



CANNON BUILDING
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STATE OF DELAWARE
DEPARTMENT OF STATE

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DIVISION OF PROFESSIONAL REGULATION

PUBLIC MEETING MINUTES:	Board of Professional Land Surveyors
MEETING DATE AND TIME:	April 16, 2009 at 8:30 a.m.
PLACE:	861 Silver Lake Blvd., Conference Room A, Second floor, Dover, Delaware
MINUTES APPROVED:	May 21, 2009

MEMBERS PRESENT

Stephen Sellers, Chair, Professional Member
Michael T. Szymanski, Vice-Chair, Professional Member
Victor Kennedy, Public Member
Laurence R. McBride, Professional Member
Joseph McDonough, Public Member
Frank Szczuka, Public Member

DIVISION STAFF/DEPUTY ATTORNEY GENERAL

Debbie Heinsch, Administrative Specialist II
Frederick Schranck, Deputy Attorney General
Kay Warren, Deputy Director, Division of Professional Regulation

ABSENT MEMBERS

John Murray, Secretary, Professional Member

OTHERS PRESENT

CALL TO ORDER

Mr. Sellers called the meeting to order at 8:37 a.m.

REVIEW OF MINUTES

The Board reviewed the meeting minutes of the March 19, 2009 board meeting. Mr. Szymanski made a motion, seconded by Mr. McDonough to approve the minutes as presented. The motion was carried, Mr. McBride abstained.

UNFINISHED BUSINESS

Update of Mortgage Inspection Plan (MIP)

Mr. Szymanski reported the committee has wrapped up the meetings and will make a presentation to the Board regarding section 12.0 of the Rules and Regulations. Mr. Szymanski will email the Board members a word document with the changes and requested they review it prior to the next meeting and be ready to make a decision. Additionally, Mr. Sellers requested all members review prior to the next meeting. Mr. Schranck reported that the process would be to post notice in the Delaware Register of Regulations, which has a deadline, then you must have a timeframe of at least 21 days for receipt of written comments, and then a hearing can be held. Mr. Schranck notified that the Board is not required to have a public hearing; however they are required to provide an opportunity for written comment. The intent is the Board will review the draft at the June meeting, will be in the August registrar and a hearing will be held in September. Mr. Szymanski requested Ms. Heinsch email a word document of Section 12.0 of the Rules and Regulations.

Certificate of Authorization Legislation –

Mr. Schranck reported the Division questioned how sole proprietorships would be affected by this. Sole Proprietorships will not be affected by this; it is about finding the responsible party. The bill is currently in the Joint Sunset Committee awaiting sponsorship. The bill also included the proposed fine increase. Mr. Sellers questioned if a fee would be involved with this. Ms. Warren responded that there would be a set fee for it. The fee will be nominal and set by the Division of Professional Regulation.

Title 24 – 2721 Letters of Concern – Kay Warren

Ms. Warren reported that the Board of Medical Practice has letters of concern and explained the process of when a complaint arrives it is investigated, the Board person is contacted. If it is going to be closed and if there is evidence that a letter of concern should be issued this is done under executive session. The intent is not that the board investigates; the Division of Professional Regulation is responsible for investigations. Mr. Szymanski questioned what happens to anonymous complaints. Ms. Warren reported that the Division does not accept anonymous complaints unless it is for unlicensed practice. Mr. Szymanski stated that some people do not want to address violations for fear of repercussions. The Board told the surveying profession that they can anonymously address the Board; the Board would issue a letter of concern without the Division's investigation but could not send to investigation if warranted. The materials provided with the complaints show what the problem is. Mr. Szymanski stated that when a survey is performed deficient of required standards, however, the level does not constitute negligence or unprofessional conduct, the Board's review or investigation of the materials is sufficient. Ms. Warren advised the Board that they or Ms. Heinsch could initiate a complaint. Ms. Warren reported that Title 29, §8735(h)(1) states that all complaints must be in writing.

(h) The following procedure shall be followed for the investigation of complaints against licensees of boards, agencies and commissions listed in subsection (a) of this section and otherwise regulated by the Division of Professional Regulation:

(1) Any person who desires to file a complaint against any licensee regulated by a board, commission or agency covered pursuant to this chapter must do so in writing.

Mr. Szymanski stated if it arrives anonymously and is not a complaint but is a letter of concern of practice that the Board should be aware of it and the Board has a right to take action if disciplinary action is not warranted. Ms. Warren indicated that a proper formal investigation should occur. Mr. Schranck advised that the better practice is having the Division's investigators review all complaints. There is a high risk of it not being a letter of concern and that it would warrant disciplinary action; in this event the individual can not have a fair trial. Mr. Szymanski stated that the Board should appoint a member to review all complaints to determine if a letter of concern could be issued; then only one member would be privy to the information and a fair trial could be held. Mr. Szczuka stated it is

outside of the perimeter of the Rules and should go through the investigative unit first. The unit could then say it looks like a letter of concern and contact the appropriate board person. Mr. Schranck, Ms. Warren and Mr. Nickerson will work on adopting a practice similar to the Board of Medical Practices.

NEW BUSINESS

Courses for Continuing Education Approval –

DTCC, CET 144 Surveying Principles – 8 pdh's - – Mr. McBride made a motion, seconded by Mr. McDonough to approve for 8 pdh's under Regulation 10.3.6. The motion carried, Mr. Szymanski abstained.

DTCC, CET 247 Route Surveying and Design – 8 pdh's – Mr. McBride made a motion, seconded by Mr. McDonough to approve for 8 pdh's under Regulation 10.3.6. The motion carried, Mr. Szymanski abstained.

Mr. Szymanski questioned license renewal. He was advised that licensee's must complete the continuing education prior to attesting that you have done it.

Review of Application for Licensure by Reciprocity –

Brian Yorkiewicz – Mr. Yorkiewicz is applying for licensure through reciprocity. He is currently licensed in Pennsylvania. However, on his certification they list the Fundamentals of Engineering and not Fundamentals of Land Surveying. It was requested the Division check with the Pennsylvania Board to see if this was a typographical error. The Fundamentals of Land Surveying is a requirement for licensure. Mr. Szymanski made a motion, seconded by Mr. McBride to approve the applicant to take the state Jurisprudence/Drainage Examinations, pending verification of successful completion of the Fundamentals of Land Surveying examination in Pennsylvania. If he did not successfully take the Fundamentals of Land Surveying examination then the Board is required to propose to deny the application. The motion carried, Mr. Szczuka opposed.

Kenneth Schilling – Mr. Schilling is applying for licensure through reciprocity from Pennsylvania, New Jersey, and South Carolina. Mr. McBride made a motion, seconded by Mr. McDonough to approve the applicant to take the state Jurisprudence/Drainage Examinations. The motion was unanimously carried.

Review of Application for Licensure by Examination – None

Complaint Assignments – None

Hearings/Consent Agreements

Daniel McCann - Decision and Order - Mr. Schranck went over the Decision and Order which reflects revocation of licensure and a fine for Mr. McCann. The revocation goes into effect upon mailing; Mr. McCann has 30 days from the date of receipt to file an appeal to Superior Court. Ms. Warren reported that a Board's decision has only been reversed one time.

Mr. Szczuka stated that other Boards require that all members must sign decision and orders before it is ratified. Mr. Schranck advised the Board that it requires a quorum of the members present at the hearing. Ms. Warren will research the legal interpretation of this procedure.

Closed Complaints – None

05-09-08 - John Murray - Contact Person – Tabled in the absence of Mr. Murray.

Renewal

John T. Elliott – Mr. Elliott's online renewal was reviewed. Mr. Schranck advised it is not a crime that the Board has determined is substantially related to the practice of Land Surveying. Mr. Szczuka made a motion, seconded by Mr. Kennedy to process Mr. Elliott's renewal. The motion carried, Mr. Szymanski abstained.

Correspondence –

Response to letter of concern – Mr. Sellers reported that the respondent sent in a letter thanking the Board for bringing it to his attention.

Restructuring of PE Examination – Was for informational purposes only

Washington Accord Programs – Was for informational purposes only

Review of Retired Status – Mr. Szymanski requested Ms. Heinsch obtain statutes from other states regarding the status of retired licensees. Ms. Heinsch had the information available at that time and shared with the Board. Mr. Szymanski thanked Ms. Heinsch for doing a great job compiling the data, and reported that there are several states that have retired status. Mr. Szymanski will review the information and present on it at the next meeting. The Board questioned probationary status of licenses as the website reflects a license on probation with an ending period of January 2009. Ms. Heinsch reviewed the order and reported that the order mandated that the individual must request the status be removed upon completing all terms and conditions of such order. Ms. Warren will request the website be revised adding a disclaimer that anyone on probationary status has that status until it is cleared by the Board.

Other Business before the Board (for discussion only)

It was questioned if the Board can conduct reviews of regulatory agencies. Mr. Schranck responded that the Board can do such and questioned if the Board desired to conduct performance audits. Mr. Szymanski made a motion, seconded by Mr. McBride to have Mr. Sellers prepare a letter requesting random performance audits, and information on plats recorded in New Castle, Sussex and Kent Counties. The counties are not policing the profession. They will be reviewed by a professional member and if not in compliance a letter will be issued to the regulatory agency and the surveyor who signed them. The Board will be looking to assure it is in compliance with the Board's Rules and Regulations and not necessarily the Counties since the State overrides. The motion was unanimously carried. This will create a history of violations. The Board will prepare one letter for each county and copy the other two counties on each letter to show that every county is receiving a similar letter. The audit will ensure they are compliant with the Board's Regulations and if not follow up with the surveyor will show where they are in violation.

Public Comment – None

Next Scheduled Meeting

The next meeting will be held on May 21, 2009 at 8:30 a.m. in Conference Room A, second floor of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware.

Adjournment

There being no further business, Mr. Kennedy made a motion, seconded by McBride to adjourn the meeting at 10:56 a.m. The motion was unanimously carried.

Respectfully submitted,

Debbie Heinsch

A handwritten signature in black ink that reads "Debbie Heinsch". The signature is written in a cursive style with a large initial 'D'.

Administrative Specialist II
Delaware Board of Professional Land Surveyors