many of the states that surround us will not even consider experience only. Of the ones that do, many of them are combining them with some level of education to be combined with it and there’s one (1) or two (2) that do allow experience only, but one (1) of them was Missouri that requires twenty (20) years of experience only, if I recall correctly, as opposed to what these bills are offering of ten (10). If I remember correctly, Mississippi was twelve (12) years and then there were some education requirements or classes on top of that, not necessarily degrees but things like that.*

*As a whole, from my research, if you look as what these bills are offering in relation to each of the surrounding states of Tennessee, this is a good barometer to judge against. If these were ever passed as they are written today, Tennessee would have the weakest requirements in terms of qualifications for examination and I don’t think I want to be a part of that. I don’t know how that serves the public in a positive way. As written today, I can’t endorse either of these two senate bills.”*

**Galyon Northcutt** – *“I agree totally with what Jay said. I, too, was on the committee as the president of TAPS when we pushed for the legislation that asked for the degree avenue towards licensure and I think likewise to do*

*anything different, to offer experience level right now would certainly weaken our avenue towards licensure and is no way in the best interest of the public of the state of Tennessee. I fail to see that.*

*In addition to that, we are trying to work with the major universities. Just last week we met with the University of Tennessee-Knoxville just to go over their programs to see if they could offer the programs not just go to one university and get a surveying and mapping degree, but just get the surveying courses so that they would be educated enough to take the exam. The avenues toward education are about to be broadened in this state, which would make it easier for an individual to become licensed.”*

**Sue Braly** – *“I agree with Jay Caughman and Galyon Northcutt about the experience.”*

**Tim Lingerfelt** – *“I’m very firmly opposed (to the bills). I will not reiterate the reason as they already said. However, I will say that the NCEES exam questions are formulated around the Bachelor’s degree. If a bill of either one of these natures passes, we regress, and I do not want to see our profession regress. We have struggled long and hard and I have said many times that I hope by the time I retire, that truly every licensee in the state of Tennessee will be known as a professional. That’s my reasoning behind not being in favor of this legislation. I do not want to see us regress, even if it is somewhat limited by sunset.”*

**SB2375 –**

**Jay Caughman** – *“The property description bill, I like the way it’s written. I do believe that it is also endorsed, if not sponsored by, TAPS. I can’t speak for TAPS right now but I do believe it was sponsored by them. I have heard some discussion on it. I’ve seen preliminary draft copies of what those reports would look like and I do support that one.”*

**Tim Lingerfelt** – *“It’s an interesting concept. It brings about good potential and it also has significant value to the public. I’ve read it. I’ve gone through the forms and so forth. As far as that goes, I’m in favor of that.”*

Mr. Caughman then stated, “I would like to make three (3) points, real brief. 1) Again, I can’t speak for the board, only myself, but I think they’ll concur with me. I certainly mean no disrespect in any way to any surveyor right now who obtained licensure through the experience route. I’ve worked with them on a daily basis. I respect them as professionals so I don’t mean to say anything disparaging to these people who have gone this route. There’s nothing against them. 2) If my numbers are correct, I believe it’s approximately thirty (30) states right now that already have recently, within the last 10-15 years, mandated the four (4) year degree requirement. Tennessee is just one of those many states that are doing it; and 3) I forget my third point. We’ll just leave it with two (2) points.”

Leonard Tusar, TAPS representative, informed the board that there is a house bill by Calfee, which is the companion bill to the Yager bill. So when they’re talking about that, they’re also talking about the companion bill. There were a couple other bills that have

come through that will really affect surveyors. One has to do with family cemeteries; another has to do with the review by county planning departments that would affect plats that were submitted for approval by county registers, etc. There are several bills right now that are going to affect surveyors.

Greer Kelly thanked Mr. Tusar for pointing that out “because I am not a land surveyor so I think there’s some legislation that comes through that I maybe didn’t realize the impact on surveyors. There will be legislation that is introduced between now and February 5 and I know we expect a few more things to come down the pipeline. I think your concerns are very valid in terms of the experience route. I think you have a very valid point and argument with the entire Haslam administration looking at higher education.”

Jimmy Cleveland, current TAPS president for 2014, informed the board that TAPS has got a divided membership on these bills. “This is an issue that, with the utmost respect for these gentlemen on the board, who are members of our association, we’ve got the...like I said, our membership is just divided on it. Speaking as the association, we are in favor of the sunset law that will only affect those that have applied and been denied application because of the confusion of the way the current law is written. Now, taking my TAPS hat off, and speaking personally as a member of the association and not as the president, I’ve got to say I personally don’t support it because the licensing law has been in effect and we are bound to understand the law if we’re in that profession and these people should have done their due diligence and researched that. I’m one of the guys that came through with a two (2) year associate’s degree and the six (6) years’ experience and I’ve got to echo what Mr. Lingerfelt said. It’s an extremely difficult exam and had I had to take it today geared around the four (4) year bachelor’s degree, it’d be extremely difficult. So I think it may be setting some people up, the experience route, may be setting them up for some disappointment and to spend a lot of money to pursue that licensure and maybe not able to pass (the exams) just because the way the exams are geared now. I personally am torn on it, again, because I am TAPS president and when I have that hat on I have to represent the stands of the association. As the president of the association, all this came about extremely quickly, within about three (3) days, about two (2) days before our next regularly scheduled board meeting. In the letter written to Representative Carr, we do reserve the right to change our opinion once we’ve had a chance to speak with our general membership. I don’t think anyone in the association would favor the concept of no exam at all. That’s absolutely a no go for me. That’s kind of where TAPS stands on it at this point.”

Greer Kelly thanked everyone for their opinions. Ms. Kelly informed them to “please let me know if there are any ways that we can help work with you all so we can move forward in the legislature.”

Mr. Lingerfelt asked Robert Herndon if there is anything that we need to further formulate, direct, etc. relative to this letter that Mr. Herndon is going to prepare. Chairman Lingerfelt then called for votes on the proposed bills SB1931, SB 2300 and SB2375.

**SB1931** – removes everything; education and examination – Jay Caughman made a motion to oppose this bill. Galyon Northcutt seconded the motion. The motion carried unopposed.

**SB2300** – version of the bill that strips the education requirement but leave the examination requirement – Jay Caughman made a motion that this board opposes SB2300. Galyon Northcutt seconded the motion. The motion carried unopposed.

**SB2375** – attestation statute – Jay Caughman made a motion in favor of SB2375. Galyon Northcutt seconded the motion. The motion carried unopposed.

Tim Lingerfelt asked, “Is it necessary to speak in favor, because by speaking in favor, it gives it more weight or merit?”

Jay Caughman stated, “Certainly the advantages to addressing a letter in favor of SB2375 gives credibility and enforces the full weight of this board behind that legislation and can only be a positive thing towards its passage.”

Mr. Caughman also stated, “Before these letters get addressed, it’s been mentioned that, and history certainly shows, that these bills will change, they be amended 2, 3, 4, 10 times, they might be withdrawn, different things that could happen. Being that those things may happen, the opinion of the board may change.”

Mr. Herndon informed the board, “I would say ‘as written’ in the letter. The board opposes the bill ‘as written.’ Now if somebody would like to make a motion authorizing me to draft a letter and perhaps give a board member authority to finalize that version.” Mr. Lingerfelt then asked, “We have a house bill that’s a parallel bill to SB2300. Should we not include that because we have knowledge of it today?”

Mr. Tusar informed the board that HB2234 by Calfee is the companion bill to SB1931. Robert Herndon said that the letter would address SB1931 (HB2234). He also told the board that they really didn’t have to write a letter in support of SB2375 unless they just wanted to support the bill.

Mr. Caughman stated that he would like to (support the bill). Mr. Northcutt also said that he thinks it’s worth it. He stated that it would probably lend even more creditability to the fact that we are opposing the other two bills.

***VOTE:*** *Galyon Northcutt then made a motion that we ask our legal counsel to draft a letter for review on legislation. Jay Caughman seconded the motion. The motion carried unopposed.*

## **TAPS REPORT**

Leonard Tusar, TAPS representative, then gave his report. The TAPS Board of Directors met in Nashville on January 18, 2014. TAPS supported a “sunset rule” for the affected applicants who applied recently to sit for the examination based on experience only and were denied because they had experience only. This is not an acceptable method to sit for an examination by statute and if for some reason this legislation were to go through, it would allow people that had applied to sit for the examination. This

would allow individuals to reapply and take the land surveyor exams for up to four (4) years. TAPS is going to have the annual conference in Murfreesboro.

TAPS members also discussed the property description legislation that was referred to earlier and also discussed getting some additional surveying courses in other locations in the state, be it UT or Tennessee Tech.

Mr. Lingerfelt stated that, "Going back to this legislation, I think it's important that it speak to in-state residents so that TAPS knows we also deny applicants from out-of-state that apply in that regard. To follow up on that for edification, the reason the "10-year" language was put in the law was because, let's say, you were licensed in Iowa and Iowa did not require a Bachelor's degree, and you come to Tennessee to apply for licensure, the Tennessee board had to have some means to evaluate your license as to say that it was comparable to the requirements of the state of Tennessee, so the "10-year" rule was put in place because the language in that paragraph TCA 62-18-109(c) specifically says practice surveying, which by definition in our statute means you are licensed. So if you had practiced surveying in Iowa as a licensee, and this is an example, for ten (10) years, then this board felt like, by statute, that you were equivalent to the other requirements that we had simply because your state did not require a BS degree when you became license. That's really the definition of the "10-year rule." If your membership further discusses it, those are things they should be aware".

Mr. Cleveland said, "Of course, as everybody knows with that legislation, and as I indicated earlier, I have to represent the current Board of Directors of TAPS opinion and that's what I was charged to do today. There was one issue that was brought up and it was the confusion over the ten (10) years and the wording. One thing that was brought up was under board policy #9 "*Any person who has practiced land surveying, as defined by Tenn. Code Ann. 62-18-102(3), under a legitimate exemption, such as employment by an agency of the federal government not requiring a state license to provide land surveying services, and having obtained at least ten (10) years of experience of a standard satisfactory to the Board in such a capacity, are eligible to apply for registration under this provision.*" That appeared to strike some of the people with a little, I don't want to say 'favoritism', but that was thing that was brought up at the meeting."

Robert Herndon explained that the reason the exemption is in there is because federal law trumps state law. If you are hired by the federal government and your job description is land surveyor and your job is identical or very similar to what a licensee would be doing and you can prove that you've been doing that for ten (10) years, of course it has to be acceptable to the board, that would be practicing, but you're not required to have a license because you're working for the federal government.

Mr. Herndon continued, really the only exemption that exists for this board, where you can actually be a surveyor without having a license in this state is if you're working for TVA or the Corps of Engineers but your job has to be land surveyor and the duties of that job have to be what the board would consider that of a land surveyor. If you've done that for ten (10) years, then you have legitimately practiced and been a land surveyor for the federal government, then you may take the exam.

Mr. Northcutt stated that it doesn't say they can be issued a license. It just says they're capable of applying.

Mr. Herndon also stated that it just means you're eligible to apply for the exam. It has to be a specific job, too. You can't just be in the civil department; it has to be your job, what you're actually hired to do.

## **DIRECTOR'S REPORT**

Donna Moulder, Administrative Director, then gave the Director's Report.

Ms. Moulder updated the members of the status of professional conduct rules and the continuing education rules. The professional conduct rules are in the Attorney General's office and the continuing education rules are waiting to be sent to the Attorney General's office.

Ms. Moulder requested the Board vote on who to send to the 2014 NCEES Southern Zone Meeting in Charleston, SC on April 24-26, 2014. Mr. Lingerfelt recommended that Jay Caughman and Galyon Northcutt attend the meeting.

***VOTE:*** Jay Caughman made a motion to allow Gaylon Northcutt and Jay Caughman to attend the southern zone meeting in Charleston, SC. Sue Braly seconded the motion. The motion carried unopposed.

The advisory committee members have recommended conflicting PDH hours on the following continuing education submitted by William Thompson for approval. The board needs to review the courses in question and vote on the number of PDHs to give each course.

**Opus Solutions:** This is a renewal request for a course that expired on 5/17/13. Originally it was approved for four (4) hours as requested by Mr. Thompson. The CE advisory committee recommended that this course be approved for three (3) and four (4) PDHs.

***VOTE:*** Jay Caughman made a motion to approve this course for three (3) PDHs. Galyon Northcutt seconded the motion. The motion carried unopposed.

**State Plane Coordinate Manipulation:** This is a renewal request for a course that expired on 5/17/13. Originally it was approved for eight (8) hours as requested by Mr. Thompson. The CE advisory committee recommended that this course be approved for six (6) and four (4) PDHs.

***VOTE:*** Galyon Northcutt made a motion to approve this course for six (6) PDHs. Jay Caughman seconded the motion. The motion carried unopposed.

**Spiral Curves:** This is new course presented for approval and Mr. Thompson is requesting that this course be approved for eight (8) PDHs. The CE advisory committee recommended that this course be approved for four (4) and six (6) PDHs.

***VOTE:*** Jay Caughman made a motion to approve this course for six (6) PDHs. Galyon Northcutt seconded the motion. The motion carried unopposed.

Ms. Moulder informed the members of the board that they need to appoint a new continuing education advisory committee member.

Mr. Caughman was asked to find someone from the West Tennessee area that would be capable of responsibility of reviewing these applications for continuing education.

Mr. Caughman recommended Mr. Byron Harris, a long time registered land surveyor, has served the Shelby County area for many years. Currently he owns his own business. Mr. Harris has retired his Tennessee land surveyor's license, but he has always been very active toward continuing the quality of surveying. Mr. Caughman contacted Mr. Harris and asked him if he would be willing to serve in this capacity and he said "yes", and he submitted his name for consideration."

***VOTE:*** Jay Caughman made a motion to recommend that Byron Harris serve on the continuing education advisory committee. Galyon Northcutt seconded the motion. The motion carried unopposed.

Mr. Lingerfelt stated that he would like to add one thing to the end of the director's report that is in the same spirit of where we're just at on the continuing education advisory committee. "I had a lengthy conversation with Mike Roberts, CE advisory committee member. Primarily, we were talking about some of these courses and he brought up a very valuable point. They spend a pretty significant amount of time reviewing these courses and determining the value of them to our licensees and I think that's a very important job. As Mr. Northcutt has spoken about it before, we do not compensate these individuals in any manner financially. I discussed that with Mr. Roberts and he brought something to my attention that I felt was very worthy of discussion by this board. What is the possibility of this board giving continuing education credit to these individuals for the work that they're doing? They would still have to complete and submit the course reporting form(s)."

Mr. Caughman said "We walk away with either a "yes" or "no" as whether we would like to approve PDHs for their efforts, but at the same time we need to do some homework on it and if we could probably get an opinion from Mr. Herndon, to see if, yes, it falls under the current guidelines allowed and you can go and do it, and if it doesn't, then, "sorry guys but we tried". Otherwise, we're going to sit here and spin this thing around and no one knows the answer."

Mr. Lingerfelt informed Mr. Herndon that we'll leave that as a task for him for our next meeting. "Let us know if we can do it, and if we can, I'd certainly like to."

Sam Payne, Deputy General Counsel and Damon Ramono, an Extern with the Regulatory Boards Legal Division, met with the members of the board to update them on the Open Meetings Act.

Michael Driver, chief counsel for the Regulatory Boards, met with the board to discuss payment to the Continuing Education Advisory Committee members for their services

on the committee. Mr. Driver informed the board that Ms. Whaley brought a question to him that the board had about 1) the possibility of charging continuing education vendors for reviewing applications submitted; 2) providing compensation to the advisory committee; and 3) the ability to procure a contract to have a third party perform the review of these applications.

Mr. Driver stated, "In my review of this, it does not appear that the board has the authority to do either of the first two of the questions; either provide compensation for the committee members or to charge a fee. This board's fees are actually fairly tightly laid out in statute and there is not any room for interpretation there where you sometimes can find some and also, these vendors are not licensees or otherwise regulated by the board as such.

As to the third question, I'm not aware of anything that would prohibit the board from putting out a request for proposals for someone to perform a review function and then report to the board. I think the board would still have to perform the final approval of any of the continuing education vendors but I'm not aware of anything that would prohibit the board from procuring a contract for someone to perform review on behalf of the board and then present that to you."

Mr. Lingerfelt asked Mr. Driver, "On the first question, if appropriate legislation was crafted that gave the board the authority to charge the vendor for submitting their product for consideration, then the board would have a fee, would that not be correct?"

Mr. Driver answered, "Absolutely."

The next item on the agenda is to review the Colonial States information.

Ms. Moulder asked for clarification on why this board wants or needs to be a member of the Colonial States Board of Surveyor Registration (CSBSR).

Mr. Lingerfelt explained that the CSBSR primarily represents the colonial states that have metes and bounds type surveys and the secondary reason is that hopefully, sometime in the future, this board may have an opportunity to utilize the examinations they provide to photogrammetrists who are trying to become licensed land surveyors and GIS individuals who want to become licensed land surveyors. The CSBSR is essentially a "sister" testing group of NCEES.

VOTE: Jay Caughman made a motion to apply for membership to the Colonial States Board of Surveyor Registration (CSBSR). Galyon Northcutt seconded the motion. The motion carried unopposed.

Mr. Caughman volunteered to attend the Government Operations meeting about the new rules when necessary.

The meeting with the Engineers committee is scheduled for Wednesday, April 9, 2014 beginning at 1:00 p.m.

Jay Caughman then briefly discussed the relationship of GPS RTK to boundary standards as set forth in the Standards of Practice.

Jimmy Cleveland stated that, if it's agreeable to the board, he would charge the TAPS Standards of Practice committee with starting to assemble some information on the GPS RTK matter and report back to the board at the April 2014 meeting.

There being no further business for the day, Galyon Northcutt made a motion to adjourn the meeting at 3:27 p.m. Sue Braly seconded the motion. The motion carried unanimously.

## **Day Two, January 31, 2014**

### **BOARD MEMBERS PRESENT**

Tim Lingerfelt  
Galyon Northcutt  
Sue Braly  
Jay Caughman

### **STAFF MEMBERS PRESENT**

Day Two: Nikole Avers, Donna Moulder, Robert Herndon, Lauren Dantche

Mr. Lingerfelt called the meeting to order at 9:15 a.m.

Applications were for the April 2014 examination(s) were reviewed. The following applications were approved:

Ryan Matthew Carlile (PLSIT)  
Jerry Don Tabers (PLSIT)  
Loren Michael Ward (PLSIT)  
Matthew Enoch Turner (PLSIT)  
Brandon Michael Shaw (PLSIT)  
Jason Wayne Britt  
Brian Clark Bradford  
Steven Richard Conti  
James Jeremiah Davis  
William Logan McCraw  
Joseph Edward Ahler  
William David Barker  
Clinton Tony Head  
James Joseph Lewis, Jr.  
Paul K. Moody III

James Michael Powers  
Edward Caldwell Burchett  
Collin Joseph Moyers  
Christopher Scott Kneram  
Wesley Earl Griggs  
Bryan Timothy Sauceman  
Michael Trevor Gorman  
Wayne Evans Shanks  
Jacob Daniel Schaffner  
William Russell Blackwell  
Keith Ryan Brotherton

The following applications were denied:

Christian P. Shurter – does not meet TCA 62-18-109(c) since licensure in NC

John Coke Smith IV – does not meet TCA 62-18-109(c) since licensure in SC

Jimmy Don Davis, Jr. – plats submitted with application do not meet Tennessee standards of practice

Bret Bee Ferguson – does not have a four year degree as required by TCA 62-18-109(A)(B)(C)

Robert Matthew Goodrum – does not have a four year degree as required by TCA 62-18-109(A)(B)(C)

Buddy Ray Curtis – does not have a four year degree as required by TCA 62-18-109(A)(B)(C)

There being no further business for the day, the meeting was concluded at 11 a.m. on January 31, 2014.