



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

**Board Meeting Minutes for October 27, 2016
First Floor Conference Room 1-B
Davy Crockett Tower**

The Tennessee Board of Examiners for Land Surveyors met on October 27, 2016 in the first floor conference room of Davy Crockett Tower in Nashville, Tennessee. Mr. Jay Caughman called the meeting to order at 9:02 a.m. and the following business was transacted:

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

BOARD MEMBERS ABSENT: None.

STAFF MEMBERS PRESENT: Roxana Gumucio, Laura Martin, Brian McCormack, Cody Kemmer, Kimberly Whaley, Mathew Wakefield.

ROLL CALL/NOTICE OF MEETING

Mr. Caughman called the meeting to order and read notice of the meeting into the record, as follows: "Notice of the October 26, 2016 meeting of the Board of Examiners for Land Surveyors was posted to the Board of Examiners for Land Surveyors website on March 22, 2016, with a revised agenda posted October 20, 2016."

AGENDA

Mr. Lingerfelt motioned to adopt the agenda as written. This was seconded by Mr. Northcutt. The motion carried by unanimous vote.

MINUTES

Mr. Caughman then turned the board's attention to the minutes from the July 28 meeting. Mr. Lingerfelt raised a concern about a possible error in the legal report. Mr. Lingerfelt recalled that the complaint in question regarded unlicensed activity yet the decision recounted in the legal report was a request for continuing education. Ms. Gumucio suggested the board authorize the minutes under the condition that legal counsel would make any necessary changes to Item 4. Mr. Caughman agreed that would be the most efficient way forward. Mr. Lingerfelt made a motion to approve those minutes pending that correction. Mr. Northcutt provided a second and the motion carried by unanimous vote.

The Board also reviewed the minutes for their additional meeting held on October 5, 2016. This meeting had been discussed at the end of the board's July meeting and officially added to the docket in September to allow the board to discuss items leftover from their previous meetings. Mr. Lingerfelt

motioned to approve those minutes as written, with a second by Mr. Northcutt. The minutes passed unanimously.

DIRECTOR'S REPORT

Ms. Gumucio recognized Assistant Commissioner Brian McCormack, who welcomed the newly appointed member Ms. Sumerford and announced Ms. Gumucio as the new permanent director for the program. Mr. Caughman expressed the board's optimism for the future.

Ms. Gumucio then recognized Ms. Sue Braly, longtime public member, who was in attendance. The Board had arranged for a plaque to be presented to Ms. Braly recognizing her many years of service. Mr. Lingerfelt made a short, lighthearted speech recalling their many years together reviewing applications and presented Ms. Braly with a framed painting.

Kimberly Whaley and Matthew Wakefield appeared before the board for an update on a new contract for the Tennessee-Specific (TS) surveying exam. Ms. Whaley presented the board with a scope document identifying several aspects that both the board and the department would like to see addressed by a potential testing vendor. Many of these points related to the content and format of the exam. Then there was the question of whether the State would follow the NCEES' move toward computer-based testing. Mr. Wakefield presented several unique challenges a state exam would have to go CBT, including the relative low numbers of exam takers, and Mr. Caughman expressed a reticence on behalf of the board to go into CBT until the current level of consistency could be guaranteed. Ms. Whaley brought up many positive points for going CBT, such as the frequency of administration and the cost savings to the board over a traditional pen-and-paper method.

Ultimately the board concluded that the department should continue on in the development of a request for proposal, with the opportunity to review it before it was sent out for bid. Mr. Wakefield assured the board that they could have the opportunity to do so on the given timeline, but that a teleconference meeting, still open to the public, may be the best avenue to pursue in that regard. The department agreed that when the RFP was complete they would notify the members of the board and the public to hold such a meeting, sometime before December.

Ms. Gumucio presented the board with its current financial information, including a projected budget and expenditures. She gave the board an update on wall certificates and the upcoming fall newsletter.

EDUCATION REPORT

Mr. Lingerfelt raised questions about some of the courses that had been recommended by the education advisory panel. Mr. Caughman noted that they had previously asked the provider in question to submit additional documentation before voting to approve or assign PDH's. Mr. Lingerfelt made a motion to approve all other courses, but that the courses related to this provider should be supplemented with additional information. Mr. Northcutt agreed and seconded the motion. The motion passed unanimously. Ms. Gumucio explained the provider would be notified that additional information would be required to justify the hours of credit related to the subjects in question.

LEGAL REPORT

- Case No.:** 201602953 Leonard Tusar #2230
Complaint History: None.

This complaint was filed by a consumer who alleges that the respondent did not send them a survey that they had paid for. The respondent allegedly will not refund the fees and has not responded to phone calls. The complainant had called the respondent and he and his employee came to her house to take photos. They told her she would have the survey in one weeks' time. The complainant gave the respondent a check for \$325. This occurred in July of 2015. The complainant alleges that she called the respondent many times in the following months and each time he said the survey was on its way but said there were complications. The survey never came in the mail. The complainant says she no longer needs the survey. She provided a copy of the check written to the surveying company. She attempted to cancel the check after months of not receiving the survey but found it had been cashed in July of 2015. She believes that she was taken advantage of because of her disabled status.

In response to this complaint the respondent claims that he obtained a copy of the latest deed of record for the complainant's property, with a description based upon a survey performed in June 14, 1995. This indicated to the respondent that he would be doing a retracement survey of the property. This same description had been carried forward in conveyances since 1995. On or about July 3, 2015, the respondent and his rodman proceeded to perform the field work on the property. Having plotted the deed description, they were able to find iron pins or pipes at the four corners as described in the deed description from 1995. Field measurements between the iron pins or pipes did not match exactly the distances called for in the 1995 deed description but followed the lines of possession and fences. The discrepancies can be attributed to precision differences in survey methods and equipment and/or probable disturbance of the corners in the 20 years since the survey was completed. The respondent explains the \$325 was for field work. A sketch of survey was not a part of the original agreement or covered by the \$325, only the field work. When asked for a survey, the respondent told the complainant that he would sketch the survey in the next couple of weeks as time permitted.

As business increased the respondent was unable to work on the survey. The survey has still not been sketched, since this was separate from the original paid-for services, he did not prioritize it. The respondent says he feels badly if he was not clear that the survey would be separate from the field work. He has offered to refund ½ of the complainant's money if that would be suitable to the Board. Going forward the respondent says he will try to ensure that clients are clear about what services they are paying for on the front end.

Recommendation: Close this case with a letter of warning, after confirming the respondent has refunded the ½ of the paid fee.

Board Decision: The Board decided to close this case with no action, but also wanted a letter to be mailed to the Respondent encouraging him to use better communication skills with clients in the future.

2. Case No: 2016032621 James Carter Phillips #2457
Complaint History:

A complaint was filed alleging a boundary dispute. The respondent created a survey of the land that is adjacent to the complainant's property in 2009. In 2013 the complainant bought his adjacent parcel. He had a survey conducted on his land that disputes the survey that the Respondent had filed with the county clerk in 2009.

The heart of the dispute appears to rely on whether a called-for land monument in the complainant's deed was properly addressed in the 2009 survey.

The respondent claims that the 2013 survey does not reference his on-file survey and that this complaint was filed because he refuses to alter his survey or testify that his survey was incorrect. The survey that was provided by the complainant was unreadable to our expert reviewer. The respondent has been contacted on three separate occasions for a copy of the survey for our reviewer to look at. To date he has not sent in the survey. He has expressed that he doesn't think he should have to but said he would send it in the next few days. At best the survey will arrive the day before the Board meeting. He was first asked to send a copy of his survey to the department on June 14th 2016.

Recommendation: close with a letter of warning concerning cooperation with the Board.

Board Decision: The Board decided to send a Consent Order to the Respondent demanding Respondent to send a copy of the plat, by certified mail, to Board staff within one (1) month of the date of receipt of the Consent Order or be issued a \$1,000.00 civil penalty. The Board also wants the Consent Order to require the Respondent to keep the Board updated on any pending litigation against the Respondent in another court of competent jurisdiction. If such court does issue a judgment against the Respondent, the Board will reconsider this matter.

3. Case No.: 2016039211 Lowell Keith Brice #1892

Complaint History:

A complaint was filed against the respondent alleging that multiple errors were present in a survey conducted by the respondent. The complainant was having a boundary dispute with neighbors and contracted with the respondent to conduct a survey. The complainant alleges they saw the respondent chatting with the neighbors on several occasions for lengthy periods of time. At one point when the complaint was in a heated discussion with the neighbors, the respondent told the complaint to "go back to their little cabin and drink coffee." After receiving the survey the complainant had a real estate property developer look at the survey as well as another land surveyor and the complainant alleges that both these people said the survey was full of errors. The complainant also believes that the respondent held clandestine meetings with the neighbors at a nearby barber shop to show them the survey before giving the completed survey to the complainant.

In response the respondent says he only spent a few minutes speaking with the neighbors, because he was explaining why he was there and what he is doing. At one point he said he did tell the complainant to go to their cabin because they were cursing at the neighbors while he was trying to work. He completely denies any clandestine meetings. The neighbors did call him asking for a copy of the survey. He says he told the neighbors he couldn't give them the survey but that once the complainant had filed the survey with the registrar of deeds, it would be a public record and they could obtain a copy that way.

The expert reviewer looked up the surveyor who had told the complainant that the survey was full of errors. That surveyor's license was expired so he gave no credence to his concerns. After reviewing the survey and the deed, the expert reviewer said he found no errors in the survey.

Recommendation: Close.

Board Decision: Close.

4. Case No.: 2016048171 Steven G. Pierce #1564

Complaint History: none

A complaint was filed against the respondent after the property owners of an adjacent property offered to sell the complainant property that the complainant believed he already owned. There have been two surveys conducted on the properties and there is an overlap between the two properties of about 3 ½ acres, which is the core of this dispute. The respondent conducted his survey in 2005 for the previous owner of the complainant's neighbor's property and delineated the 3 ½ acres as belonging to the neighbor of the complainant, meaning it is now owned by the respondent. The complainant found a survey from several years prior to the respondent's survey that shows the 3 ½ acres belonging to the complainant's property. At the time the respondent conducted the survey, he saw that the deeds of the two properties caused the overlap issue and so in his survey demarcated the 3 1/2 acres as being in dispute. The respondent does not allege that the prior survey was incompetent but says he interpreted the deeds differently in how he interpreted the natural monuments called for in the deeds.

The survey in question was sent to an expert reviewer. This expert found that while there might be a genuine boundary dispute between the two property owners, that the respondent's survey had not violated any standards of practice. It appears that this dispute is best left to the civil courts to be argued between the property owners.

Recommendation: Close.

Board Decision: Close.

5. Case No.: 2016055171 Thomas A. Campbell II #978

Complaint History: 201200081 closed with a consent order for \$2000

This complaint was opened administratively to investigate allegations that were listed in a newspaper article about the respondent. The newspaper alleged that the respondent had been charged with multiple felonies and misdemeanors including but not limited to; aggravated statutory rape, sexual exploitation, aggravated assault, theft, coercion of a witness, and carrying a fire arm in a government building.

A grand jury indicted the respondent on October 24th for a majority of the charges. The respondent has until January 23rd of 2017 to either settle with the District Attorney's office or the case will be set for a jury trial.

Recommendation: Discuss

Board Decision: The Board decided to place this case in litigation monitoring status by sending a Consent Order stating that no action will be taken if Respondent's criminal case is dismissed, but if the Respondent is convicted, then Respondent is agreeing to the automatic revocation of Respondent's license.

RULE MAKING

Ms. Martin briefly explained some restructuring taking place in the legal department, then presented the board with new language in the board's rules regarding testing and application procedure in light of the recent changes from the NCEES. The idea was to leave the language open enough to allow for more changes in the future, such as those discussed earlier regarding the TS. Ms. Martin planned to incorporate these changes and send them to the board directly, because no vote or public meeting would be required for an individual board member to relate their suggestions to her.

NEW BUSINESS

Mr. Jackie Dillehay appeared on behalf of TAPS after the current president, Bruce McClellan, was unable to attend. Mr. Dillehay recapped the latest meeting, and highlighted some of the preparations for 2017 which marks a big anniversary for the organization.

A group of concerned surveyors then appeared before the board to follow up on a recent disciplinary action that had been issued by the board in a previous meeting. Surveyor Alan Crawford, speaking on their behalf, stated that the surveyors were concerned about the details of the case which they had heard by viewing the July meeting, and wanted to get clarification on how the case had been handled subsequent to the meeting and whether it could be continued as a criminal matter. Mr. Lingerfelt agreed with their concerns, and gave an overview of the procedures related to handling that complaint. Mr. Crawford suggested that his group had obtained new information related to the case, so Ms. Martin stepped in to advise that those details not be presented to the board in this forum in the event they needed to be submitted as a new complaint. Additionally Mr. Caughman suggested that the board would help however it could in pursuing further legal charges.

Ms. Martin then provided the board with an update on the request for opinion from the Office of Attorney General relating to QBS standards. She was unsure how long it would take for that response.

The board had a brief discussion about applications and the possibility of making changes to the existing applications. It was agreed that they should have applications available at the next meeting to make some revisions to help streamline and update the process.

Mr. Lingerfelt brought the board's attention to the upcoming NCEES Southern Zone meeting, where the board was proud to recommend him for Assistant Vice-President in their upcoming election of officers. Because of travel concerns, Mr. Lingerfelt relayed a notice he'd received that a request for delegates would go out mid-November, looking for a list of any potential delegates, then a hard registration deadline for those who planning to attend would be February 1, 2017. Mr. Caughman suggested they wait to complete the registration until that time.

Mr. Caughman then relayed a scenario he had been seeing more frequently involving the use of drones in what could potentially be considered surveying. Ms. Martin gave the opinion that any work performed as described in the law should be considered surveying and requiring a surveying license, regardless of technology. Mr. Caughman suggested the development of a policy to help inform the public how the existing law relates to new technology.

Mr. Lingerfelt asked questions of Ms. Gumucio about changes he noticed to the website and the online complaint form. Ms. Gumucio explained that the various complaint departments were in the process of consolidating and universal forms were being issued regardless of profession.

As part of the potential changes to the application process, the board discussed the option of changing the renewal dates from December 31st of every odd year to something more evenly distributed such as license date or birthday. Mr. Caughman made the suggestion to float this idea to TAPS and other organizations to see what interest there might be among licensees.

Finally, Mr. Caughman called for the awarding of PDHs for the day's session. Mr. Caughman suggested five hours of credit, which Mr. Northcutt put forward a motion to accept and Mr. Lingerfelt seconded. The motion passed unanimously. There being no other new business, Mr. Caughman concluded the meeting at 3:32 p.m.