



STATE OF TENNESSEE
BOARD OF EXAMINERS FOR LAND SURVEYORS
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NASHVILLE, TENNESSEE 37243-1166
615-741-3611

October 23-25, 2013 - Minutes
First Floor Conference Room (1-B), Davy Crockett Tower

The Board of Examiners for Land Surveyors met October 23-25, 2013 in Nashville, Tennessee, at the Davy Crockett Tower in the first floor conference room. Mr. Lingerfelt called the meeting to order at 1:05 p.m. 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, Dennis O'Brien
Day Two: Nikole Avers, Donna Moulder, Robert Herndon
Day Three: Nikole Avers, Donna Moulder, Robert Herndon

Day One, October 23, 2013

ADOPT AGENDA

Mr. Lingerfelt asked if there were additions or corrections to the agenda. Mr. Lingerfelt stated that he would like clarification of the "Condominium Act of 2008" and would like that to be added to the agenda to be presented by Robert Herndon. Mr. Lingerfelt would also like to continue our discussion on our out-of-state applicants applying for licensure per T.C.A. 62-18-109(c).

Mr. Lingerfelt requested that a person knowledgeable in the Open Meetings Act and Roberts Rules of Order be present at the next scheduled board meeting to address these items. Ms. Avers stated that is the plan, according to one of the department's legal counsels, to meet with every board and commission within the Department of Commerce and Insurance regarding the Open Meetings Act and Roberts Rules of Order.

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

Mr. Lingerfelt read the public meeting statement into the record, indicating that the agenda was posted to the Land Surveyor website on September 6, 2013.

MINUTES

The minutes of the previous meeting held on August 1-2, 2013 were reviewed.

Vote: Jay Caughman made a motion to approve the minutes as written. Mr. Northcutt seconded the motion. The motion carried unopposed.

LEGAL REPORT

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

REVISITED CASE

1. Complaint #201301643

This matter was originally presented to the Board at its February 2nd, 2012 meeting as follows: This case was referred to a Board member for review 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 used unreliable information to produce a plat and did not perform all due diligence. The plat and attendant information in the complaint was forwarded to a Board member for review to identify any indication of incompetence or misconduct, if any. The events generating the complaint occurred in East Tennessee, and the reviewing Board member was West Tennessee Board member Mr. CAGLE. Based upon this presentation, the Board accepted Mr. CAGLE'S assessment of the Respondent's application of the minimum expected standards of practice and voted to dismiss the matter due to lack of grounds for discipline.

UPDATE: A review of the current complaint shows that the Respondent made a revision to the plat only a notation to the previous surveyor and has not changed any calculated data on the documentation. There is no additional information relative to the Respondent's adherence to the minimum standards of practice contained in the complaint that would alter the Board's previous decision.

Counsel recommended that the case be Dismissed with prejudice for lack of disciplinary grounds.

Vote: Mr. Northcutt made a motion to accept counsel's recommendation. This was seconded by Mr. Caughman. The motion carried unopposed.

NEW CASE

1. Complaint #201301578

The complaint alleges that the Respondent, a licensed land surveyor, committed misconduct in his professional practice by participating in a conflict of interest in violation of TENN. COMP. R. & REG. 0820—04—.05 [CONFLICTS OF INTEREST]. Specifically, the complainant alleges that the Respondent improperly purchased land owned jointly by the Complainant and a sibling without informing the estate attorney. The Respondent was hired by the estate attorney to survey property owned by the deceased, the property then passed to the siblings, and to serve as a special commissioner to suggest a partition of the parcel. There is no complaint history with

this Respondent. The real estate appraiser and a former circuit court clerk were appointed as the other two commissioners. The partition was signed by the court on April 29th, 2013 reflecting its decision on April 10th, 2013. On April 18th, 2013, the Complainant asked the Respondent to mark the partition, which was done for a fee. After other attempts by the Complainant's sibling to sell the property, the Respondent along with some investors purchased it. The Respondent has not provided any further professional surveying services since these events.

Recommendation: Close the case for lack of disciplinary grounds.

ANALYSIS: The Board agrees with this assessment.

Vote: Galyon Northcutt made a motion to close the complaint. Jay Caughman seconded the motion. The motion carried unopposed.

As this is the legal report, Mr. Herndon stated that he considers this report not just for complaints, but also time to offer advice to the Board since that what he is supposed to do. Mr. Herndon received a communication about the "Condo Law" from the chairman and his advice to the board is based on that communication. There is a passage that passed in that law that says "any certification of a plat or plan required by this section must be made and signed an original by an independent registered surveyor, architect or registered engineer or combination thereof." There is some concern in the world that this would allow an engineer to stamp a plat but that is not what the law says. As a matter of fact, the passage goes out of its way to say **plat** or **plan**, which distinguishes what a plat is and what a design document is. The law is as it always has been, only a surveyor can survey and only an engineer can engineer and that's what this says. If an engineer attempts to stamp a surveying **plat** and we get ahold of it, then that's unlicensed practice. It's just like it has always been, whether or not they are designing condos. If it has a design element on it, it becomes a site plan and an engineer can seal it if they are changing something. If it's a measurement plat, then it's a survey. We can't control who files things, but we do have jurisdiction over who stamps things. Surveys are surveys and site plans are civil site plans.

There's been some question regarding TCA 62-18-109(c). The discussion within the department, after looking at our policy, is that there are some people that are continuing to be approved for the exam that were approved prior to the current board being appointed, but they don't qualify to take the exam. We are going to have to cease that practice. If not qualified to take the exam under any circumstance, then they can't be approved. Mr. Herndon stated that he would put something in writing regarding this issue and distribute it to the board members.

DIRECTOR'S REPORT

Ms. Moulder gave the director's report to the Board, which began with Bill Giannini, Assistant Commissioner and Kimberly Whaley meeting with the members of the board to discuss the budget. Mr. Giannini explained to the board that this would be an annual occurrence, after budget closes, to come before the boards and present you close numbers, let you see where you're at, and then talk about some of the non-budget related things what we're doing. The primary goal of these meetings is to make sure that the boards are "kept in the loop" about your administrative operation. Mr. Giannini told the board members of the department's current initiatives, which includes the

purchasing of the new CORE licensing system, the implementation of the ENotify system, which is the electronic notification of board information, legislation or anything pertaining to your program. He also explained that the department is moving toward being paperless. We have moved locations, which translated into monthly savings to the board. He mentioned Customer Focus Government, which is one of the Governor's initiatives to improve the customer service experience for anyone that does business with the State of Tennessee.

Ms. Moulder provided the members an overview of the budget information and license data.

DENIED APPLICATION REVIEW

The board then reviewed the denied application of James Powers. Mr. Powers submitted a new application for review by the board on April 3, 2013. An NCEES record was submitted to the board via email by NCEES on April 8, 2013. Mr. Powers' application was reviewed by the board at the August 1-2, 2013 board meeting and was denied due to the fact that "application is incomplete. NCEES record is not current or a new completed application was not submitted." The NCEES record submitted with the application is dated May 16, 2008. Mr. Powers was notified via email of the board's decision on his application on August 6, 2013.

On August 28, 2013, the board office received a letter from Mr. Powers appealing the denied decision on his application. He requested that the board review his letter, along with the supporting documentation that was attached to the letter.

Mr. Powers originally applied for licensure in Tennessee on July 30, 2008 and he took and failed the Tennessee Specifics exam on October 29, 2009. He has not taken the exam since that time. He reapplied for licensure in Tennessee on May 26, 2011 and as of this date has not retaken the exam since October 29, 2009.

After reviewing the application, it remains denied based on the fact that the NCEES record that we received is dated May 16, 2008. Mr. Caughman suggested, with the opportunity of fairness to the applicant that if in fact that was the basis for the denial of the application and in fact, that his record was current, that the board re-review the application based on the current information and make a decision from there. The applicant must submit a new application that includes a new current, updated NCEES record as part of the application.

Vote: Galyon Northcutt made a motion to re-review the application with an updated NCEES record without any additional fees. Jay Caughman seconded the motion. The motion carried unopposed.

Galyon Northcutt then gave a report on the NCEES conference that was held in San Antonio, TX August 21-24, 2013.

The board discussed membership in the Colonel States Board for Surveyor Registration (CSBSR). Jay Caughman suggested that the board investigate the CSBSR further.

Robert Herndon gave the board members a brief description on the rulemaking hearing process will work on October 24, 2013.

TAPS Report

Mr. Lingerfelt welcomed Leonard Tusar, Middle Director at Large for TAPS, to the meeting and invited him to present any information he had to share. Mr. Tusar reported that TAPS held their regular board meeting in September 2013, in which they discussed several items, including the rulemaking hearing that is coming up on October 24, 2013. Mr. Tusar informed the board that TAPS, as a board, is proposing legislation that concerns metes and bounds descriptions and providing a service to registers of deeds offices.

There being no further business for the day one, the meeting was concluded at 3:35 p.m. on October 23, 2013.

Day Two, October 24, 2013

Mr. Lingerfelt called the meeting to order at 9:03 a.m.

The following were present for the rulemaking hearing: Tracy Wilkes, Court Reporter; Bart Crattie, TLS #1742; Stephen Ward, TLS #2342; Leonard Tusar, TLS #2230; Jimmy Cleveland, TLS #2079 and Allan Crawford, TLS #1455.

The purpose of today's meeting is to hold a rulemaking hearing on Rule 0820-04 Rules of Professional Conduct and Rule 0820-05 Continuing Education.

Robert Herndon called the Rulemaking Hearing to order. We have two hearings today; the first one we're going to do is the Rules of Professional Conduct.

The agency representatives who were presented at the hearing introduced themselves.

Mr. Herndon then read the statutorily required statement into the record.

The purpose of this rulemaking hearing is to solicit comments on rules the Board of Examiners for Land Surveyors is proposing to update, the Rules of Professional Conduct. The Board of Examiners for Land Surveyors is proposing these rules and amendments because the board has identified the need to update administrative practices regarding the above in order to better protect the public health, safety and welfare.

Mr. Herndon then read the amended rules 0820-04 Rules of Professional Conduct into the record.

After reading the amended rules, Mr. Herndon read written comments that were received and then called for comments from the public that was in attendance and had signed in to speak.

Substance of Proposed Rules

*Chapter 0820-04
Rules of Professional Conduct*

Amendments

Rule 0820-04-.02 Proper conduct of practice is amended by deleting the text of the rule in its entirety and substituting instead the following so that, as amended, rule 0820-04-.02 shall read:

Rule 0820-04-.02 Proper Conduct of Practice

- (1) The registrant shall at all times recognize the primary obligation to protect the safety, health and welfare of the public in the performance of the registrant's professional duties.
- (2) A registrant possessing knowledge of a violation of T.C.A. Title 62, Chapter 18, or any rules promulgated thereunder, shall report such knowledge to the Board in writing and shall cooperate with the Board in furnishing such further information or assistance as it may require.
- (3) The registrant shall respond to all inquiries and correspondence from the Board within fifteen days from the day of receipt and shall timely claim undelivered correspondence from the U.S. Postal Service, or other delivery service, upon notice thereof.
- (4) The registrant shall not assist in any way in the application for licensure of a person known by the registrant to be unqualified in respect to education, training, or experience.

Authority: T.C.A. §§62-18-105(d) and 62-18-106(c).

Rule 0820-04-.03 Service in areas of competence is amended by deleting the text of the rule in its entirety and substituting instead the following so that, as amended, rule 0820-04-.03 shall read:

Rule 0820-04-.03 Service in Areas of Competence

- (1) The registrant shall undertake to perform land surveying assignments only when qualified by education or experience in the specific technical field of professional land surveying involved.
- (2) The registrant may accept an assignment requiring education or experience outside of his own field of competence, but only to the extent that his services are restricted to those phases of the project in which **the registrant** is qualified. All other phases of such project shall be performed by qualified associates, consultants, or employees.
- (3) The registrant shall not affix **his/her** signature **or** seal to any plan or document dealing with subject matter in which **the registrant** lacks competence acquired through education or experience, nor to any **document** not prepared by **the registrant** or under **his/her** supervision.

- (4) *In providing services, the registrant shall take into account all applicable laws and regulations. The registrant shall not knowingly provide services resulting in violation of such laws and regulations.*
- (5) *Incompetence. The following acts or omissions, among others, may be deemed to be "incompetence" for the purposes of T.C.A. §§62-18-116(a) (1) (B), and to be cause for denial, suspension or revocation of a certificate of registration to practice land surveying.*
 - (a) *Malpractice. Incompetence includes, but is not limited to recklessness, or excessive errors or omissions in the registrant's record of professional practice.*
 - (b) *Disability. Incompetence includes but is not limited to mental or physical disability or addiction to alcohol or drugs as to endanger health, safety and interest of the public by impairing skill and care in providing professional services*

Authority: T.C.A. §§62-18-105(d) and 62-18-106(c).

Rule 0820-04-.04 Public Statements is amended by deleting the text of the rule in its entirety and substituting instead the following so that, as amended, rule 0820-04-.04 shall read:

Rule 0820-04-.04 Public Statements

- (1) *The registrant shall be completely objective and truthful in all professional reports, statements, or testimony. **The registrant** shall include all relevant and pertinent information in such reports, statements, or testimony.*
- (2) *The registrant, when serving as an expert witness before any court, commission, or other tribunal, shall express an opinion only when it is founded upon adequate knowledge of the facts in issue, upon a background of experience and competence in the subject matter, and upon honest conviction of the accuracy and propriety of **the registrant's** testimony.*
- (3) *The registrant shall express a professional opinion publicly only when it is founded upon an adequate knowledge of the facts and a competent evaluation of the subject matter.*

Authority: T.C.A. §§62-18-105(d) and 62-18-106(c).

Rule 0820-04-.05 Conflicts of interest is amended by deleting the text of the rule in its entirety and substituting instead the following so that, as amended, rule 0820-04-.05 shall read:

Rule 0820-04-.05 Conflicts of Interest

- (1) The registrant shall conscientiously strive to avoid conflict of interest with *his/her* employer or client; but, when such conflict is unavoidable, the registrant shall forthwith disclose the circumstances to *his/her* employer or client.
- (2) The registrant shall avoid all known *potential* conflicts of interest with *his/her* employer or client, and shall promptly inform *his/her* employer or client of any; business association, interests, or circumstances which could influence *the registrant's* judgment or the quality of *his/her* services.
- (3) The registrant shall not accept compensation (financial or otherwise) from more than one party for services on or pertaining to the same project rendered in the same time frame, unless the circumstances are fully disclosed to, and agreed to, *in writing*, by all interested parties.
- (4) When engaged in public service on a project as a member, advisor, or employee of a governmental body or department, the registrant and *the registrant's* organization shall not perform services for any other client regarding or connected to the project.
- (5) The registrant shall not reveal facts, data, or information obtained in a professional capacity without the prior consent of the client, employer, or *public body on which they serve* except as authorized or required by law. The registrant shall not solicit or accept gratuities, directly or indirectly, from contractors, their agents, or other parties in connection with work for employers or clients.

Authority: T.C.A. §§62-18-105(d) and 62-18-106(c).

Rule 0820-04-.07 Misconduct is amended by deleting the text of the rule in its entirety and substituting instead the following so that, as amended, rule 0820-04-.07 shall read:

Rule 0820-04-.07 Misconduct

- (1) The registrant shall not *partner, practice, or offer to practice with* any person or firm which *the registrant* knows, or has reason to believe, is engaging in business or professional practice of a fraudulent or dishonest nature.
- (2) The registrant shall not furnish limited services in such a manner as to enable unregistered persons to evade:
 - (a) Federal, state and local surveying and planning laws and regulations, or
 - (b) Registration requirements of T.C.A., Title 62, Chapter 18.

- (3) *Misconduct. The following acts, among others, may be deemed to be "misconduct" for the purposes of T.C.A. §§62-18-116(a) (1) (B), and to be cause for denial, suspension or revocation of a certificate of registration to practice land surveying:*
- (a) *Conviction in a court of competent jurisdiction of a felony or any offense that has a directly unfavorable reflection on the registrant's ability to practice land surveying.*
 - (b) *Revocation, suspension or **disciplinary** voluntary surrender of a license or certificate of registration to practice land surveying in another jurisdiction.*

Nothing in this paragraph should be construed as precluding the Board from deeming other acts and conduct to be "misconduct."

Authority: T.C.A. §§62-18-105(d) and 62-18-106(c).

Rule 0820-04-.08 Seals is amended by deleting the text of the rule in its entirety and substituting instead the following so that, as amended, rule 0820-04-.08 shall read:

Rule 0820-4-.08 Seals

- (1) *The design of the registrant's seal required by T.C.A. §§62-18-119, shall be as follows:*



- (2) *The seal and signature of the registrant and the date of signing shall be placed on all land surveys, reports, plats, drawings, plans, and calculations whenever presented to a client or any public agency to certify that the work thereon was done by the registrant or under the responsible charge of the registrant. Working drawings or preliminary documents are not required to have a seal and signature if the working drawing or preliminary document contains a statement in large bold letters to the effect "PRELIMINARY, NOT FOR CONSTRUCTION, RECORDING PURPOSES, OR IMPLEMENTATION." The size of the seal shall be two inches in diameter in all cases and on all documentation requiring the registrant's seal, regardless of the size of the document.*

- (3) The registrant shall superimpose *his/her* signature (not a rubber stamp) and date of signature across the face and beyond the circumference of or adjacent to the seal on documents to which his seal is affixed.
- (4) The seal and signature shall be placed on all original copies, tracings, or other reproducible documents so that the seal and signature will be reproduced when copies are made.
- (5) When the document contains more than one sheet, the first or title page shall be sealed and signed by the registrant who was in responsible charge. *In addition, each sheet shall be sealed and signed by the registrant or registrants responsible for that sheet. Two or more registrants may affix their signatures and seals provided it is designated by a note under the seal the specific subject matter for which each is responsible.* When a firm performs the work, each sheet shall be sealed and signed by the registrant or registrants who were in responsible charge of that sheet as required by T.C.A. § 62-18-122(b).
- (6) The seal and signature shall be placed on work only when it was under the registrant's responsible charge. The registrant shall sign and seal only work within the registrant's area(s) of competence.
- (7) Maps, plats, surveys, or other documents will be deemed to have been prepared under the responsible charge of a registrant only when all the following conditions have been met and documented:
 - a. The client requesting preparation of such maps, plats, surveys, or other documents makes the request directly to the registrant, or a member or employee of the registrant's firm;
 - b. The registrant supervises the preparation of the maps, plats, surveys, or other documents and has input into their preparation prior to their completion;
 - c. The registrant reviews the final maps, plats, surveys, or other documents; and
 - d. The registrant has the authority to, and does, make any necessary and appropriate changes to the final maps, plats, surveys, or other documents. The registrant is responsible for meeting all of the preceding requirements whether the work is being performed remotely or locally.
- (8) Any revision to a document containing the seal and signature of a registrant shall be described and dated in a manner that conforms to current industry standards. If the revisions are not done by the original registrant, the revisions must also be signed and sealed by the registrant in responsible charge of those revisions and otherwise identified in the same manner.
- (9) In circumstances where a registrant in responsible charge of the work is unavailable to complete the work, a successor registrant may take

responsible charge by performing all professional services to include developing maps, plats, surveys or other documents and any necessary and appropriate changes to the work. The non-professional services, such as drafting, need not be redone by the successor registrant but must clearly and accurately reflect the successor registrant's work. The burden is on the successor registrant to show such compliance. The successor registrant shall have control of and responsibility for the work product and the signed and sealed originals of all documents.

- (10) Computer-generated seals not signed with a digital signature may be used on final original drawings provided a handwritten signature is placed across the seal and the date is **handwritten** below the seal. Maps, plats, surveys or other documents that are signed using a digital signature must have an electronic authentication process attached to or logically associated with the electronic document. The digital signature must be:
- a. Unique to the individual using it
 - b. Capable of verification
 - c. Under the sole control of the individual using it
 - d. Linked to a document in such a manner that the digital signature is invalidated if any data in the document is changed.

A digital signature that uses a process approved by the board will be presumed to meet the criteria set forth in subsections 10 a–d above. Any hard copy printed from the transmitted electronic file shall bear the facsimile of the signature and seal and **shall** be a confirmation that the electronic file was not altered after the initial digital signing of the file. Any alterations to the file shall cause the facsimile of the signature to be voided.

Authority: T.C.A. §§62-18-105(d), 62-18-106(c), and 62-18-119(d).

Rule 0820-04-.09 Responsible charge of service is amended by deleting the text of the rule in its entirety and substituting instead the following so that, as amended, rule 0820-04-.09 shall read:

Rule 0820-04-.09 Responsible Charge of Service

- (1) Only officers and principals who are employed full-time for a minimum of thirty (30) hours per week and who hold active Tennessee registration can be in responsible charge of a firm's practice. A registrant who renders occasional, part-time, or consulting services to or for a firm may not be designated as an officer or principal in responsible charge.
- (2) The officer or principal in responsible charge must be registered in the profession in which services are being offered.
- (3) An officer or principal may be in responsible charge of more than one firm only if the firms are at the same physical location.

- (4) *Corporations, partnerships and firms maintaining any place of business in this state for the purpose of providing or offering to provide land surveying services to the public shall have, in responsible charge of such service at any and each place of business, a resident registered land surveyor.*
- (5) *In the event of a change in the officer or principal in responsible charge, a firm cannot provide or offer services to the public until such time as a new officer or principal in responsible charge is identified.*

Authority: T.C.A. §§62-18-105(d) and 62-18-106(c).

New Rule

New Rule 0820-04-.10 Practice - Disclosure of service is created by adding the following language, so that new rule 0820-04-.10 shall read:

Rule 0820-04-.10 Practice-Disclosure

- (a) *A corporation, partnership or firm offering service to the public may engage in the practice of surveying in this state; provided that at least one (1) of the principals or officers of the corporation, partnership or firm is in responsible charge of the practice and is registered as required in this chapter for surveyors or is otherwise by this chapter authorized to practice. The same exemptions shall apply to corporations, partnerships and firms as apply to individuals under this chapter.*
- (b) *Corporations, partnerships or firms offering surveying service to the public shall file with the board, on a form prescribed by the board, a listing of names and addresses of all principals and officers, as well as the principals or officers duly registered to practice surveying in this state who are in responsible charge of the practice in this state. The corporations, partnerships or firms shall advise the board in writing within sixty (60) days of any change of status.*

Authority: T.C.A. §§62-18-105(d) and 62-18-106(c).

Robert Herndon called for motion to accept or deny the proposed changes to the Professional Conduct rules.

Galyon Northcutt made a motion to approve the proposed changes as noted. Jay Caughman seconded the motion. The motion carried unopposed.

Mr. Herndon then read the regulatory flexibility analysis into the record and the board answered the following questions:

Regulatory Flexibility Analysis - Methods of Reducing Impact of Rules on Small Businesses:

1. Overlap, duplicate, or conflict with other federal, state, and local governmental rules:

The Board is the sole regulatory agency for the practice of land surveying in this state; there is no overlap, duplication or conflict with federal authority.

2. Clarity, conciseness, and lack of ambiguity in the rules:

The rules are clear in purpose and intended execution. The rules are not open to different interpretations.

3. Flexible compliance and/or reporting requirements for small businesses:

These rules require all licensees operating as a land surveying company to initially register with the Board, but contain no continuous reporting requirements.

4. Friendly schedules or deadlines for compliance and/or reporting requirements:

Deadlines for compliance and/or reporting are the same as exist currently.

5. Consolidation or simplification of compliance or reporting requirements:

Compliance and reporting requirements are simple and are no more complex than those currently existing.

6. Performance standards for small businesses:

The performance standard for small businesses is the same as those operating larger businesses, since the law and rules apply equally to all registrants of the Board.

7. Barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs:

There are no known barriers stifling entrepreneurial activity, curbing innovation or increasing costs.

Jay Caughman made a motion to accept the flexibility questions and answers. Galyon Northcutt seconded the motion. The motion carried unopposed.

Mr. Northcutt then made a motion to accept the economic impact statement. Jay Caughman seconded the motion. The motion carried unopposed.

A roll call vote was then made to approve the rules as amended:

Tim Lingerfelt – Yes

Galyon Northcutt – Yes

Jay Caughman – Yes
Sue Braly – Yes

The rulemaking hearing was then adjourned for lunch at 11:00 am.

The rulemaking hearing on Continuing Education reconvened at 12:33 pm and was called to order by Robert Herndon. Mr. Herndon read the purpose of the rulemaking hearing and then read the rules into the record. Mr. Herndon read the written comments submitted by TAPS.

Substance of Proposed Rules

*Chapter 0820-05
Continuing Education*

Amendments

Rule 0820-05-.02 Definitions is amended by deleting the text of the rule in its entirety and substituting instead the following so that, as amended, rule 0820-05-.02 shall read:

Rule 0820-05-.02 Definitions

- (5) *“Active” means a registered land surveyor who has complied with the continuing education requirements prescribed herein.*
- (6) *“Board” means the Tennessee State Board of Examiners for Land Surveyors.*
- (7) *“Inactive” means a registered land surveyor who has obtained inactive status from the Board pursuant to Rule 0820-05-.06 and is not required to comply with the continuing education requirements prescribed herein. An inactive registrant may not engage in the practice of land surveying in the State of Tennessee.*
- (8) *“Professional Development Hour (PDH)” means an hour of continuing education found acceptable by the Board.*
- (9) *“Retired” means a registered land surveyor who has obtained retired status from the Board pursuant to TCA 62-18-128 and is not required to comply with the continuing education requirements prescribed herein. A retired registrant may not engage in the practice of land surveying in the State of Tennessee.*
- (10) *Ethics/Business-Related Course or Activity-A qualifying course or activity with content areas related to (1) the awareness of ethical concerns and conflicts; (2) an enhanced familiarity with the codes of conduct; (3) an understanding of standards of practice or care; (4) project management and risk-assessment management; or (5) other similar topics aimed at*

maintaining, improving, or expanding the skills set and knowledge to the licensee's field and methods of practice.

- (11) *Continuing Education Unit (CEU)-Unit of credit customarily used for continuing education courses. One continuing education unit equals 10 hours of class in an approved continuing education course.*
- (12) *College/Unit Semester/Quarter Hour-Credit for course in ABET-approved programs or other related college course approved in accordance with subsection E of this section.*

Authority: T.C.A. §§ 62-18-105(d) and 62-18-106(d).

Rule 0820-05-.03 Basic requirements is amended by deleting the text of the rule in its entirety and substituting instead the following so that, as amended, rule 0820-05-.03 shall read:

Rule 0820-04-.03 Basic Requirements

- (1) *Every licensee is required to obtain the equivalent of thirty (30) PDH's per biennial renewal period. These PDH's may be obtained any time during the applicable renewal period. A minimum of **two (2) PDH's shall be earned by successfully completing a course or activity that has content areas focused on surveying ethics and two (2) PDH's shall be earned by successfully completing a course or activity that has content areas focused on surveying standards of practice.** If a licensee exceeds the biennial requirement in any renewal period, a maximum of fifteen (15) PDH's may be carried forward to the subsequent renewal period. PDH's may be earned as follows:*
 - 1. *Successful completion of college courses;*
 - 2. *Successful completion of continuing education courses;*
 - 3. *Presenting or attending qualifying seminars, **webinars**, in-house courses, workshops, or professional or technical presentations made at meetings, conventions, or conferences.*
 - 4. *Teaching or instructing in 1 through 3 above;*
 - 5. *Authoring published papers, articles, books, or accepted licensing examination items;*
 - 6. *Active participation in professional or technical societies, **limited to two (2) PDHs per organization. The registrant must serve as an officer and/or actively participate in a committee of the organization;***
 - 7. *Receiving a patent; or*

8. *Active participation in educational outreach activities pertaining to professional licensure or the surveying profession which involve K-12 or higher education students;*
- (2) *A registrant seeking biennial renewal of active registration must, as a prerequisite to renewal, submit satisfactory evidence to the Board of having obtained thirty (30) PDH's during the two-year period immediately preceding application for renewal (carryover hours, not exceeding fifteen (15) hours, from the next preceding renewal cycle may be included).*
- (3) *A new registrant is not required to satisfy the continuing education requirements prescribed in this chapter as a prerequisite for the initial one-year period of active registration; however, a new registrant is required to obtain continuing education requirements for application toward the second year of the initial licensing period, if initial licensure includes two years.*

Authority: T.C.A. §§ 62-18-105(d) and 62-18-106(d).

Rule 0820-05-.04 Conversion table is amended by deleting the text of the rule in its entirety and substituting instead the following so that, as amended, rule 0820-05-.04 shall read:

Rule 0820-05-.04 Conversion Table

- (1) *Conversion of other units of credit to PDH's is as follows:*
 - (a) *1 college or unit semester hour.....45 PDH*
 - (b) *1 college or unit quarter hour.....30 PDH*
 - (c) *1 continuing education unit.....10 PDH*
 - (d) *1 hour of professional development in coursework, **webinars**, seminars or professional or technical presentations made at meetings, conventions or conferences.....1 PDH*
 - (e) *Teaching any of (a) through (d) above.....PDH value times 2*
Teaching credit shall only be valid for the first offering or presentation. Full-time faculty may not claim teaching credit associated with regular duties of employment

- (f) *Publications:*
 - (1) *Each published peer-reviewed paper or book in the registrant's area of professional practice.....10 PDH*
 - (2) *Each published paper or article, other than (f)(1) above, in the registrant's area of professional practice.....5 PDH*
- (g) *Active participation in professional and technical societies.....2 PDH*
- (h) *Each patent obtained.....10 PDH*
- (i) *1 hour of outreach activities.....1 PDH (not to exceed 3 PDH)*

Authority: T.C.A. §§ 62-18-105(d) and 62-18-106(d).

Rule 0820-05-.05 Types of acceptable continuing education is amended by deleting the text of the rule in its entirety and substituting instead the following so that, as amended, rule 0820-05-.05 shall read:

Rule 0820-05-.05 Types of Acceptable Continuing Education

- (1) *Continuing education activities for which credit may be given by the board include college and university courses which are awarded continuing education units (CEU's), and those portions of technical meetings, seminars, **webinars**, tutorials, short courses and correspondence courses that are related to practice of land surveying.*
- (2) *The Board will grant credit for only such continuing education activities that satisfy the following criteria:*
 - (a) *There is clear purpose and objectivity for each activity;*
 - (b) *The content of each presentation is well organized and presented in a sequential manner;*
 - (c) *There is evidence of pre-planning which should include the opportunity for input by the target group to be served;*
 - (d) *The presentation will be made by persons who are well-qualified by reason of education or experience; and*
 - (e) *There is provision for individual participant registration which will include information required for record keeping and reporting*

- (3) *The Board will grant no credit to a registrant for a course, technical meeting, **webinar**, seminar or tutorial repeated by the registrant within three (3) years (if credit was originally granted), unless, in the Board's opinion, there is a substantial change in the content of such course, technical meeting, **webinar**, seminar or tutorial of the complexity of the subject matter warrants award of additional credit.*
- (4) *All activities submitted to the board for continuing education credit are subject to approval by the Board.*

Authority: T.C.A. §§ 62-18-105(d) and 62-18-106(d).

Rule 0820-05-.06 Inactive registrants is amended by deleting the text of the rule in its entirety and substituting instead the following so that, as amended, rule 0820-05-.06 shall read:

Rule 0820-05-.06 Inactive and Retired Registrants

- (1) *A registered land surveyor may request in writing to be placed on the Board's inactive or retired roll, thereby obtaining inactive or retired status.*
- (2) *An inactive or retired registrant will be permitted to retain that registrant's original certificate of registration by paying the fee for registration without submitting proof of complying with the continuing education requirements prescribed herein.*
- (3) *An inactive or retired registrant may not engage in the practice of land surveying in the State of Tennessee. Any practice or offer to practice land surveying in the State of Tennessee by an inactive or retired registrant shall constitute misconduct for the purpose of Tennessee Code Annotated, Section 62-18-116(a)(1)(B) (grounds for revocation or suspension of certificate by the Board.)*

Authority: T.C.A. §§ 62-18-105(d) and 62-18-106(d).

Rule 0820-05-.07 Reinstatement to active registration is amended by deleting the text of the rule in its entirety and substituting instead the following so that, as amended, rule 0820-05-.07 shall read:

Rule 0820-5-.07 Reinstatement to Active Registration

- (1) *An inactive or retired registrant seeking to reinstate an inactive registration of one (1) year or more must submit a request in writing to the Board with a fee of twenty-five dollars (\$25.00) and must satisfy one (1) of the following requirements:*
 - (a) *Satisfaction of the biennial PDH requirement multiplied by the number of years of inactive or retired status up to a maximum of thirty (30) PDH's; or*

- (b) *Successful completion of the Tennessee State Specific Land Surveying examination within one (1) year immediately prior to application for reinstatement.*
- (2) *An inactive or retired registrant seeking to reinstate an inactive or retired registration of less than two (2) years must meet the biennial PDH requirement.*

Authority: T.C.A. §§ 62-18-105(d) and 62-18-119(d).

Rule 0820-05-.08 Noncompliance is amended by deleting the text of the rule in its entirety and substituting instead the following so that, as amended, rule 0820-05-.08 shall read:

Rule 0820-05-.08 Noncompliance

Unless a request for inactive or retired status is made, any registrant failing to furnish the required continuing education form, properly completed and signed, shall not be granted renewal of registration by the Board and shall lose the right to practice land surveying in the State of Tennessee upon the expiration of registration.

Authority: T.C.A. §§ 62-18-105(d) and 62-18-106(d).

Rule 0820-05-.09 Hardships is amended by deleting the text of the rule in its entirety and substituting instead the following so that, as amended, rule 0820-05-.09 shall read:

Rule 0820-05-.09 Hardships and Exemptions

- (1) *Notwithstanding any other provision of this Chapter to the contrary, the Board may exempt a registrant from complying with all or part of the continuing education requirements for a given year in the following cases:*
 - (a) *A registrant affected by physical disability, illness, or other extenuating circumstances as reviewed and approved by the Board; provided that adequate supporting documentation is furnished to the Board; or.*
 - (b) *A non-career military registrant serving on active duty in the armed forces of the United States for a period of one hundred twenty (120) consecutive days in a calendar year; provided that the adequate supporting documentation is furnished to the Board.*
 - (c) *Those who are 65 years of age or older who also have 25 or more years of active registration; provided that adequate supporting documentation is furnished to the Board. **This exemption does not waive two (2) PDHs of ethics and two (2) PDHs of standards as provided by 0820-05.03(1).***

Authority: T.C.A. §§ 62-18-105(d) and 62-18-106(d).

Rule 0820-05-.10 Reports and records is amended by deleting the text of the rule in its entirety and substituting instead the following so that, as amended, rule 0820-05-.10 shall read:

Rule 0820-05-.10 Reports and Records

- (1) Each registrant shall report, on a form provided by the Board, the continuing education activities undertaken during the **biennial renewal period**.*
- (2) The registrant shall maintain a file in which records of the activities are kept, including dates, subjects, duration of programs, printed program schedules, registration receipts or other proof of participation, and other appropriate documentation, for a period of three (3) years after the date of the program or activity.*

Authority: T.C.A. §§ 62-18-105(d) and 62-18-106(d).

Rule 0820-05-.12 Approval of programs is amended by deleting the text of the rule in its entirety and substituting instead the following so that, as amended, rule 0820-05-.12 shall read:

Rule 0820-05-.12 Approval of Programs

- (1) Approval of any program may be granted **for a period of two (2) years from the date of approval**, to a sponsoring organization or individual if the following information is submitted to the Board:
 - (a) Instructors and their qualifications; and*
 - (b) Synopsis of course material.**
- (2) No sponsor may provide any continuing education course(s) without prior approval from the Board.*
- (3) Upon completion of the approved course the sponsor shall submit to the Board the record of attendees as provided in Rule 0820-05-.11 above and time, place and schedule of activities.*

Authority: T.C.A. §§ 62-18-105(d) and 62-18-106(d).

Rule 0820-05-.14 Comity is amended by deleting the text of the rule in its entirety and substituting instead the following so that, as amended, rule 0820-05-.14 shall read:

Rule 0820-05-.14 Comity

- (1) *The Board will deem a registrant to have met the continuing education requirements provided herein if such registrant, when making submission of continuing education toward renewal of Tennessee registration, certifies in writing the following:*
 - (a) *The registrant resides in another state or territory which has been recognized by the Tennessee Board and shall satisfy all continuing education requirements for renewal in Tennessee.*

Authority: T.C.A. §§ 62-18-105(d) and 62-18-106(d).

That concludes the amending of the rules.

Mr. Herndon read the flexibility statement in to the record, advising the board to answer the questions at the end of the statement.

Regulatory Flexibility Analysis - Methods of Reducing Impact of Rules on Small Businesses:

1. Overlap, duplicate, or conflict with other federal, state, and local governmental rules:

The Board is the sole regulatory agency for the practice of land surveying in this state; there is no overlap, duplication or conflict with federal authority.

2. Clarity, conciseness, and lack of ambiguity in the rules:

The rules are clear in purpose and intended execution. The rules are not open to different interpretations.

3. Flexible compliance and/or reporting requirements for small businesses:

These rules contain no new reporting requirements.

4. Friendly schedules or deadlines for compliance and/or reporting requirements:

Deadlines for compliance and/or reporting will now be continuous over the biennial renewal cycle rather than annually.

5. Consolidation or simplification of compliance or reporting requirements:

These rules simply compliance and reporting requirements because they will bring these requirements into harmony with the current two-year renewal cycle.

6. Performance standards for small businesses:

These rules do not impact the performance standard for small businesses.

7. Barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs:

There are no known barriers stifling entrepreneurial activity, curbing innovation or increasing costs.

Vote: Jay Caughman made a motion to accept the economic impact statement. Gaylon Northcutt seconded the motion. The motion carried unopposed,

A roll call vote was then made to approve the rules as amended:

Tim Lingerfelt – Yes
Gaylon Northcutt – Yes
Jay Caughman – Yes
Sue Braly – Yes

There being no further business for the day two, the meeting was concluded at 3:17 p.m. on October 24, 2013.

Day Three, October 25, 2013

Mr. Lingerfelt called the meeting to order at 9:07 a.m.

Mr. Lingerfelt stated that he would like to continue the board's discussion on the Colonial States issue until the January 2014 meeting as the board is accumulating further information on that organization.

The board then reviewed the revised FS application form and suggested changes to the form that need to be made.

The board then met with Steven Conti, as his request, to discuss his application that was denied at the August 1-2, 2013 board meeting. After all board members reviewed Mr. Conti's application, it was determined that Mr. Conti could sit for the Principles of Surveying exam and the Tennessee Specifics of Surveying exam in April 2014.

Vote: Gaylon Northcutt made a motion, that based on what the law says, and after having reviewed the application, it appears that Mr. Conti exceeds the twenty-four (24) months of experience required for licensure and he be allowed to take the next portion of the exam. Jay Caughman seconded the motion. The motion carried unopposed.

The board then reviewed the PLSIT application and education of Justin Parrish. The board determined that Mr. Parrish falls under Category B in his education. The following courses submitted by Mr. Parrish were approved:

- CE4233 Control Surveys
- CE4243 Land Surveys
- ABE4823 Capstone Surveying
- GR4323 Cartographic Sciences
- GR4303 Principles of GIS

- ABE4990 AutoCad for Geomatic Applications

Vote: Jay Caughman made a motion to deny the application under Category A, but after further review, the applicant is approved under Category B. Galyon Northcutt seconded the motion. The motion carried unopposed.

Mr. Lingerfelt asked the Board to vote on the number of PDHs the Board members may be granted for their participation at the Board meeting from the past two days. It was agreed that a total of ten (10) hours was appropriate. Mr. Caughman made a motion to grant each Board member present a total of ten (10) PDHs for their attendance on all three days. The motion was seconded by Ms. Braly. The motion carried unopposed.

There being no further business, the meeting was adjourned at 10:35 a.m.