MINUTES

Tennessee Board of Examiners for Land Surveyors

The Tennessee Board of Examiners for Land Surveyors met on Thursday, April 12, 2012 at 9:00 a.m. in the 2nd Floor Conference Room of the Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, TN.

Those present were: Tim Lingerfelt, Chairman; Sue Braly, Vice-Chairman; David Cagle, Board Member; Galyon Northcutt, Board Member; Robert Herndon, Attorney for the Board; and Donna Moulder, Administrative Director for the board. Also present was Nikole Avers, Executive Director and Jesse Joseph, Staff Attorney for the Regulatory Boards. Gail Reed was also present.

The meeting was called to order at 9:10 a.m. by Chairman Lingerfelt.

Galyon Northcutt made a motion to adopt the agenda as presented. David Cagle seconded the motion. The motion carried unopposed.

The minutes of the previous meeting were then reviewed. David Cagle made a motion to accept the minutes as written. Galyon Northcutt seconded the motion. The motion carried unopposed.

Robert Herndon then presented the following legal report for review:

Complaint #201102711 – David Cagle reviewed the plat submitted by the respondent as required by the board. Mr. Cagle made the motion that the respondent has complied with the board's request with the exception of

Complaint #201102731 –

This complaint was previously presented at the February 2, 2012 Board meeting as follows: *The complaint alleges that the Respondent offered to provide land surveying services without a license in violation of Tenn. Code Ann. § 62-18-102(4) by presenting a business card advertising these services in Tennessee and identifying the Respondent as a "P.L.S." The Respondent's license file indicates that his professional land surveyor's license expired on December 31, 2007 and remains expired. There are no prior complaints in the Respondent's file.* The previous recommendation was to issue a "cease and desist" letter along with a Consent Order for a civil penalty of $1,000.00. In the intervening time, the Respondent's attorney has provided information showing the Respondent's inability to pay such a civil penalty and respectfully requests that the Board reduce the amount of the civil penalty to $250.00 due to hardship.

Recommendation: Accept the attorney's request; mitigating factors include the willing correction of the business documents to comply with applicable law and the fact that no plats have ever been produced since the Respondent's initial expiration in 2007.

David Cagle made a motion to accept the attorney's recommendation; Galyon Northcutt seconded the motion. The motion carried unopposed.

FINDING: Mitigating factors to justify reduction of civil penalty.

RULING: Reduce civil penalty to $250.00.

Complaint #201102919 –

This complaint was previously presented at the February 2, 2012 Board meeting as follows: *The complaint alleges that the Respondent provided land surveying services in an unprofessional manner. The Complainant is a neighboring land owner to the Respondent's client and alleges trespass on the part of the Respondent. Tenn. Code Ann. § 62-18-124 (Right-of-entry) allows registrants to enter the land of other in the performance of land surveying duties and is not a disciplinary offense. There are allegations of verbal altercations between the parties, but no evidence that the Respondent performed his duties in an incompetent way.* The recommendation at the time, which was accepted by the Board, was to close the case due to lack of evidence of misconduct. Additional information in the form of written correspondence with the Complainants was felt to merit an informal conference with the Respondent, which was conducted by Mr. LINGERFELT on April 11, 2012.

Recommendation: Accept the reviewing Board members assessment of the impact of additional information.

Tim Lingerfelt recommended to uphold the board's previous decision of case closure. Mr. Lingerfelt made a motion that the complaint remain closed; Sue Braly seconded the motion. The motion carried with Galyon Northcutt abstaining from voting.

FINDING: Insufficient evidence to alter the Board's previous decision.

RULING: Previous decision of case closure upheld.

Complaint #201220081 –

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), specifically the allegation is that the Respondent overstated the acreage of a parcel while developing a land survey and created a boundary dispute. There is no previous complaint history for this Respondent.

Recommendation: Board discussion based on the stated probable cause from the complaint reviewer.

FINDINGS: The initial reports were received with insufficient time to properly review the findings for the Board's determination.

RULING: Defer to next meeting.

Complaint #201200428 -

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), specifically the allegation is that the Respondent produced a plat that is inconsistent with two previously plats on the same parcel of land by using a completely different set of calls. There is no previous complaint history for this Respondent.

Recommendation: Board discussion based on the stated probable cause from the complaint reviewer.

FINDINGS: The initial reports were received with insufficient time to properly review the findings for the Board's determination.

RULING: Defer to next meeting.

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), specifically the allegation is that the Respondent made errors significant enough on a survey that it required the hiring of another land surveyor and caused a significant delay in the acquisition of a building permit.

Recommendation: Board discussion based on the stated probable cause from the complaint reviewer.

FINDINGS: The case reviewer's analysis was not received in time for this meeting's discussion.

RULING: Defer to next meeting.

Complaint #201200472 -

The complaint alleges professional misconduct on the part of the Respondent by virtue of failing to deliver completed plats to the client, in possible violation of Tenn. Code Ann. § 62-18-116(a)(1)(B). The Complainant alleges that the Respondent never handed over

a copy of the completed plat that was prepared in late 2005, and when asked to do so he reacted in a confused manner and stating that he did not remember preparing the plat. An investigation was ordered to find out what happened, and as it turns out, the plat for the Complainant's property was actually prepared by another land surveyor in January of 2006 and has been on file at the tax assessor's office ever since and available for inspection by the Complainant. The complaint file has documentary proof that this is the case; and the Complainant has been made aware of these facts. There is no complaint history for this Respondent.

~~Recommendation: Dismiss the case for lack of disciplinary grounds.~~

David Cagle made a motion to accept the attorney's recommendation; Galyon Northcutt seconded the motion. The motion carried unopposed.

FINDINGS: The Board agrees with this assessment.

RULING: Approved.

Complaint #201200609 –

The complaint alleges unlicensed practice of land surveying by advertising to offer "detailed technical sign surveys," "as-built surveys" and "construction surveys" in various online media; the Respondent company also appears in phone indexes under the designation of "surveying, engineers, land surveyors" in violation of Tenn. Code Ann. §§ 62-18-101(b) and 62-18102(3). A detailed explanation of actual services provided was received by the Respondent. The Respondent states that the "primary business is nationwide commercial sign surveys," in which the company is "contracted by major sign manufacturers to survey sites for replacement of existing signage or adding new signage." The Respondent provides "digital photographs of property, approximate measurements of any building on the property," and provides the manufacturer "exact measurement of all signage on the property of the building," and "finally we provide the client with an 'as-built' survey package as the end product with information for these companies to secure permitting." The Respondent acknowledges that he doesn't have the credentials of expertise to provide land surveying as defined by the Board. The listing in the phone index under "surveying, engineers and land surveyors" was done by the publisher and without the Respondent's participation. There is no complaint history for this Respondent.

Recommendation: Issue a "cease and desist" order, and further Board discussion for remediation.

David Cagle made a motion to accept the attorney's recommendation; Sue Braly seconded the motion. The motion carried unopposed.

FINDINGS: The Respondent is to be notified that he is to comply with all Board laws and rules and the Respondent needs to provide proof to the Board that he has complied.

RULING: Approved for "cease and desist" order in addition to implementing the findings above.

The board then discussed and finalized the changes to the Rules of Professional Conduct.

David Cagle made a motion to accept the changes to the Rules of Professional Conduct. Sue Braly seconded the motion. The motion carried unopposed.

Robert Herndon then read the Economic Impact Statement and the members of the board answered the questions associated with the impact statement. Galyon Northcutt made a motion to accept the Economic Impact Statement. David Cagle seconded the motion. The motion carried unopposed.

The board then reviewed Daniel Collier's request to retake the land surveyor's exam. The board considered his request and determined that his application and retake request will be reviewed at the August 2-3, 2012 board meeting, along with all other applications submitted for review for the October 2012 exam.

There being no further business, Sue Braly made a motion to adjourn; seconded by Galyon Northcutt. The motion carried unopposed. The meeting was adjourned at 3:00 pm.

FRIDAY, April 13, 2012 –

The Tennessee Board of Examiners for Land Surveyors met on Friday, April 13, 2012 at 9:00 a.m. in the 2nd Floor Conference Room of the Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, TN.

Those present were:; Tim Lingerfelt, Chairman; Sue Braly, Vice Chairman; David Cagle, Board Member; Galyon Northcutt, Board Member; Robert Herndon, Attorney for the Board; and Donna Moulder, Administrative Director for the board.

The meeting was called to order at 9:20 a.m. by Chairman Lingerfelt.

The board then held a discussion on changes to the Rules of Continuing Education.

There being no further business, David Cagle made a motion to adjourn. Sue Braly seconded the motion. The motion carried unopposed and the meeting was adjourned at 11:05 a.m.

Respectfully submitted,

Donna Moulder
Administrative Director

Tim Lingerfelt, Chairman

Sue Braly, Vice-Chairman

David Cagle

Galyon Northcutt