



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

**Board Meeting Minutes for July 28, 2016
First Floor Conference Room 1-B
Davy Crockett Tower**

The Tennessee Real Estate Appraiser Commission met on Thursday, July 28, 2016 in the first floor conference room of Davy Crockett Tower in Nashville, Tennessee. Mr. Jay Caughman called the meeting to order at 9:04 AM and the following business was transacted:

BOARD MEMBERS PRESENT: Jay Caughman, Tim Lingerfelt, Galyon Northcutt.

BOARD MEMBERS ABSENT: None.

STAFF MEMBERS PRESENT: Brian McCormack, Laura Martin, Kimberly Whaley, Cody Kemmer.

ROLL CALL/NOTICE OF MEETING

Mr. Caughman, serving as chair due to Mr. Northcutt's recent illness, called the meeting to order at 9:04.

AGENDA

Mr. Caughman's first order of business was to rearrange the agenda to accommodate both the change in chairmanship as well as those members of the public in attendance who had expressed an interest in addressing the Board.

A new election of officers was held: Mr. Lingerfelt put forward Mr. Caughman's name as chair, and Mr. Caughman suggested Mr. Lingerfelt should serve as the new vice-chair. Mr. Northcutt made a motion to accept both names, which Mr. Lingerfelt seconded. The new officers were elected by unanimous vote. Now chair, Mr. Caughman put forward the adoption of Robert's Rules of Order, which Mr. Northcutt made a motion to accept and which Mr. Lingerfelt seconded. Again the motion passed unanimously.

MINUTES

Mr. Lingerfelt made a motion to adopt the minutes from the April 6, 2016 meeting as written, which Mr. Northcutt seconded. The motion carried by unanimous vote.

PUBLIC ADDRESS

The Board then heard from Mr. Benjamin Moorman, who had recently contacted the office of legal counsel seeking clarification about standards on behalf of his firm, Benchmark Associates. Mr. Moorman had run into an issue with a local planning commission who in his view were imposing standards more rigorous than those set forth by the Board's own rules and laws. The Board agreed with counsel that they lacked the authority to supersede a jurisdictional authority in this instance, and that any client or agency

could impose stricter qualifications on a surveyor's work than those expressed by the Board so long as they did not conflict with the rules and laws established by the Board. They advised Mr. Moorman as best they could about how to satisfy both the standards of practice and the local planning commission.

Next, Mr. Jimmy Cleveland addressed the Board representing the Tennessee Association of Professional Surveyors (TAPS). Mr. Cleveland gave a brief recap of his time serving as TAPS President and a few of his ideas for the future as TAPS approaches its 50th anniversary. He informed the Board about the upcoming TAPS meeting, to be held in Nashville at the end of September, and requested someone from the Commerce & Insurance staff be available to help explain many of the new changes relating to licensure and examination.

EDUCATION REVIEW

The Board reviewed the education committee's recommendations for course approvals. Mr. Lingerfelt made a motion to accept the committee's recommendations, which Mr. Northcutt seconded. All courses were approved by unanimous vote.

DIRECTOR'S REPORT

Assistant Commissioner Brian McCormack addressed the Board in the absence of its new interim director, Roxana Gumucio. Mr. McCormack thanked the previous director, Nikole Avers, for her work on the Board and looked forward to what might be accomplished in the future. Mr. McCormack highlighted a few areas where he hoped to help the Board with continued efficiency and improved service.

Decisions for the NCEES 2016 Annual Meeting were finalized, after a revision to the Department's dealings with the Council two members of the Board were qualified to receive delegate funding for the trip to Indianapolis. The Board had previously selected Mr. Lingerfelt and Mr. Northcutt as funded delegates, with Mr. Caughman intending to pay for his own trip.

Director of Licensing Kimberly Whaley was on hand to help explain some of the changes to the proposed contract with the NCEES, which would also affect the changes in examinations. Mr. Lingerfelt raised a question about the language regarding turnaround time for scoring computer-based exams. He made a motion to amend the proposal to allow the Council fourteen days for delivering the results to examinees. Mr. Northcutt seconded the motion. The Board voted unanimously to accept those changes.

Finally, the Board voted on proposed 2017 meeting dates and expressed interest in holding a meeting away from its usual Nashville location.

EXAM DISCUSSION

The meeting resumed after a break at 10:30 AM, having moved from Conference Room 1-B into the nearby Conference Room 1-A. The Board had been dealing with microphone problems in 1-B and made the decision to move to the larger room where audio and video recording would be assured.

Mr. Peter Messier appeared before the board to discuss the Tennessee-Specific (TS) exam and the examination process. Mr. Messier is a lecturer at Clemson University who writes and administers the TS exam under contract with the State of Tennessee. As the current contract draws to a close the Board reviewed exam administration policies under Mr. Messier and posed questions about the future of the process now that the Principles & Practice of Surveying (PS) is being administered via NCEES.

LEGAL REPORT

1. Case No.: L16-SUR-2016019651

Complaint History: none

This complaint was filed by a consumer and alleged that the Respondent didn't go by the deed in his survey. The complainant has a quitclaim deed for property that she and her now deceased husband owned. The neighbor of the complainant has allegedly increasingly begun to encroach on her property, and at this point now has a driveway on her property. At the time of the purchase the house on the neighbor was already encroaching on the complainant's land (which is probably why they had a quitclaim). The respondent saw a lawyer who encouraged her to pay for a land survey. The respondent- surveyor conducted a survey which resulted in showing that her property line was five feet less than what she thought. The complainant believes that there are certain land markers that vindicate her position and has included pictures. There is also a large plat that she got from record at the courthouse.

This complaint and all relevant materials were sent to an expert reviewer. After reviewing the plat, photos provided, and other letters from the complainant the reviewer recommended the following;

"Based On The Preponderance Of Evidence Supplied By The Respondent, I Find That There Is No Basis For The Complaint. The Respondent Has Provided His Professional Opinion For The Survey And Has Relied On Evidence Found In The Field As Will As Several Previous Surveys By Other Surveyors. All Of Which Match Within Reason."

It appears that the survey conducted by the respondent is a reasonable interpretation of the materials provided.

Recommendation: Close

Board Decision: Concur.

2. Case No.: L16-SUR-2016029871

Complaint History: none

This complaint was filed by a consumer alleged that the respondent has been paid for his job but he has done it wrong and his out about \$50,000 over all his mistake. The Complainant, Alleges That The Respondent, Incorrectly Performed A Land Survey. This is a boundary dispute, whereby both neighbors believed the other to be encroaching on each other's land. The respondent sent in an explanation that he was hired by the complainant because of pending litigation. The respondent said the complainant bought what he claimed to be 22 acres in 1980, but he did not have a survey of the land, and his deed only describes 3.5 acres of land. The complainant had relied on an existing fence that he had improved and he has been using the 22 acres. There is no survey or deed for the respondent to rely on to say that the claim to property is 22 acres, so he couldn't create a survey saying so. He did believe that the complainant had been taken advantage of and he was willing to help him by testifying about the fence he had improved, but was not willing to create a survey which the respondent felt would be an improper use of his license.

This case was sent to an expert reviewer along with the deeds on the land. The reviewer reports that;

"I agree with the respondent's assessment as to the reason for the complaint, that is he has maintained more land than is spelled out in his deed. The case is baseless and should be dismissed."

There appears to be no wrongdoing by the respondent.

Recommendation: Close.

Board Decision: Concur.

3. Case No.: L15-SUR-20150215801

Complaint History: 200705385 closed with a consent order for \$500, 200707824 closed with no further action, 201100760 closed with a consent order for \$300 and 201101743 closed with a consent order for \$300, 201401188 closed with a LOC.

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 and/or 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 Voluntary Revocation.

Board Decision: Concur.

4. Case No.: L15-SUR-20150222421

Complaint History: none

This complaint was filed by a licensed surveyor, alleging that the he discovered recorded documents with his RLS seal placed on the site exhibit and his signature forged across the seal by the respondent. Our record shows that the Respondent had a denied application. The complainant sent in many documents with his seal and signature that he claims to have no knowledge of whatsoever. The respondent had worked for the complainant for several years, but they parted ways in 2004. The respondent says they parted on good terms have maintained a friendship over the years. The complainant claims he released the respondent from employment for a matter similar to the complaint here. The complainant provided a document that bears the complainants seal and signature. This document also has the respondent's business logo, address, and the respondent's name on it. This was created in 2015. The complainant says he has not worked with the complainant since 2004, but the respondent says they have worked on projects together on off since his initial employment. The respondent claimed that at no time has he ever presented himself as a license surveyor; however the name of his company is "Xxxx Surveyors, LLC."

This was sent to an expert reviewer. The reviewer found that the respondent had violated the following statutes;

TCA 62-18-101-(a), (b)

- Practicing land surveying without a valid license.

TCA 62-18-120 et al

- Presenting or attempting to file as that person's own the certificate of registration of another;
- Falsely impersonating any other practitioner; and
- A person shall be construed to practice, or offer to practice, land surveying who, by verbal claim, sign, advertisement, letterhead, card or any other way, represents the person to be a land surveyor, with or without qualifying adjectives, or through the use of some other title implies that the person is a land surveyor

Recommendation: Authorize for formal hearing. Allow authority to settle by consent order assessing \$5,000.

Board Decision: Authorize for formal hearing. Allow authority to settle by consent order assessing 16 hours of boundary-related CE courses to be completed by December 31, 2016.

5. Case No.: L15-SUR-20150217461

Complaint History: none

This complaint was filed by a consumer and alleged that the Respondent disregarded the complainant's property deed and fence and marked a new property line between him and his neighbors. The complainant tried this in civil court, the trial was held in Feb. 2015, and the judge ruled in the complainant's favor, he was awarded \$10,000. The final order notes that the damages to the plaintiff exceeded \$10,000 but the parties had agreed at the commencement of the suit to cap damages at \$10,000. At trial another surveyor who had been hired by the complainant testified, he claimed that the methods by which the respondent conducted his survey were not any methods that he was familiar with, and he did not agree with the conclusions he had found.

This case was sent to an expert reviewer. The reviewer found that the respondent did not include exclusion on one of the tracts of land and he believes this was the source of the confusion between the neighbors and the source of the law suit. The reviewer further states that this case was particularly difficult to review because the deeds of the two adjoining properties at issue do not relate to each other, but he said relationships of tracts are not required on surveys. He found that in not including the exclusion on one of the tracts, that the surveyor had acted negligently. The reviewer recommended that this was only borderline incompetence and that he felt the majority of the survey had been done correctly.

Recommendation: Authorize for formal hearing. Allow authority to settle by consent order assessing \$1,000.

Board Decision: Authorize for formal hearing. Allow authority to settle by consent order assessing 16 hours of boundary-related CE courses to be completed by December 31, 2016.

6. Case No: L16-SUR-2016018761

Complaint history: none

Complaint filed by a consumer regarding a boundary dispute. The complaint alleges that Respondent conducted a faulty survey of the land in 2013, which led to a builder encroaching on Complainant's property. Complainant rehired Respondent in 2015 in order to review and correct the allegedly wrong survey from 2013. Complainant alleges that the 2015 survey was purposefully wrong in an attempt to cover up Respondent's faulty survey in 2013.

This case was sent to an expert reviewer. The reviewer found that Respondent had not committed any violations. The reviewer states that Respondent prepared a grading plan for preparing a "No-Rise" permit, not a survey for construction of building encroachment. The reviewer further states that the builder located the construction location without the benefit of a boundary line survey. The reviewer also states that Respondent indicated a possible overlap in property lines, and Respondent recommended that Complainant contact a title attorney to resolve any boundary line issues.

There appears to be no wrongdoing by Respondent.

Recommendation: Close.

Board Decision: Concur.

7. Case No: L16-SUR-2016014001

Complaint history: 200503403 dismissed

Complaint filed by a consumer alleging that Respondent failed to perform proper research and did not contact any adjoining property owners on a survey. The complaint alleges that Respondent's survey indicated a property to be 21.961 acres, but the plat and deed indicated that the property was 24.6 acres. Complainant states that the error was due to the location of a fence across the property, formerly a separate piece of property that was eventually bought by the previous property owner. Complainant alleges that a survey conducted in 1978 accurately reflects the acreage of the property following the acquisition of land beyond the fence.

This case was sent to an expert reviewer. The reviewer found that Respondent violated the following rules:

Tenn. Comp. R. & Regs. 0820-03-.07(1)(b)(7) Survey Types and Requirements

The certification of survey does not indicate actual ratio of precision of the unadjusted survey.

Recommendation: Authorize for formal hearing. Allow authority to settle by consent order assessing \$250.

Board Decision: Close with a letter of warning.

NEW BUSINESS

By this time the meeting had gone well over its scheduled ending, and it was agreed that discussion of the remainder of the agenda would suffer. Mr. Lingerfelt suggested an additional meeting to be scheduled before the Board's next official meeting in October. Assistant Commissioner McCormack agreed to the idea, and the Board decided on a tentative date of September 5.

Lastly the Board awarded itself 7 PDHs based on the amount of time the meeting had taken. There being no other business, Mr. Caughman adjourned the meeting at 5:53 PM.