



CANNON BUILDING
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DIVISION OF PROFESSIONAL REGULATION

PUBLIC MEETING MINUTES:	Board of Professional Land Surveyors
MEETING DATE AND TIME:	October 15, 2009 at 8:30 a.m.
PLACE:	861 Silver Lake Blvd., Conference Room A, Second floor, Dover, Delaware
MINUTES APPROVED:	December 17, 2009

MEMBERS PRESENT

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

DIVISION STAFF/DEPUTY ATTORNEY GENERAL

Debbie Heinsch, Administrative Specialist II
Frederick Schranck, Deputy Attorney General

ABSENT MEMBERS

OTHERS PRESENT

Donald Elrod
John Johnson
Michael Paraskevich
Tom Whitehead

CALL TO ORDER

Mr. Sellers called the meeting to order at 8:35 a.m.

EXECUTIVE SESSION – None

REVIEW OF MINUTES

The Board reviewed the meeting minutes of the September 17, 2009 board meeting. Mr. McDonough made a motion, seconded by Mr. McBride, to approve the minutes as amended. The motion was unanimously carried.

UNFINISHED BUSINESS

Mr. Szymanski made a motion, seconded by Mr. McBride, to reorder the agenda to allow Ms. Warren to speak first.

Title 24- 2721 Letters of Concern – Kay Warren – Mr. Szymanski stated that as he understood it Mr. McBride would be the complaint officer for anonymous complaints. Ms. Warren replied that the letters of concern would be handled as indicated in the May, 2009 meeting minutes. The anonymous complaint would be given to Mr. McBride to review. All other complaints would be indiscriminately assigned to all board members. If a letter comes to the Division of Professional Regulation and it is not a formal complaint it will be assigned to Mr. McBride to consult with the Investigative Unit to determine if a Division investigation is needed. If not, Mr. McBride will determine if the Board should hold an Executive Session to review the anonymous complaint and if justified issue a Letter of Concern. Ms. Warren reiterated the verbiage in the May minutes as the process. Ms. Heinsch and Mr. McBride will write the letter of concern and it will be signed by the Board Chairperson. The cover letter will come from the Division of Professional Regulation and not from the Board. This allows for the licensee's information within the letter to remain anonymous. Mr. Szymanski reiterated if an anonymous complaint is received, the Division will contact Mr. McBride regarding it and he will serve as the complaint officer. Mr. McBride will review the anonymous complaint with the investigator. They will determine if a formal complaint should be submitted to the Division. If it is decided that a formal complaint is unnecessary, Mr. McBride will determine if the Board should review for a potential letter of concern. The Board will only be cognizant of the complaint number and not the licensee's information. The Board Chairperson will sign the letter of concern that is drafted by Mr. McBride and Ms. Heinsch. Ms. Heinsch will send a cover letter along with the letter of concern. The complaint officer would be the one to file an official complaint for the matter to be investigated. The complaint officer would be assigned as the contact person for that complaint and would be required to recuse himself if it resulted in a hearing. He can not participate in the proceedings but could be called as a witness by the Attorney. Mr. McDonough questioned what constitutes a majority of quorum. Mr. Szczuka was concerned regarding previously issued Letters of Concern. He felt that, since the procedure previously followed was different, the previously issued Letters should be rescinded. Ms. Warren responded that the Board may not go back and undo what has already been done. Mr. Szczuka believed that the Board made an error and the individual may not have been given due process. Mr. Szymanski felt that, even though the process didn't follow the required Division policy due to a misunderstanding, the decisions would have been the same. Mr. Sellers reminded everyone that the individuals had a chance to voice their concern. Mr. Szymanski stated that the Board has issued three or four letters of concern; of which, only one was appealed. The Board reviewed the appeal and determined that it did not warrant rescinding the original letter of concern. Mr. Schranck advised the Board that the individual could have obtained an Attorney. He further stated that the letter of concern is to point out a problem that doesn't warrant disciplinary action. It is only a notice of potential discipline if an action continues to occur. He further advised that the Board had legal authority to do what it did and had jurisdiction of those licensees so there were no legal errors. It is a policy decision that the Board and the Division have agreed to follow to handle the process. If an individual disagrees with the Board's determination and feels that the appeal was flawed, they have the opportunity to pursue other avenues. The Board has no say on that issue unless the matter is reopened. There is no legal requirement to rescind the Letters; it would be a policy choice. Legally there is no issue related to past decisions. Mr. Szymanski said of the three or four letters that were issued the Board received only one appeal response and two individuals thanked the Board for telling them about their actions and how they can improve. The Board determined to leave the matter as is. Mr. Szczuka stated that the Board bypassed due process and shouldn't have reprimanded the

individuals. Mr. Szczuka was reminded that no one was reprimanded. Mr. Szczuka made a motion to send a letter rescinding all letters of concern that the Board sent in error. Discussion on the motion followed. Mr. Sellers questioned if he wanted all letters to be rescinded or just the one that was appealed. Mr. McDonough added “if the outcome is the same, then why”. Mr. Sellers added that at that time the Board was under the impression that they were doing exactly what they were supposed to do. Ms. Warren advised of another option to ask that person if they wanted to have a hearing before the Board for further review. Mr. Szczuka stated that the statute wasn’t adhered to and that at issue is the opportunity for legal representation. He further stated that the Board should protect the public and the licensee. Mr. Szymanski responded that the statute reads... “the Board may determine after an investigation” and that the Board interpreted this to mean a Board investigation, not a Division investigation. He stated that the only issue raised was the procedure to be followed which has been resolved. Mr. Sellers added that when the Board reviewed this policy they were advised by Ms. Reardon that it was not being conducted in the proper manner. Ms. Warren stated that the Board was interpreting their law, but also needed to adhere with Title 29 and the Administrative Procedures Act. Mr. McDonough requested the board vote on the matter. Mr. Sellers called for a vote on rescinding the previously issued Letters of Concern. Mr. Szczuka was in favor; all others opposed. The motion failed.

Review of Draft Survey Intern Application – The Board reviewed Mr. Szymanski’s recommended changes. After June 30, 2011, unless applying through reciprocity, an applicant for licensure will need to be registered as a survey intern. Mr. Szymanski will send a copy of the proposed application changes to all board members for review prior to the next meeting.

Update on Audit of Regulatory Agencies – Tabled pending discussion between Mr. Schranck and Ms. Reardon.

Clarification of Hearing Quorum – Mr. Schranck reported that Ms. Reardon has received correspondence from Mr. Szczuka regarding this. Mr. Szczuka questioned if five members were present at a hearing, with three in favor of a decision and two opposed, can documents legally be signed by one of the members who was in favor and the two that were opposed to the decision. Mr. Schranck advised the answer is yes, when signing a board order you are acknowledging that the Board made that decision. It is an administrative task of signing the Board’s decision. It’s a quorum of the people that voted regardless of how they voted.

Correspondence from Mr. Stephen Johns – tabled pending completion of review of audit materials. The Board discussed carry over credits, the possibility of requiring all persons who receive an ethical complaint to take a course in ethics, and the depth of online courses. All discussion was tabled until the November meeting.

Review of Rules and Regulations comments – The Board reviewed the suggested changes that Mr. Szymanski made. Mr. Bielicki questioned setting two corners of the property and the additional cost that are involved. Mr. Bielicki believes that there are times when it needs to be reviewed and can’t be finished on the site. His point is there is a lot of time involved and costs involved regardless. Mr. Bielicki stated that often times he finds corners are not set in less affluent neighborhoods. Mr. Szymanski stated that if you are performing 3000 surveys a year, as Mr. Bielicki stated, setting corners should not be a problem. Furthermore, the setting of corners should benefit a firm, such as Mr. Bielicki’s, since they would have knowledge of control locations prior to the start of fieldwork. Mr. Sellers added that the more corners that get out there the easier it will be for the surveyor to do the surveys in the future and for a cheaper price. Mr. Bielicki said it is at the expense of the current customer and the money comes out of their pocket. Mr. Bielicki distributed to the Board members copies of letters from two customers requesting the cheapest option. Mr. Szymanski said that he could have brought correspondence from customers asking why they didn’t have corners set on their property. Mr. McDonough questioned when we could make some decisions on this matter.

Mr. Szymanski advised that he and Mr. Sellers received a letter prepared by the Pelsa Company sent to various attorneys and real estate agencies. The letter was read into the record. The letter questioned Section 12.7 which requires the surveyor to contact the ultimate user to sign a waiver and Section 12.8.3.4 which will require two corners be set on properties. The letter requested that anyone opposing it should send a letter to the Board prior to October 5, 2009 via mail or email to Ms. Heinsch. The letter was signed by Michael Paraskevich.

A letter from Michael Dunning was reviewed by the Board.

The Board called Mr. Donald Elrod forward regarding a letter that he submitted to the Board. Mr. Elrod feels that the proposed regulation changes are heavily prejudiced towards making people get a boundary survey. Mr. Elrod would also like to see pricing information on the waiver form which the consumer and surveyor could sign. He felt that this would be sufficient proof of the consumer's choice. Mr. Szymanski stated that paralegals could pass pricing information on to the consumer upon their request. He expressed concern that pricing information on the form could be presented in a fashion that would sway a consumer from having a boundary survey performed. Mr. Szymanski saw merit in Mr. Elrod's suggestion regarding scanning the waiver once signed by the consumer and witness in lieu of retaining the hard copy. He further stated that a number of the proposed changes have previously been adopted by the New Jersey Board. Mr. Szymanski thanked Mr. Elrod for his letter. He stated that he agreed with a few of the letter's suggestions; however, he felt that the tone of the correspondence lacked professionalism and that the last statement in particular was tacky. Mr. Elrod ended by saying that he was just expressing his opinion.

Mr. Szymanski stated and Mr. Sellers concurred that, if you quote someone a price for a survey and your expenses exceed the price, the additional expense is something the surveyor absorbs.

Mr. Szymanski felt that the setting of two corners seemed to be the major concern with the proposed changes. He expressed the idea that the Board could except properties in the City of Wilmington established for over 60 years and '55 and over' communities. The two corner requirement could be amended to reflect the exceptions in New Castle County.

Mr. Paraskevich stated that the comments from the public that the Board received were not solicited by his correspondence.

Mr. Tom Whitehead felt that different brands of mortgage surveys are being performed. He could not understand why some specific surveyors make a big spiel in the phone book advertising reasonable rates. He felt that such advertising is just wrong. He questioned Mr. Bielicki on whether he showed control points on every survey. Mr. Bielicki responded that he usually does by coordinates. Mr. Whitehead feels that performing 3,000 mortgage surveys in a year is mind boggling and questioned responsible charge in doing that amount of surveys plus other work. Mr. Whitehead suggested revising the rules and regulations so that responsible charge would require that the surveyor actually go out and walk the lines and look at the property. He felt that if you are signing your name to a plan this should be done as a minimum. He asked "What is wrong with upgrading your profession?" Mr. Whitehead stated that protecting the consumer should be paramount. He further stated that he did not "have a horse in this race" and that people performing 3,000 surveys a year do. He questioned if it is really a financial thing on the surveyor's part as opposed to a public thing. Mr. Whitehead stated that the image of a surveyor should be considered, not just the business. He expressed that surveyors should advise clients more and not try to get the cheapest job. He felt that setting two corners is a minimum requirement and that if this was started 30 years ago surveying today would be much easier. Mr. Szymanski stated that responsible charge is defined in our statute and agreed with Mr. Whitehead that it may not always be followed. Mr. Szymanski made a general statement that he

would like to see the records of surveyors and see how many surveys done in a year have the accompanying required waiver forms. Mr. Whitehead expressed concern that lawyers pass on information only looking for the cheapest job with the least problems. Mr. Szymanski stated that we tend to forget about professionalism.

Mr. Sellers requested the Board take a ten-minute recess.

Mr. Schranck reported that he had to leave for another meeting and suggested they review the audit materials.

Mr. Szymanski stated that the professional members of the Board could review course work submitted for the audit not on the approved list and determine if the course work would have been approved if previously submitted. He added the Board needs to get the word out that licensees should have courses pre-approved. Another problem cited was course work approved for 3.5 pdh's by the Delaware Board being approved by the Maryland Board for four pdh's.

Mr. Szczuka stated that the board has some discretion. Mr. McDonough questioned why are we auditing 100%. Mr. McBride stated that we want to see what is getting through the cracks. Mr. McDonough jokingly responded that the guy that suggested it should review all of them.

05-01-09 Consent Agreement Laurence McBride/Contact Person

Mr. Schranck reviewed the consent agreement for 05-01-09. If the Board accepts the consent agreement a letter of reprimand will be issued. Mr. Schranck explained the process from the Division receiving a complaint to a consent agreement being reached. He further advised the Board that an affirmative vote of four members is required. Mr. Sellers and Mr. McBride are recused from voting. Mr. Schranck stated that the Board could request that the Attorney General, Barbara Gadbois, and the individual come before the Board for questions about the consent agreement prior to the Board signing it if the Board desires more information. Mr. Szymanski made a motion, seconded by Mr. Bielicki, to request Ms. Gadbois and the licensee be invited to a discussion to delve more into what is outlined in the consent agreement in regards to the violations. Mr. Sellers and Mr. McBride abstained. Mr. Szymanski, Mr. McDonough, Mr. Szczuka, and Mr. Bielicki voted in favor. The motion carried.

Mr. Schranck and Mr. Szczuka left the meeting at 12:15 p.m.

NEW BUSINESS

Courses for Continuing Education Approval –

Maryland Society of Surveyors – 2009 Fall Conference – Mr. Szymanski made a motion, seconded by Mr. McBride, to approve the courses indicated - the morning courses from 8:00 a.m. until Noon to be approved for 4 pdh's, and the afternoon courses from 1:30 p.m. until 5:00 p.m. to be approved for 3.5 pdh's. The motion was unanimously carried.

Delaware Association of Surveyors, Inc. 2009 Conference & Expo – Mr. John Johnson representing DAS spoke to the Board with a concern regarding a professional member needing credit for teaching. Mr. Szymanski responded that person would need to apply for Board approval for teaching the course. Mr. McBride made a motion, seconded by Mr. McDonough, to approve the courses excluding Session 1c and 2c which are exam review courses of 4 hours each. The motion carried. Mr. Szymanski abstained.

Mr. Johnson reported that he would contact George Wigfield with the Maryland Society of Surveyors today and advise him that a 3.5 hour course will not be approved for 4 hours and for Mr. Wigfield to contact Ms. Heinsch.

Review of Application for Licensure by Reciprocity –

Michael Martin – Mr. Martin is applying for licensure through reciprocity. Mr. Szymanski made a motion, seconded by Mr. Bielicki, to approve the applicant to take the State Jurisprudence/Drainage and Fundamentals of Surveying Examinations. The motion was unanimously carried.

Coard Bounds – Mr. Bounds is applying for licensure through reciprocity. Mr. Szymanski made a motion, seconded by Mr. McBride, 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 –

05-01-09 Consent Agreement Laurence McBride/Contact Person

This matter was addressed above.

Closed Complaints – None

Correspondence – None

Certificates -

William Wichess

Dominic Lawrence Agresta

All of the above certificates were signed.

Mr. Szymanski proposed to table voting on Rules and Regulations changes until the next meeting to digest the revisions proposed, the response letters, and the comments received today.

Review Audit Material – The Board began the process of reviewing the audit materials. Of the 237 licensees audited, 5 did not respond and 50 failed the audit.

Mr. Szymanski requested that the letters for Rule to Show Cause hearings be sent out to the five individuals that did not respond to the audit, scheduling their audits first.

The Board requested a letter be sent to the Maryland Society of Land Surveyors and a copy sent to the Maryland Board indicating that certificates issued in the future should have the attendees name printed on it. The Board will not accept certificates that have names handwritten in the future due to the possibility of fraud.

Per the Board's Statute and the Administrative Procedures Act, the licensees shall be notified and a hearing will be scheduled to determine if there are any extenuating circumstances justifying the apparent noncompliance with these regulations. The hearings will be scheduled up until 4:00 p.m. with a one hour break, beginning at the November meeting.

Correspondence – None

Other Business before the Board (for discussion only) - None

Public Comment – None

Next Scheduled Meeting

The next meeting will be held on November 19, 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. McDonough made a motion, seconded by Mr. McBride to adjourn the meeting at 3:38 p.m. The motion was unanimously carried.

Respectfully submitted,

Debbie Heinsch



Administrative Specialist II
Delaware Board of Professional Land Surveyors