MINUTES

Tennessee Board of Examiners for Land Surveyors

The Tennessee Board of Examiners for Land Surveyors met on Thursday, February 3, 2011 and Friday, February 4, 2011 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: Jackie Dillehay, Chairman; Tim Lingerfelt, Vice-Chairman; David Cagle, Board Member; Sue Braly, Public Member; Robert Herndon, Attorney for the Board; and Donna Moulder, Administrative Director for the board. Nikole Avers, Executive Director of the Small Units Program,Eman Youseff, Complaint Coordinator for the board, and Keeling Baird were also present.

The meeting was called to order at 9:21 a.m. by Chairman Dillehay.

The agenda was then reviewed. David Cagle made the motion to adopt the agenda as presented. Tim Lingerfelt seconded the motion. The motion carried unopposed.

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

The members of the board reviewed a letter from Land Surveyors Workshops regarding a process that they are developing that uses "go to training.com." After much discussion, the board determined that while courses are on-line courses are obtained through a training process with interaction by the licensee. Therefore, Tim Lingerfelt made a motion to allow the licensee to obtain all 15 PDHs via this on-line training instead of only 7.5 of the required 15 PDHs as stipulated in the new continuing education guidelines that went into effect on January 1, 2011. David Cagle seconded the motion. There being no further discussion, the motion carried unopposed.

Robert Herndon, Staff Attorney for the board, then presented the following complaints for review:

Complaint #201002186 – This case was deferred at the October, 2010 meeting because of insufficient material for the Board to make a determination. It alleges misconduct in Middle Tennessee and the reviewing Board member was Mr. CAGLE. The final plat has since been obtained and reviewed.

Recommendation: Accept the reviewing Board member's proposal.

FINDING: The Respondent was accused of failing to communicate with the Complainant, an adjoining landowner of a parcel that the Respondent surveyed, and not disclosing a potential dispute on the property line. The Complainant claimed ownership of a portion of the parcel for which there was no evidence of such. The Respondent provided an affidavit that not only did he communicate with the Complainant, he traveled the property with him and discussed any potential disputes and offered his professional judgment. The Complainant never had his own property surveyed.

RULING: David Cagle made a motion to dismiss the case due to lack of evidence of misconduct. Sue Braly seconded the motion. There being no further discussion, the motion carried unopposed.

Complaint #201003146 – This case was referred to a Board member for review to determine probable cause, if any. It alleges misconduct in Middle Tennessee and the reviewing Board member was Mr. CAGLE. The complaint involved an allegation that the Respondent failed to use the latest recorded deed when preparing a plat.

Recommendation: Accept the reviewing Board member's proposal.

FINDING: The Respondent found to have used professionally acceptable methods to produce that plat.

RULING: David Cagle made a motion to dismiss the case due to lack of evidence of misconduct. Tim Lingerfelt seconded the motion. There being no further discussion, the motion carried unopposed.

Complaint #201003215 - This case was referred to a Board member for review to determine probable cause, if any. It alleges misconduct in Middle Tennessee and the reviewing Board member was Mr. CAGLE. The complaint involved an allegation that the Respondent failed to use the proper monuments when preparing a plat, which resulted in subsequent surveys of the property to adopt the alleged wrong boundaries set by the Respondent.

Recommendation: Accept the reviewing Board member's proposal.

FINDING: The evidence presented in the complaint consisted of several deeds, many of which are very old, and only makes reference to the Respondent's plat which was produced around twenty years ago. There have been subsequent surveys since, adopting and verifying the Respondent's results. No plat was produced to show any errors committed by the Respondent.

RULING: David Cagle made a motion to dismiss the case due to lack of evidence of misconduct. Sue Braly seconded the motion. There being no further discussion, the motion carried unopposed.

Complaint #201003299 - This case was referred to a Board member for review to determine probable cause, if any. It alleges misconduct in Middle Tennessee and the reviewing Board member was Mr. CAGLE. The complaint involved an allegation that the Respondent produced a document that was not a survey and was marked as such; however, the document was evidently used by another who made some changes to produce a plat and call it a site plan. The Respondent has marked the document bearing his seal as a "mortgage loan inspection" and included disclaimers on its face.

Recommendation: Accept the reviewing Board member's proposal.

FINDING: The Respondent's plat is clearly marked as to its purpose and is not intended to establish boundary lines.

RULING: David Cagle made a motion to dismiss the case due to lack of evidence of misconduct. Sue Braly seconded the motion. There being no further discussion, the motion carried unopposed.

CASES PRESENTED FOR RECONSIDERATION –

This complaint was previously presented in August of 2010 and has since gone on to litigation. Here is the history: *This complaint alleges that the Respondent, an unlicensed individual, advertised to offer land surveying services in violation of Tenn. Code Ann. § 62-18-101(b). A former employer of the Respondent was utilizing the Respondent as a "party chief" for the employer's land surveying company, but the Respondent was subsequently fired for unprofessional conduct. During an investigation into the matter, it was discovered that the Respondent was advertising land surveying services on the internet. There is written proof of this in the complaint file. Recommendation: A Consent Order for a civil penalty of $1,000 for unlicensed conduct. RULING based on discussion and further advice: Approved for a $3,000 civil penalty ($1,000 for each of the 3 observed advertisement) pursuant to Tenn. Code Ann. § 62-18-101(b) and Tenn. Code Ann. § 62-18-102(3) & (4)(B).* **UPDATE:** This matter was decided on the basis of the Respondent's activities relative to offering services for construction staking. I recommend further discussion of this activity based on the Respondent's answer to the charges.

Recommendation: Board discussion.

FINDING: The three advertised items in the Respondent's complaint were discussed and compared to the title act for possible unlicensed activity. The first was found to likely not be violation. The other two were found to be problematic. However, the Board decided to consider the remaining two as a single act of unlicensed activity.

RULING: Tim Lingerfelt made a motion to reduce the civil penalty to $1,000.00 and authorized a payment schedule for collection. Sue Braly seconded the motion. There being no further discussion, the motion carried unopposed.

Complaint #201000989 – Jackie Dillehay reviewed the case.

NEW CASES:

Complaint #201003301 - The complaint alleges that the Respondent, a land surveyor licensed in another state, performed land surveying activities in Tennessee without a licensed issued by the Board. The nature of the activity relates to property located in Tennessee, but is tied to the state line of another state. The Respondent states that this is common and acceptable practice, but admits that neither he nor his home state Board could find any clarification of this. There is no complaint history for this Respondent.

Recommendation: A Letter of Warning for violating Tenn. Code Ann. § 62-18-101, which prohibits the practice of land surveying in this state without a license. *Mitigating factors: A reliance on opinion of resident state licensing board and a lack of complaint history with the Board.*

FINDING: Although this situation arises periodically on border property, especially those bounded by a river, the Respondent could have researched the matter further before proceeding with the survey.

RULING: Tim Lingerfelt made a motion to accept the attorney's recommendation in recognition of the presented mitigating factors. David Cagle seconded the motion. There being no further discussion, the motion carried unopposed.

Complaint #201100056 - The complaint alleges that the Respondent, a "land planner," performed land surveying activities in Tennessee without a licensed issued by the Board; the Respondent is qualified by education to do land planning work. The nature of the activity relates to the coordination of civil engineering and land surveying information and providing it to a local municipality. The Respondent's business materials advertise the preparation of subdivisions of land. The Complainant, a licensed land surveyor, states that the

definition of land surveying at § 62-18-102(3) includes "the platting and layout of lands and subdivisions thereof" and that the advertising of producing subdivisions violates this statute. There is no complaint history for this Respondent.

Recommendation: Board discussion of applicability of statute.

FINDING: The Respondent was found to be genuinely unintentional in making any claim to being able to provide land surveying services independent of a licensed land surveyor, but used a poor choice of words in the application of "subdivision" in the business materials. There is a possibility that this could confuse the public by indicating that this land planner could provide land surveying services.

RULING: Tim Lingerfelt made a motion to close the case with a Letter of Instruction to modify the word "subdivision" in the letterhead to "subdivision coordination" to avoid any confusion and for the respondent to provide evidence of the corrected letterhead to the board. David Cagle seconded the motion. There being no further discussion, the motion carried unopposed.

Complaint #201000989 – After reviewing this case, Jackie Dillehay recommended that, because the respondent failed obey a subpoena to appear in court, he failed to communicate with the board and he did not respond to this complaint in a timely manner, the board reduce the original civil penalty amount of $5,000.00 to $2,500.00 with no suspension of the respondent's license and no letter of reprimand. Tim Lingerfelt agreed with Mr. Dillehay's recommendation but would also like to order the respondent to complete the survey at no charge as requested by the complainant and provide a copy of the completed survey to this board. David Cagle made a motion to accept Mr. Dillehay's recommendation of $2,500.00 civil penalty with no suspension and no letter of reprimand. Sue Braly seconded the motion. There being no further discussion, the motion carried unopposed.

Jesse Joseph, Regulatory Boards litigation attorney, visited with the board to introduce himself to the board members. Mr. Joseph explained the formal hearing process and the board's role in the hearing.

NEW BUSINESS –

The following continuing education was reviewed:

> Johnny Kerr – Tim Lingerfelt made a motion to approve Mr. Kerr's request for 16 PDHs. Sue Braly seconded the motion. The motion carried unopposed.

James (Eddie) Campbell II – David Cagle made a motion to approve Mr. Campbell's request for 15 PDHs. Tim Lingerfelt seconded the motion. The motion carried unopposed.

William M. Burns - David Cagle made a motion to approve Mr. Burns' request for 16 PDHs. Sue Braly seconded the motion. The motion carried unopposed.

The members of the board then reviewed the continuing education submitted by Frank Palumbo, TLS #581 (expired 12/31/07). Mr. Palumbo failed to comply with the board's direction on January 15, 2010, which instructed Mr. Palumbo to submit 30 hours of continuing education, taken AFTER January 1, 2009. He submitted 30 hours of continuing education to the board office on December 13, 2010, with four of those hours being taken in 2008. Therefore, based on the fact that Mr. Palumbo did not comply with the board's original direction in a timely manner, Tim Lingerfelt made a motion to rescind the original motion in this matter. David Cagle seconded the motion. There being no further discussion, the motion carried unopposed. Mr. Lingerfelt then made a motion to allow Mr. Palumbo to take the Tennessee specifics portion of the exam in April 2011 and give him credit towards his exam fee for the $100.00 he has already submitted. Mr. Palumbo will not need to submit any more continuing education at this time. David Cagle seconded the motion. There being no further discussion, the motion carried unopposed.

The board then reviewed the reapplication of Gregory Mullins, TLS #1702 (expired 12/31/07). Tim Lingerfelt made a motion that Mr. Mullins must submit 30 hours of continuing education and sit for the Tennessee specifics portion of the exam. The continuing education submitted must be approved by the board before the applicant will be allowed to sit for the exam. Sue Braly seconded the motion. There being no further discussion, the motion carried unopposed.

The following applications were approved to sit for the April 2011 examination(s):

Landon O'Dell Loveday
Kristopher D. Gordon (PLSIT)
Jason W. Britt (PLSIT only)
Gregory Kenneth Gurney (PLSIT)
Christopher Jason Wilbanks (PLSIT)
James Ernest Scott (PLSIT)
Jacob Matthew Bonds
Benjamin Lee Drerup
Phillip Bradley Kee
Shon S. Keeton
Charles Troy Halliburton
Sammey Dewayne Peters
Eric B. Stuart
James C. Pierce (PLSIT)
Edward Caldwell Burchett(PLSIT)
Bryan Timothy Sauceman (PLSIT)
Jubal Robert Parris (PLSIT)
Brian Clark Bradford (PLSIT)
John Christopher Sexton
Nicholas Lee Barnes
Benjamin Olen Rippy
Daniel James Collier, Jr.
Andrew David Berryhill
Bentley Lee Robison
Erik R. Heng-Fischbach
Joseph Forrest Grider

Travis Wilson (PLSIT)
William Logan McCraw (PLSIT)

Sarah Matney

There being no other business, the meeting was adjourned at 5:00 pm.

FRIDAY, FEBRUARY 4, 2011 –

The Tennessee Board of Examiners for Land Surveyors met on Thursday, February 3, 2011 and Friday, February 4, 2011 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: Jackie Dillehay, Chairman; Tim Lingerfelt, Vice-Chairman; David Cagle, Board Member; Sue Braly, Public Member; Robert Herndon, Attorney for the Board; and Donna Moulder, Administrative Director for the board. Nikole Avers, Executive Director of the Small Units Program, Eman Youseff, Complaint Coordinator for the board, and Keeling Baird were also present.

The meeting was called to order at 9:07a.m. by Chairman Dillehay.

The application review continued. The following applications and requests to retake the exam(s) were denied:

Charles Stuart – David Cagle made a motion to deny Mr. Stuart's request to retake the exam due to the fact that his application (dated February 2, 2005) is not current nor did he show just cause, in a timely manner as set forth in rule 0820-1.03(3)(a), as to why he did not appear at the last exam in October 2010.

Rusty Norville – Needs six more hours of surveying related course work in List I.

There being no further business, the meeting was adjourned at 1:00 pm.

Respectfully submitted,

Donna Moulder
Administrative Director

Jackie Dillehay, Chairman

Tim Lingerfelt, Vice-Chairman

David Cagle

Sue Braly