

STANDARDS OF PRACTICE: The Tennessee Experience

By

K. Max Billingsley, PLS

INTRODUCTION

The Tennessee Board of Examiners for Land Surveyors has been, for several years, brainstorming the revision of the current Standards of Practice. A draft of the proposed standards as it currently exists is provided as a handout for this presentation. These proposed standards are the result of an arduous process of the Tennessee Board and some of the, mistakes, concepts or ideas may be of value to other land surveyors with input into future revisions in another jurisdiction. Since these standards have not cleared the rulemaking process and are subject to additional revision, constructive comments are invited. The broad differences in philosophy, content, scope and structure of existing standards in jurisdictions throughout the country clearly indicates a need for model standards. A national organization such as the National Society of Professional Surveyors (NSPS) or the National Council of Examiners for Engineers and Surveyors (NCEES) or a joint task force composed of members of each, with input from other related professional organizations, have the wherewithal to accomplish this.

BACKGROUND

All state regulatory boards for surveyors that I am familiar with have some form of regulation regarding standards of practice. Sometimes these are styled “minimum standards” that imply that professional services are expected to be better than the standards promulgated and cannot fall below the provisions in the regulations. Some jurisdictions promulgate the standards as statutes however, most are in the form of regulations as rules based upon enabling statutes, as is the case in Tennessee. In Tennessee, the Standards of Practice is Rule 0820-3, which was originally issued in 1980 and underwent a major revision and expansion that became effective in January 1992. As we are well aware, the practice of land surveying has undergone some very significant changes in the past 12 years. Our standards are out-of-date and fail to address many new methods, equipment and technology. The Tennessee Board now finds themselves with standards that will have to be completely rewritten in order to produce a regulatory document that is relevant to the current state of practice, understandable by the public for which they are meant to protect and reasonable for the professional practice being regulated.

STAKEHOLDER INVOLVEMENT

The Tennessee Board of Examiners for Land Surveyors consists of three (3) professional members, one from each grand division of the State, and a public member. The Board has shared administrative, investigative and legal support from the Tennessee Department of Commerce and Insurance. The wherewithal in available time or technical expertise did not appear available to undertake the task of rewriting the standards of practice. The most obvious source of input was to involve the stakeholders. The initial effort was to solicit ideas and suggestions from the Tennessee Association of Professional Surveyors (TAPS) at the local chapter level in order to get grass roots input. To encourage group participation it was even suggested that professional development hours could be requested for workshops developed to suggest revisions.

RESULTS OF SOLICITATION

One chapter made a fairly comprehensive stab at revising the standards. Most chapters did not respond or offered cosmetic changes consisting of minor tweaking of language or correcting typos in the existing standards. One chapter returned a resolution declaring the current standards to be fine as they existed and opposed any effort to revise them. This wide diversity in consensus across the State made it obvious that there would be no ground swell of support and cooperation to get the task accomplished from the grass roots. It was obvious that if the task was going to be accomplished it would have to be driven by the Board, probably, having to overcome strong objection in the required public hearings in order to amend the rule.

RECLAIMING THE CHARGE

With the hope that someone else would take up the task being dashed the Board found themselves with the ball and the options were to run with it or punt. The decision was made to run with the ball. It was obvious that neither the public nor the land surveyors being regulated were being well served by the existing standards. Most of the valid complaints that the Board had received within the past few years concerned violations pertaining to the Standards of Practice rules. Hearing disciplinary cases citing these rules gave the Board a knowledge base of the issues that appeared to be of the most concern to the public. Also, there were indications of areas of the current standards that were obviously misunderstood, misinterpreted or considered by the practitioners as irrelevant, trivial or unimportant. The members of the Board have the dilemma of trying to enforce rules that are not focused on or, in some cases, irrelevant to their primary purpose of constraining behaviors that result in harm to the public.

FINDING A PARADIGM

The first step was to find or develop a paradigm for regulatory standards. As mentioned, NCEES has developed model laws and rules for regulating the practice of engineering and surveying but these do not include model standards of practice. The most widely used standard is the “Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys” last revised and issued in 1999. ACSM and NSPS have for many years made exemplary efforts to keep these standards, current, reasonable and functional. However, these standards only pertain to real estate titles and conveyances and do not address the other aspect of the practice of land surveying. The content of these standards are generally applicable to any property survey and are used in the proposed revision of the Tennessee standards. NSPS has developed and published standards for topographic and mapping surveys and these are adapted for the proposed standards. Standards of practice from other jurisdictions were studied to try and find a paradigm that appeared to address the deficiencies in the present Tennessee standards. The easy way out was to find existing standards that could be cut, pasted and adapted to Tennessee. Good ideas were discovered but no complete example that would address all or most of the issues considered important by the Board. Model standards from a national organization were conspicuously absent.

DEVELOPING A PARADIGM

The most important discovery was the exhaustive works of Knud Hermansen, PLS, PE, PhD, Esq.. Knud is a Professor at the University of Maine, and his knowledge and experience writing, revising and using standards of practice is contained in clearly written detailed treatises and shared in seminars and lectures. Members of the Board attended one of Knud’s seminars to try and get focused on developing regulatory standards. Using the philosophies, knowledge and understanding shared at the seminar, the Board was able to develop a format and outline for the contents of the proposed standards of practice. This outline revealed that the old standards were not being revised but completely rewritten with a different format and content. This outline survives as the contents in the draft proposed standards for Tennessee provided in the handout.

FEEDBACK FROM STAKEHOLDERS

Writing, cutting, pasting and incorporating the few comments from the initial solicitation covering the issues the Board considered important, developed a very rough draft. This was presented to the TAPS organization for review and comment. This offering brought much better response from the stakeholders than the first solicitation. A sampling of some of the issues that appear to be of most concern to Tennessee surveyors based upon their response and the rationale of the Board is as follows:

1. **Written Documentation or Contract for Services:** The draft provides for a written contract, letter of engagement or some documentation of the scope of work and agreement between the client and the surveyor. The rationale by the Board to include this item was the numerous complaints against surveyors by members of the public based on oral agreements and the misunderstandings that ensued. The client's understanding was often drastically different from the surveyor based upon the recollection of each and the Board had no way of determining the true intent and purposes of their agreement. Some surveyors approved the inclusion with the comment that this would offer a means to persuade reluctant clients to accept written documentation. Usually not averse to written documentation per se most comments were adverse to this provision believing that required written documentation was too invasive to their practice.
2. **Accuracy Standards and Classes of Survey:** One group, in particular, suggested changes to the accuracy standards contained in the draft. The standards in the draft were adapted from the ALTA/ACSM/NSPS standards and the Board will probably not accept any radical changes for the final draft submitted for rulemaking.
3. **Azimuth and Datum Reporting:** The item that has not received much strong comment but has been met with skepticism is the issue of requiring surveys to be oriented to an azimuth that can be recovered in perpetuity without having to make the determination from monuments found or placed on the premises of the survey. Presently, such references as "record", "plat", or "magnetic" may be used. Along with other similar provisions in the existing standards the Board considers such references nebulous and misleading. The proposed requirement will only accept the use of the grid azimuth of the Tennessee Coordinate System of 1983 or a true azimuth, that are mathematically correlated for any known position. Also, the item meeting with even more skepticism is a requirement that coordinates within the Tennessee Coordinate System be used to precisely locate surveys. The rationale of the Board is that the time has come for surveyors to either step up to the plate and be part of the solution for the implementation of the myriad of land and geographic systems now underway or remain a part of the problem. The surveyor can take responsibility for the spatial accuracy of his work or allow other professionals to deal ungraciously with his inadequate work product. Many of the Tennessee agencies, counties and planning jurisdictions already require surveys to be located by survey to state plane coordinates by contract or ordinances. Efforts are underway to map all parcels within the state in a statewide GIS by the Division of Property Assessment for use by the public. Surveys without spatial reference will probably be ignored to a large extent and new subdivisions of property will continue to be mapped inaccurately, sometimes creating liability to the property owner based on recent court decisions. New technology, principally low cost static GPS, has rendered the cost excuse moot.
4. **Detail Standards for Subdivisions:** A strong suggestion has been made for essentially eliminating any detail requirements for the subdivision of property based upon the premise that there are widely varying standards existing within the many planning jurisdictions within the State. The rationale of the Board for developing very detail standards and requirements was to set the stage for

promoting a more uniform standard across the State. Once an adequate set of standards of practice are contained in the state rules, negotiations with the Division of Planning for a policy that would encourage local planning departments to refer to the standards contained in the rules rather than pass local ordinances containing different standards and requirements.

SUMMARY

The Tennessee Board of Examiners for Land Surveyors is now prepared to enter into the rulemaking process to revise or replace the Standards of Practice for surveyors. This has been a long and frustrating process due to the lack of a contemporary paradigm for standards of practice. The fits and starts of this experience is outlined for others undergoing or contemplating this process to consider or build upon. Feedback from practicing surveyors as the stakeholders being regulated is presented in order to estimate their point of view and balance that with the needs of the public. There is more commonality in the practice of surveying across the nation than there are differences as evidenced by the widely used NCEES examinations. A national organization could make a significant contribution by developing model standards of practice as a guide for regulatory boards nationwide as a step toward more uniformity and mobility of licensed professional surveyors.

[Note: A draft of the final revision to be submitted for rulemaking will be provided as a handout at the presentation at the ACSM Convention in Nashville on April 19, 2004]

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KEYWORDS

Tennessee, land surveyors, board of examiners, standards of practice, ACSM, NSPS, NCEES, TAPS, Hermansen, regulation, coordinate system

ABSTRACT

State licensing boards for land surveyors across the nation are usually charged with the regulatory process for the practice of that profession. The most difficult part of the law or rules to interpret and apply in disciplinary proceedings is the standards of practice. Codifying “standards” for the practice of surveying is a moving target. Technology has and is moving the paradigm rapidly. Relevancy issues are common with standards written a few years ago. Without frequent revision this will be compounded. This paper presents the challenges that the Tennessee Board of Examiners for Land Surveyors encountered in their quest to revise and update their standards of practice. A call is issued for a national organization such as NSPS or NCEES to become involved in creating a model for standards of practice to assist with this revision process.

BIOGRAPHICAL NOTES

K. Max Billingsley, has been a professional surveyor for over 30 years having been first licensed in Mississippi in 1973. He now holds licenses in Tennessee and Kentucky, also.

He was one of the original founders and remains a principal of PLS, Inc., a land surveying firm headquartered in Jackson, Tennessee.

Max is an ACSM fellow, a member of NSPS, GLIS and Tennessee Association of Professional Surveyors, and the Society of American Foresters.

He is serving a second 6-year term as a member of the Tennessee Board of Examiners for Land Surveyors having been first appointed in 1996.

He is a 1962 graduate of Mississippi State University with a BS in Forestry and a retired lieutenant colonel in the United States Marine Corps Reserve.