

MINUTES

BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS

General Business Meeting
Hilton Gardens Inn
12 Via Luna Drive
Pensacola, Florida 32561

July 18, 2003

Call to Order / Roll Call

Pamela Nobles, Chair, called the meeting to order July 18, 2003 at 9:50 a.m.

Members Present:

Pamela Nobles, Chair
Omar Armenteros, Vice Chair
Lou Bush
Jeffrey Cooner
Beverly Sutphin
Louis Lebron
Sidney Greer
Frances Poppell

Members Absent:

Dennis Blankenship

Others Present

Juanita Chastain, Executive Director
Christa Patterson, Government Analyst I
Paul Martin, Board Counsel
Charles Pellegrini, Prosecuting Attorney
Diane Carr, Secretary
Leanne Acebo, Deputy Secretary
Ken Oliver, DBPR
Ken Walling, DBPR
G.W. Harrell, DBPR
Jerry Wilson, Deputy Division Director
Michael Murphy, DBPR
Steven Woods
Nicholas Franklin
Gary Hunt
Ted Madson
Henry Echezabal
John Clyatt
Scott Daniel
Mark Norris

Scott Mills
Freddie Burch
Marilyn Evers
Russell Daly
Lanier Mathews
Gail Oliver
Oscar Pittman
David Glaze
Rob Working
Stephen Gordon

PLEDGE OF ALLEGIANCE

REVIEW AND APPROVAL OF MINUTES

March 18, 2003, General Business Meeting TCC

The board reviewed the March 18, 2003 general business meeting minutes and after review the following motion was made.

MOTION: Mr. Armenteros made a motion to approve the minutes.
SECOND: Mr. Bush seconded the motion and it passed unanimously.

April 16-17, 2003, General Business Meeting

The board reviewed the April 16-17, 2003 general business meeting minutes and after review the following motion was made.

MOTION: Mr. Bush made a motion to approve the minutes with corrections.
SECOND: Ms. Sutphin seconded the motion and it passed unanimously.

REVIEW OF THE TASK FUNCTION FORM

The board reviewed the task function form and all tasks from the April 2003 meeting were completed.

DISCIPLINARY PROCEEDINGS – Charles Pellegrini

Daryle Burgis
Case # 2000-00647

Mr. Burgis was present at the meeting and was represented by Mr. David Theriaque.

Mr. Pellegrini reviewed the case materials with the board. After review the following motions were made.

MOTION: Mr. Bush made a motion to accept the settlement stipulation as presented.
SECOND: Ms. Sutphin seconded the motion and it passed unanimously.

Emerald Coast Associates, Inc.
Case # 2000-00643

Mr. Burgis was present at the meeting and was represented by David Theriaque.

Mr. Pellegrini reviewed the case materials with the board and after discussion the following motion was made.

MOTION: Mr. Bush made a motion to accept the settlement stipulation as presented.
SECOND: Mr. Greer seconded the motion and it passed unanimously.

Gabriel Denes
Case # 2002-01855

Mr. Denes was present at the meeting and was not represented by counsel.

Ms. Sutphin recused herself.

Mr. Pellegrini reviewed the case materials with the board and after discussion the following motions were made.

MOTION: Mr. Bush made a motion to reject the terms of the settlement stipulation.
SECOND: Mr. Cooner seconded the motion and it passed unanimously.

MOTION: Mr. Bush made a motion to offer a counter settlement stipulation to include the following: fine must be paid within 12 months, change the minimum technical standard course to correspondence or classroom, require that all surveys submitted for probation review include elevations and documentation of survey accuracy measures.
SECOND: Mr. Cooner seconded the motion and it passed unanimously.

James Frier
Case # 2002-00034

Mr. Frier was present at the meeting and was not represented by counsel.

Mr. Pellegrini reviewed the case materials with the board and advised the board that Mr. Frier had one prior discipline back in 1997. After discussion the following motions were made.

MOTION: Mr. Bush made a motion to reject the settlement stipulation.
SECOND: Mr. Cooner seconded the motion and it passed unanimously.

MOTION: Mr. Bush made a motion to offer a counter settlement stipulation to include the following: change the minimum technical standards course to correspondence or classroom course.
SECOND: Mr. Armenteros seconded the motion and it passed unanimously.

INFORMAL HEARING OF APPLICATION DENIAL – Brian Scott Daniel

Mr. Daniel was present at the meeting and was not represented by counsel.

The board reviewed Mr. Daniel's application and stated Mr. Daniel had now provided documentation of 48 months of responsible charge work experience.

MOTION: Ms. Sutphin made a motion to rescind the notice of intent to deny of Mr. Daniel's application and to approve Mr. Daniel for licensure by examination.

SECOND: Mr. Bush seconded the motion and it passed unanimously.

GARY HUNT PETITIONER REQUESTING WAIVER OR VARIANCE

Mr. Hunt was present at the meeting and was represented by Ted Madson.

Mr. Martin advised the board that Mr. Hunt requested in his petition for the board to waive or make variance to board rules regarding renewal of licensure. Mr. Martin stated Mr. Hunt does not have a license at this time. Mr. Martin stated that the board did not have jurisdiction since Mr. Hunt was not licensed by the board and was not an applicant for licensure. Mr. Martin stated Mr. Hunt did not have a valid standing to request a waiver or variance of board rule.

Mr. Madson stated the board had revoked Mr. Hunt's license and he was unable to renew his license. Mr. Madson stated that Mr. Hunt's license went null and void. Mr. Martin suggested Mr. Hunt re-apply for licensure. Mr. Madson stated Mr. Hunt does not meet current licensure requirements and feels the board does have the authority to go back and reconsider Mr. Hunt's case. Mr. Madson stated Mr. Hunt no longer has a surveyor and mapper license and is no longer licensed with the board.

Mr. Hunt addressed the board and stated that he had relocated to California and never received the notice of hearing when the board revoked his license. Mr. Hunt asked the board if they would reconsider the past action taken by the board. Mr. Martin stated the board did not have the authority to reconsider that case and that the final order is closed. Mr. Hunt stated that having his license revoked by Florida is effecting his ability to obtain a license in other states.

Mr. Martin stated that the final order was handled 10 years ago and Mr. Hunt did not appeal and the final order is finalized. Mr. Martin stated he would have to re-apply for licensure and meet current licensure requirements.

Mr. Hunt advised the board that he felt it was unfair not to allow him to practice in the state of Florida. Mr. Armenteros advised Mr. Hunt that the board in the past had been sympathetic to a person whose license had gone null and void and the board ended up rescinding the vote to be in compliance with Chapter 455. Mr. Armenteros stated that the way the law is written the board does not have the authority to reinstate a null and void license.

MOITON: Mr. Bush made a motion to take no action.
SECOND: Mr. Armenteros seconded the motion and it passed unanimously.

Ms. Poppell advised Ms. Nobles that she was leaving the meeting.

REVIEW AND CONSIDERATION OF ISABELLE C. LOPEZ PETITION FOR DECLARATORY STATEMENT

Ms. Isabelle Lopez the assistant county attorney for St. John's county was present at the meeting. Ms. Gail Oliver was also present to participate in the discussion of the petition for declaratory statement.

Ms. Lopez addressed the board and reviewed the petition with the board. Ms. Lopez stated she did not want to implement a system that put a surveyor in the position of not complying with the laws and rules.

The board discussed the petition and Ms. Sutphin stated that other Chapters besides Chapter 177, F.S. may be affected. Mr. Martin stated he agreed and he did not think it would be in the best interest of the board to render an opinion on sections of Chapter 177 when the question does not tie back to Chapter 472, F.S. Mr. Martin stated that Ms. Lopez could request a written opinion through the attorney general's office or the county could make it's own legal interpretation through their legal office.

Mr. Martin advised the board he had concerns that the petition was not asking questions regarding the practice of surveying and mapping, it was asking if the county's interpretation of the law is correct. Ms. Lopez stated she did not agree and felt the board should consider their petition. After discussion the following motion was made.

MOTION: Mr. Greer made a motion to deny the petition based on the fact that the petition was asking the board if the county's interpretation of state law was correct.

SECOND: Mr. Armenteros seconded the motion and the motion passed.

Mr. Bush stated he felt the board should address their issues and he opposed the motion. Mr. Martin stated nowhere in the petition does the question tie back to Chapter 472, F.S.

Ms. Sutphin asked Ms. Oliver to identify the questions in the petition, she felt there may be a violation to Chapter 472, F.S. Ms. Oliver stated that the question was making changes to plats and the surveyor labeling it re-plat. Ms. Oliver advised the board that the issue was very confusing and stated it was a procedural issue.

Ms. Sutphin asked Ms. Nobles to poll the board. Ms. Nobles advised the board that Ms. Diane Carr, Secretary of the Department, was present at the meeting and wanted to address the board. Ms. Nobles tabled the poll of members until after the Secretary's presentation.

Ms. Diane Carr introduced herself to the board. Ms. Carr advised the board that she and her staff were present at the meeting to share with the board the Department's latest developments.

Mr. G.W. Harrell, General Counsel, was present at the meeting and introduced himself to the board. Mr. Harrell asked the board if they had received a copy of Mr. Blankenship's e-mail regarding the board's discussion of privatization. The board members acknowledged receipt. Mr. Harrell advised the board that Mr. Blankenship stated he would like to participate in the discussion and the voting of privatization by telephone conference.

Mr. Martin advised the board that he knew in advance that Mr. Blankenship, due to medical reasons, was unable to attend the meeting. Mr. Martin stated that the meeting was noticed at a public location. Mr. Martin stated that the meeting was not noticed by way of a telephone conference and he did not think Mr. Blankenship participating and voting by telephone conference would be appropriate.

Mr. Harrell asked the board to table discussion of privatization to the next meeting so all board members could be present and participate. Ms. Nobles stated that the privatization issue was tabled from the last meeting.

Mr. Cooner stated he was concerned that Ms. Poppell was not present and she was not given the opportunity to participate and vote by telephone conference. Mr. Martin stated Ms. Poppell had asked him before she left if she could give her vote by proxy regarding the privatization and he advised her no.

After discussion the following motion was made.

MOTION: Mr. Bush made a motion to not allow board members to monitor or vote by telephone conference when meetings have been noticed at a location.
SECOND: Mr. Cooner seconded the motion and it passed.

Ms. Sutphin opposed.

Ms. Leanne Acebo, Deputy Secretary, was present at the meeting and introduced Mr. Ken Walling. Mr. Walling presented an overview of the Department's Customer Contact Center. Mr. Walling advised the board that additional staff had been hired and the call wait time was one and half minutes. Mr. Walling stated that if the board had any suggestions or concerns to please contact him.

Ms. Chastain introduced the Chief of Central Intake Unit and Licensure, Mr. Michael Murphy. Mr. Murphy presented an overview of the Department's Central Intake Unit and Licensure. Mr. Murphy advised the board that this unit handles revenue, renewal, and processes applications. Mr. Murphy advised the board that he could be reached at (850) 488-9401.

Ms. Chastain introduced the Bureau Chief of the Department's Finance and Accounting Office, Mr. Ken Oliver. Mr. Oliver presented the board with an overview of the board's budget. Mr. Oliver advised the board that he could be reached at (850) 921-0890.

Ms. Chastain introduced the Deputy Division Director of Professions, Mr. Jerry Wilson, and Senior Attorney for the Office of the General Counsel, Mr. G.W. Harrell. Mr. Wilson advised the board that he had recently been assigned to his position and that he has worked for the Department for many years. Mr. Wilson presented an overview of his current job responsibilities and his past job responsibilities with the Department. Mr. Wilson advised the board that the Division of Regulation is working toward having specialty areas in regulating professionals. Mr. Wilson advised the board that an investigator Mr. Harold Rambo had been assigned to the board and that they were also in the process of assigning a complaint analyst.

The board shared their concerns regarding the credentials of investigators hired by the Department. Mr. Harrell advised the board that the investigators hired to handle the surveying profession were not licensed surveyors but they do have extensive background in investigation work. Mr. Harrell advised the board that the Department hosts annual investigator training seminars and stated that in the past, board members from each profession participated, and this training has been very beneficial.

Ms. Sutphin asked Mr. Harrell to identify who was responsible for determining legal sufficiency when a complaint is received. Mr. Wilson replied that the complaint analyst reviews the initial complaint for legal sufficiency. Ms. Sutphin asked who was responsible for training the complaint analyst. Mr. Harrell stated he works directly with the complaint analyst.

Ms. Sutphin stated she felt cases with legal sufficiency have been closed by the Department without proper review. Mr. Harrell offered to conduct an audit and to let the probable cause panel member review the cases.

Ms. Nobles advised the board that Mr. Armenteros and Ms. Oliver conducted the last audit of closed complaint files three years ago. Ms. Oliver advised the board that the last audit was good.

Mr. Bush advised the board that there has been a significant turn around with the Department's attention to unlicensed activity complaints. Mr. Bush stated that once the Department's legal office receives the complaint there is a problem with the turn around time in their office. Mr. Bush stated that photogrammetry cases have been closed by the Department's legal office due to lack of education and experts.

Mr. Harrell advised Mr. Bush that he was unsure of which case he was referring to. Mr. Bush advised the board that prior to the meeting he sent an email to three employees of the Department and asked for one of them to be present at the meeting to address the issue. Mr. Bush stated that the problem with the Department is staff turnover and no communication.

Mr. Bush stated that the Department takes an unreasonable amount of time to process complaints, complete investigations, and to prosecute the cases.

Mr. Wilson reviewed with the board an unlicensed activity report. Mr. Wilson reported that the Department recently conducted an unlicensed activity sweep.

Mr. Bush stated that the board is charged costs for the investigation of unlicensed activity and there is no recovery of the cost charged by the Department. Mr. Harrell stated he would follow-up on the authority to recover costs.

Ms. Carr concluded their presentations and thanked the board for the opportunity to participate at their meeting.

BOARD COUNSEL REPORT – Paul Martin

Mr. Martin advised the board, that at the next meeting, he would provide the board with a written rules report.

COMMITTEE REPORTS

Probable Cause Panel

Ms. Nobles reported that the probable cause panel met and reviewed 2 administrative complaints, and 7 closing orders. Ms. Nobles stated that 2 cases probable cause was found, 4 cases were closed, 2 cases were closed with letters of guidance, and 1 case was tabled to the next meeting.

CONSIDERATION AND DISCUSSION OF THE MANAGEMENT PRIVATIZATION ACT.

Mr. Steven Gordon and Mr. Ron Villella addressed the board. Mr. Gordon reviewed the consultant report provided by the Harris Management Group. Mr. Villella stated that the proposed legislation has a house and senate sponsor and the society would vote on this matter at their September 2003 meeting.

The board reviewed the financial allocations included in the consultant's report and after discussion the following motion was made.

MOTION: Mr. Bush made a motion to support proposed legislative language to privatize the board of professional surveyors and mappers.
SECOND: Mr. Armenteros seconded the motion and it passed.

Ms. Sutphin opposed the motion.

OLD/NEW BUSINESS

Mr. Bush advised the board that back in 1994 Chapter 472 included a saving clause for photogrammetrists to apply for licensure. Mr. Bush advised the board that he prepared proposed legislative language for the board to consider. Mr. Bush advised the board that back in 1994 the window of opportunity was limited.

Mr. Gordon stated that the Florida Surveying and Mapping Society was in support of the proposed language.

Mr. Martin advised the board that there was a Supreme Court ruling many years ago that affected the surveying profession. Mr. Martin stated that the court ruled that surveyors were not professional since a degree was not required. Mr. Martin stated there were professional liability issues. Mr. Martin stated that now that a four year degree is required it has remedied the professional liability issues.

Mr. Martin advised the board that each time a practice act is opened during a legislative session there is the possibility of changes that the board may not want to support and it was his opinion that opening a window for non-degree applicants would be a step backwards.

After discussion the following motion was made.

MOTION: Mr. Bush made a motion to support the proposed legislative language to open the window for photogrammetrists.
SECOND: Mr. Cooner seconded the motion.

The motion did not pass. Ms. Sutphin, Mr. Armenteros, Ms. Nobles, and Mr. Greer opposed the motion.

Ms. Lopez and Ms. Oliver returned to the meeting and asked the board to consider paragraph number two of their petition for a declaratory statement.

After discussion Mr. Martin stated that he did not see how this question directly related to Chapter 472. Mr. Martin advised the board that Ms. Lopez should request an opinion from the Attorney General's Office.

It was the consensus of the board that change to the division of a previously platted lot is not considered a change to the recorded plat.

MOTION: Ms. Sutphin made a motion to ask Mr. Martin to respond in writing to Ms. Lopez on behalf of the board.
SECOND: Mr. Cooner seconded the motion and it passed unanimously.

MYRON E. BARKER CORRESPONENCE

The board reviewed Mr. Barker's letter and after discussion the following motion was made.

MOTION: Mr. Bush made a motion to accept the practice of a copy of the signature and a raised seal is acceptable.
SECOND: Mr. Armenteros seconded the motion and it passed.

Ms. Nobles, Jeff Cooner opposed the motion.

PROSECUTING REPORT – Charles Pellegrini

Mr. Pellegrini reviewed the prosecuting attorney report with the board. Ms. Nobles stated that in the report there were two cases where probable causes was found six

months ago and these cases have not been on the board's agenda. Mr. Pellegrini stated he would follow-up on these cases.

COMMITTEE REPORTS - Continued

Rule Committee Report

Mr. Cooner reported that a rules workshop was held and that all board members present participated.

Mr. Cooner stated that it was the consensus of the board that the staff bring the Accredited Institutions of Postsecondary Education booklet to each of the application review committee meetings.

Mr. Cooner presented an overview of the change recommendations and discussions taken place at the rules workshop.

Mr. Cooner reported that the board recommended adoption of draft language for 61G17-2.006, with minor language changes.

Mr. Cooner reported that the board discussed 61G17-2 and recommended amending fine ranges and Mr. Lebron volunteered to work on draft language changes. Mr. Cooner stated that Mr. Martin will conduct a word search and take out patient and insert client.

Mr. Cooner reported that the board discussed 61G17-3 and the committee was in agreement that rule language needed to be developed to accommodate surveying and mapping programs that were not yet ABET accredited. Mr. Cooner stated Ms. Sutphin volunteered to work on draft language with Mr. Martin.

Mr. Cooner reported that the board discussed 61G17-4 and that the committee was in agreement that an applicant should be limited to 3 attempts at taking each part of the licensure exam.

Mr. Cooner reported that the board discussed 61G17-5 and that the committee was in agreement that no material changes should be made to the rewrite of the rule until it has been finalized. Mr. Cooner stated that some minor changes suggested were 61G17-5.0031(2) and .0041 (3)(e)(f). Mr. Cooner stated that the board discussed the need to clarify language regarding provider vs. individual experience, department vs. board office, instructor vs. applicant.

Mr. Cooner reported that it was the consensus of the board that internet courses offered by providers should have the same standards and the same requirements as the correspondence courses.

Mr. Cooner reported the 61G17-9.006 proposed language was not needed.

Mr. Cooner reported that it was the consensus of the board to adopt 61G17-9.007 with changes allowing the board to continue to review surveys by the probation committee or have a consultant perform the reviews and if the stay was lifted then a licensee would

have to take both parts of the Florida exam.

Mr. Cooner reported that the board reviewed the draft language for supervision of government employees and after discussion the board agreed not to pursue rule development.

Mr. Cooner reported that the board discussed 61G17-6 and it was the consensus of the board to move forward with rule changes. Mr. Cooner stated the board agreed to consider the following language developments.

- Removing Tool/Technology dependent language and move to product dependent minimum standards
- Adding digital ortho-photos as a survey product
- Continuation of the truth in labeling/dis
- closure of survey methods/intended use concept

Mr. Cooner stated that the board agreed in conjunction with the work of the positional accuracy committee to continue the development of rule language. Mr. Cooner stated that the areas of development were definitions, moving any additional details regarding positional accuracy with the body of MTS rule, update the continued use of traditional accuracy requirements add corresponding positional accuracy, and the use of metadata requirements within the standards.

Mr. Cooner stated that the board rejected expansion of regulation objective language in 61G17-6.0031 (1)(a).

Mr. Cooner reported that the board agreed to the proposed language to 61G17-6.003 (2)(k) 1 and did not agree with proposed language to 61G17-6 - 0031(c).

Mr. Cooner reported that with all of the input he has received he would continue to work on a rewrite to 61G17-6 for board review and consideration.

Mr. Cooner established the following goals.

- To produce a fully printable digital document in the rewrite phase
- To consider the licensee time to understand the new rule language
- Committee chair to take lead on writing drafts of MTS for committee/board review
- Will take input from past board members, etc., to develop draft language

MOTION: Ms. Nobles made a motion to approve the rule's committee report.

SECOND: Mr. Bush seconded the motion and it passed unanimously.

Application Committee Review

Mr. Bush reported that the application committee reviewed applications and made recommendations.

Mr. Bush reported that the application committee recommended denial of the following endorsement candidates.

Kenneth Hutter
Frank Rankin
Luis Santana
Edward Wright
Robert S. Denney

Mr. Bush reported that the application committee recommended approval of the following examination candidates.

Tomas Galloway
Hector Lebron
Christopher O'Neill
Darren Townsend
Allen QuickeI

Mr. Bush reported that the application committee recommended denial of the following examination candidates.

Kirby Gardener
Michael McKay
Jesus Rodriquez

Mr. Bush reported that the application committee recommended approval of Faun Hoffmeier and Joseph Doto application of surveyor in training.

Mr. Bush reported that the application committee recommended approval of the following certificate of authorization applicants.

Southern Environmental Engineering Company
Design Surveys, PA – Approved pending \$1000.00 fine for unlicensed activity.

MOTION: Ms. Sutphin made a motion to approve the application review committee's report.

SECOND: Mr. Cooner seconded the motion and it passed unanimously.

Probation Committee Report

Mr. Armenteros reported that the probation committee met and the committee approved Mr. Auguesvives MTS correspondence course.

Mr. Armenteros reported that the committee did not approve Mr. Franklin's 1st set of surveys and the committee requested Mr. Franklin to submit 2nd set.

Mr. Armenteros reported that the committee did not approve Ms. Marley's 1st set of surveys and requested Ms. Marley to submit 2nd set.

Mr. Armenteros reported that Ms. Nobles reviewed Mr. Serbu's corrected surveys and the committee recommends that Mr. Serbu be released from probation.

Mr. Armenteros reported that the committee found Mr. Rowell's sample surveys acceptable and Mr. Madson would send Mr. Rowell a letter with the committee comments.

Mr. Armenteros reported that the committee recommended that Mr. Far be removed from the non-compliance list and Mr. Far will be required to submit his 1st set of surveys for the January 2004 meeting. Mr. Armenteros stated that his deadline for submission is December 1, 2003 and if Mr. Far is unable to submit surveys or be present at the January 2004 meeting he is to notify the board office immediately.

Mr. Armenteros reported that Mr. Clyde McNeal is in non-compliance to his final order and will be on the October 2003 probation committee agenda for consideration.

MOTION: Ms. Sutphin made a motion to approve the probation committee report.
SECOND: Mr. Bush seconded the motion and it passed unanimously.

MOTION: Ms. Sutphin made a motion to lift the stay of suspension on Preston Polhill, Clyde McNeal, and Kevin Walsh.
SECOND: Mr. Cooner seconded the motion and it passed unanimously.

Continuing Education Committee

Ms. Sutphin reported that the continuing education committee met and recommended that the course land desktop for surveyors offered by Advanced Surveying Technology, Inc. be approved as a distance learning course.

MOTION: Mr. Bush made a motion to approve the continuing education committee's report.
SECOND: Mr. Cooner seconded the motion and it passed unanimously.

Unlicensed Activity Report – Lou Bush

Mr. Bush reviewed the unlicensed activity report with the board.

Examination Committee – Pam Nobles

No report

NCEES Committee – Pam Nobles and Lou Bush

No report

ACSM Committee Report – Beverly Sutphin

No report

Positional Accuracy Committee – Lou Bush

No report

Adhoc Committee on MTS – Pam Nobles

No report

The board discussed the 2004 meeting schedule and after discussion it was the consensus of the board to meet the following dates and locations. Ms. Nobles asked Ms. Patterson to forward the proposed schedule to all members.

January 12-13, 2004 – St. Augustine, Florida

April 5-6, 2004 – Ft. Myers, Florida

July 12-13, 2004 – Orlando, Florida

October 14-15, 2004 – Tallahassee, Florida

EXECUTIVE DIRECTOR’S REPORT – Juanita Chastain

Ms. Chastain advised the board that an investigator workshop would be held in August and Ms. Nobles would be attending.

There being no other business the meeting adjourned at 4:48 p.m.