MINUTES

Tennessee Board of Examiners for Land Surveyors

The Tennessee Board of Examiners for Land Surveyors met on Thursday, August 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; Robert Herndon, Attorney for the Board; and Donna Moulder, Administrative Director for the board. Sue Braly, Public Board Member, was not present/

The meeting was called to order at 9:15 a.m. by Chairman Dillehay.

The agenda was then reviewed. David Cagle made a motion to amend the agenda by adding the Legal Report. 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.

Jesse Joseph presented the following Agree Final Order proposal:

Complaint #200501940 –

This complaint was opened in the spring of 2005 alleging unlicensed activity against an "unknown person" who allegedly determined the location of property lines in a rural county and prepared property descriptions, included within 3 quit claim deeds, and filed them in June, 2004. An investigation was concluded in 2006, wherein it appeared that a specific individual (now the named Respondent) divided a parcel of land he considered a family farm into five tracts amongst three family members – the Respondent and his two siblings.

This matter was presented to the Board previously in January, 2007, and the Board approved issuance to Respondent of a Consent Order assessing a $1,000 civil penalty, with conditional authority to file a formal proceeding if the proposal was not accepted. The proposed Consent Order was mailed to Respondent's prior counsel in February 2007 and was not accepted.

The complaint has been assigned to five different attorneys since 2005 and was delivered to the litigation counsel in late 2010 for the filing of a formal notice of

hearing and charges. A formal proceeding was filed in early May of this year and Respondent now has agreed to settle the case and has indicated that he only has the ability to pay a civil penalty of $300 and to reimburse the State for its hearing costs (filing fees) of $200, for a total of $500.

Respondent claims that he did not know he was engaging in activity that could be considered the practice of land surveying at the time, he has not engaged in these activities since 2004, and has agreed to cease and desist in the future. Through counsel, he also expresses doubt that the statutes defining the practice of land surveying necessarily apply to persons who divide their own family property between family members and who are not holding themselves out to the general public as offering this service. Thus, he desires to enter into this Agreed Final Order on a "no contest" basis.

Litigation counsel does not agree with the Respondent's legal position on the applicability of the statutes, but nonetheless would recommend acceptance of the Agreed Final Order as a fair resolution of this older complaint file where the Respondent has not engaged in further unlicensed activity which could harm the public, and where the Respondent has acknowledged the problem and has agreed to cease and desist from further unlicensed activity.

This matter was set for formal hearing on August 4, 2011, and the formal hearing has been continued until October 27, 2011 in case the Board decides not to approve this proposed Agreed Final Order.

RECOMMENDATION: Litigation counsel recommends that the Board approve the proposed Agreed Final Order.

Recommendation: Approve the Agreed Order and close the case.

RULING: Unanimously approved.

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

Complaint #201100519 -

This case was referred to a Board member for review because of the allegation of incompetence that resulted in a boundary dispute, in possible violation of Tenn. Code Ann. § 62-18-116(a)(1)(B). The events generating the complaint occurred in East Tennessee, and the reviewing Board member was West Tennessee Board member Mr. CAGLE.

Recommendation: Accept the reviewing Board member's proposal.

FINDING: After a review of the Respondent's work product and comparison to the Board's standards of practice, there does not appear to be any incompetent practice indicated.

RULING: Dismiss due to lack of disciplinary grounds.

Complaint #2011007601 –

This case was referred to a Board member for review because of the allegation of incompetence in the preparation of land survey documents, in possible violation of Tenn. Code Ann. § 62-18-116(a)(1)(B). The events generating the complaint occurred in West Tennessee, and the reviewing Board member was East Tennessee Board member Mr. LINGERFELT.

Recommendation: Accept the reviewing Board member's proposal.

FINDING: Review of the Respondent's work product and other evidence contained in the complaint, there is indication of violation of the following authorities: Tenn. Code Ann. 62-18-116(a)(1)(B), indicating incompetency by way of failure to meet all required standards of practice and Tenn. Code Ann. 62-18-127, which requires a registrant to research all common boundaries.

RULING: **A Letter of Reprimand along with a Consent Order to correct the errors on the documents and provide the Board with proof of such within ninety (90) days of the acceptance of the Consent Order, or a civil penalty of one thousand dollars ($1,000) will be imposed.**

Complaint #201100790 –

This case was referred to a Board member for review because of the allegation of incompetence in the preparation of land survey documents, in possible violation of Tenn. Code Ann. § 62-18-116(a)(1)(B). The events generating the complaint occurred in East Tennessee, and the reviewing Board member was Middle Tennessee Board member Mr. DILLEHAY.

Recommendation: Accept the reviewing Board member's proposal.

FINDING: Review of the Respondent's work product and other supporting evidence contained in the complaint, there is indication of violation of the following authorities by virtue of the Respondent failing to provide all land surveying services required in a contract for work: Tenn. Code Ann. 62-18-105(d), which requires a registrant to affix his or her seal to all final documents; Tenn. Code Ann. 62-18-106(c), which requires a registrant to follow all

established standards of practice; and Tenn. Comp. R. & Reg. 0820—03—.07, which establishes a registrant's duty to identify all monuments in a survey.

RULING: A Letter of Reprimand along with a Consent Order to set out all of the corners on the documents and provide the Board with proof of such within ninety (90) days of the acceptance of the Consent Order, or a civil penalty of one thousand dollars ($1,000) will be imposed.

Complaint #2011008871 –

This case was referred to a Board member for review because of the allegation of incompetence in the preparation of land survey documents, in possible violation of Tenn. Code Ann. § 62-18-116(a)(1)(B). The events generating the complaint occurred in East Tennessee, and the reviewing Board member was Middle Tennessee Board member Mr. DILLEHAY.

Recommendation: Accept the reviewing Board member's proposal.

FINDING: After a review of the Respondent's work product and comparison to the Board's standards of practice, there does not appear to be any incompetent practice indicated.

RULING: Dismiss due to lack of disciplinary grounds.

Complaint #201101979 –

The complaint alleges that the Respondent, a previously licensed land surveyor, provided land surveying services after the expiration date of his license. There are three known instances of this, as represented by the filing of three plats bearing the Respondent's expired professional seal. In answer, the Respondent freely admits that the allegations are in fact accurate. Mitigating factor(s): The Respondent has shown remorse in his acts, and has no previous record of complaints with the Board. Additional information: The Respondent is currently under application for a license as a professional land surveyor.

Recommendation: A Consent Order for a civil penalty of $1,000 per act of unlicensed activity, for a total civil penalty of $3,000.

RULING: Approved with the addition of an addition one thousand dollars ($1,000) for each year of practice with an expired license (2008 and 2009), for a total civil penalty of five thousand dollars ($5,000).

Election of Officers were then held. Results are as follows:

David Cagle made a motion to nominate Tim Lingerfelt as Chairman. There being no other nominations, the nomination was accepted by acclimation. The motion carried unopposed. Tim Lingerfelt was elected chairman.

Tim Lingerfelt nominated Sue Braly as Vice Chairman. There being no other nominations, the nomination was accepted by acclimation. The motion carried unopposed. Sue Braly was elected Vice-Chairman.

The board then reviewed a letter regarding Charles Rusk that was sent to each board member from Lewis S. Howard, Attorney for The Coal Creek Company. The board determined that it has no business quoting rules regarding ownership. The issues between The Coal Creek Company are not under the board's prevue and they have no jurisdiction over this matter. Jackie Dillehay made a motion for Donna Moulder to draft a letter to Mr. Lewis and The Coal Creek Company stating this and Tim Lingerfelt is to review. David Cagle seconded the motion. The motion carried unopposed.

The board then met with Frank Palumbo. Mr. Palumbo has reapplied for licensure as his license expired on December 31, 2009. David Cagle made a motion to issue Mr. Palumbo a new license. Jackie Dillehay seconded the motion. The motion carried unopposed.

The board then began reviewing applications for the October 2011 exam.

There being no further business, the meeting was adjourned at 4:45 pm.

FRIDAY, AUGUST 5. 2011 –

The Tennessee Board of Examiners for Land Surveyors met on Friday, August 5, 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; Tim Lingerfelt, Chairman; David Cagle, Board Member; Robert Herndon, Attorney for the Board; and Donna Moulder, Administrative Director for the board. Sue Braly, Vice Chairman, was not present.

The meeting was called to order at 9:15 a.m. by Chairman Lingerfelt.

The board then met with Bart Lay to discuss the denial of a TAPS continuing education seminar. The board informed Mr. Lay that the application for approval needs to be modified (the application is too vague) and then resubmitted to the Continuing Education Advisory Committee.

The board then resumed reviewing applications for the October 2011 exam. The following applicants were approved to take the exam on October 28-29, 2011:

Timothy Alan Anderson
Landon O'Dell Loveday II
Jarrod Thomas Bonar
Ezra James Glafenhein
Russell B. Norville
Brandon Michael Shaw
Thomas Laslie Seratt III
Kevin Centers
Robert Sherron Freeland
Anthony Manary
Jubal Robert Parris
Russell Alan White
Andrew Davis Berryhill
Robert Jason Coyle
Byron David Howell
Abbie Marie Jones
Steven Craig Matthews
Gregory Lee Mullins
Joseph M. Pence
Stanley Todd Reese
Timothy Alan Rudolph
Travis Lamar Sheilds
Jason W. Britt
Patrick Donald Slone
Jeffrey Todd Girten
William Logan McCraw
James Whitney Roper
Christopher Jason Wilbanks
Robert Lea Carson III
Benjamin David Fasig
Ryan Dax Hillhouse
Paul Jeffery Menz
Wayne Evan Shanks
Nicholas Lee Barnes
Daniel James Collier, Jr.
Erik R. Heng-Fischbach
David Neil Houghton
Michael A. Martin
Derek Scott Meadows
Jesse Ray Peirpoint
Sammey Dewayne Peters
Timothy Neil Ross
Steven Eamerson Semple
William John Whitman II

There being no further business, the meeting was adjourned at 12:00 p.m.

Respectfully submitted,

Donna Moulder
Administrative Director

Tim Lingerfelt, Chairman

Sue Braly, Vice-Chairman

David Cagle

Jackie Dillehay