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Florida Surveying and Mapping Society

Pride, Empowerment, Cooperation & Commitment



Draft Minutes

Florida Surveying and Mapping Council

Subcommittee

Thursday, February 28, 2008

Ziegler Hall

University of Florida www.fsms.org

850.942.1900 • 800.237.4384 • Fax: 850.877.4852

Council Mission Statement

The Florida Surveying and Mapping Council shall be directly responsible to enhance the relationship between the Society and various governmental agencies to stay informed of the future surveying and mapping activities in the State.

Attendees:

Mr. Bon A. Dewitt
Mr. Terry Wilkinson
Mr. Howard Ehmke
Mr. Mike Maxwell
Mr. Joe Stokes
Ms. Kay Gargis
Mr. Matthew Kalus

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South Florida Water Management District 561-682-6672
NSPS FSMS 239-263-6431
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DRAFT Minutes

Agency Reports

NGS - *Mr. Ronnie Taylor*

- Not in attendance

FLDEP - *Mr. Terry Wilkinson*

- Budget concerns
 - No cuts in the core programs
- Debra Poppell- New Director
- Current Litigation
- Question on the selling of surplus lands
- State lands for sell on the website
- Adverse possession against the State

FLDOT - *Mr. Horace Roberts*

- Not in attendance

U of F - *Mr. Bon Dewitt*

- Dave Gibson retired December 31, 2007 and was rehired Feb 1st – will continue to teach for the program
- Enrollment strong
- Installed Polycom video systems in the Distance learning centers and Gainesville
- The Budget is a big issue this year the Dean's are preparing the budgets with a 6% reduction

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NSPS Governor -*Mr. Mike Maxwell*

- See attached report

FSMS Legal Report - *Mr. Jack Breed*

- Not in attendance (see attached report)

Surveyors in Government - *Mr. Joe Stokes*

- See attached Report

Florida Association of Cadastral Mappers (FACM) - *Ms. Kay Gargis*

- The Budget is tight
- Issues with FLDOT aerial photography Ms. Lori Phillips Not all have been flown
- New Condo document book
- Guest- Mr. Matthew Kalus – alternate FACM representative

Adjourn

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MEMORANDUM

February 14, 2008

From: Joe Stokes, SIG Chairman
To: Marilyn Evers, Executive Director
Subject: 2nd Quarter 2007 / 2008 Surveyors in Government Committee Report

- Prepared article for Florida Surveyor regarding the need to revise FS 177.041 and proposed language.
- Prepared article for Florida Surveyor regarding current title opinion procedures and the effect on FS 177
- Prepared article for Florida Surveyor regarding the current down turn in the surveying and mapping profession.
- Solicited and Gathered input from SIG's across the State regarding the current trend in official recording document numbers.

DBPR Liaison Report of January 9 & 10, 2008 Board Meeting

Privatization Committee

The Committee updated the Board and those in attendance as to the status of the privatization. As proposed at the earlier meeting, the Board sent the proposed "Business Case" to the Governor's office and the Department for final review and comment. The Board received comments from the Department on January 7th. The two minor revisions requested were in regards to the large amount of emails we proposed, and the insufficient staffing that may occur during the renewal periods. Those points will be addressed and the plan resubmitted. Once the plan is submitted (hopefully within a short period of time) the "Business Case" will then be sent to the budgeting for financing for start up. If all goes well, this could happen in April. With an April financing, the operational board will need to be seated and in place by July for the beginning of the next fiscal year. FSMS has agreed to help the BPSM disseminate the news and application for those board appointments when the time is correct.

Application Review Committee

Next, the Application (Licensure exam) Committee met to review the applications that have been received since the last review meeting. The following occurred:

- The Committee heard the request for licensure by endorsement under 472.015(3)(a)(3) from one candidate. That request was denied.*
- The Committee heard the request for licensure by examination from nine candidates. Five were approved and three were denied and one was continued.*
- One application for SIT was heard and approved.*
- One application for Temporary Certificate of Authorization was heard and denied.*

The committee then reviewed the revised "Experience Verification" form. These final changes will be made and the new form will be used for new applications. Professionals who fill out, sign and seal these verification forms need to carefully review the statements they are making and that they are correct.

Machine Controlled Equipment.

The Board had a presentation on digital machine control from CADD Centers. They made a quick presentation on how DTMs are compiled, how they are transferred, and how they control heavy equipment. After the presentation a question and answer period was held by the Board and audience.

After that period, the Board discussion was on what, if anything, needed to be done. Following the discussion, it is the unofficial opinion of the Board that this is simply a new tool to do our work. They do not believe that there is any need for further rules on tools as this is still surveying. It is also the unofficial opinion of the Board that the preparation of the data files (TIN's and DTM's) are still surveying and need to be preformed by surveyors and mappers. The actual use of the file still falls under the construction staking and the control needs to be provided by a surveyor and mapper while the actual use could be by the contractors under their exemption.

In recap, this Board has chosen to NOT add rules for tool, but enforce the current rules and laws already existing.

Probation Review Committee

There were five cases reviewed under the first set of survey submittals. Two probationer's surveys were accepted and then released from probation. One probationer's surveys was accepted conditionally with the stipulation that the errors on the submitted surveys were fixed, re-issued to the client, and also sent to the board for final release from probation. One was deemed unacceptable and a second set of review surveys were requested. One was continued

until the January meeting.

During the Probation Summary Report review, six practitioner's stays were lifted for failure to comply with the terms of their Final Order.

Continuing Education Committee

The Continuing Education Committee met and discussed the following:

- *Three existing providers were requesting new courses to be approved;*
 - *The first provider had one course approved*
 - *The second provider had three courses approved*
 - *The third provider had two courses approved and one course denied.*
- *Two new providers were requesting their approval and then their courses to be approved;*
 - *The first provider was approved, and had five courses approved and one course denied.*
 - *The second provider was approved, and had one course approved.*

Disciplinary Proceedings.

Settlement Stipulations ---- *These are negotiated penalties that are agreed upon by both the prosecutor and the licensee.*

- *Six cases were scheduled. In one of the cases the Board rejected the Stipulation and offered a counter stip that was accepted. In four cases the stipulated agreement was accepted by the Board. Fines as presented. One case was continued until April. Fines imposed ranged from \$ 750 to \$2,500 along with imposed cost of the investigation and education courses and survey reviews for the individuals.*

Informal hearing- (Not disputing the facts)

- *Four discipline cases were scheduled - In two cases the Board acted and issued fines and other stipulations as discipline. One case was continued until April. One case was dismissed as being erroneously noticed as it was already acted upon at an earlier meeting.*

Prosecuting Attorney Report

We first had the report from the prosecuting attorney, Eric Hurst. He reported as of December 12, 2007:

- *There were 28 confidential cases in various stages of investigation*
- *There were 54 Public cases in various stages of investigation*

Making a total of 82 cases in the Legal system being from complaint to final order. Of the 82 pending cases, 42 are over a year old.

Board Council Report

The Staff Attorney made the following rule updates to the Board:

Became a rule on 12-16-07 – 61G17-7.0025 – procedures for electronic Signing and Sealing of Documents

There was also an update on the dismissal of the Federal complaint.

Committee Report

- Probation Committee – Committee reported to the full Board and then the Board ratified the committee actions.
- Application Committee – Committee reported to the full Board and then the Board ratified the committee actions. Also, the experience page of the application is being revised.
- Examination Committee – October results pending third grader review
 - Working on revision to Florida Jurisdictional exam - Tentative change 4/09
- NCEES Committee - NCEES looking for members to serve on committees
 - Southern zone meeting in May, need delegate
- Rules Committee – Planning 61G17- 6 rules committee meeting in April
- ACSM/NSPS Committee – Next meeting in Spokane, Washington in March
- Probable Cause Committee - Scheduled to meet on 1-10 after Board meeting
- Continuing Education Committee – Committee reported to the full Board and then the Board ratified the committee actions
- Privatization Committee – Committee reported to the full Board on the current status

Executive Director's Reports

FBPSM executive director Rick Morrison gave his report on the finances, complaints and investigations and unlicensed activity followed by our board.

Old/New Business

The Board continued the DTM machine control discussion. See earlier report. Item is closed at this time.

Still no action by the Governor's office on filling the vacant board chairs.

2008 Schedule

April 8, 9, &10, 2008 - Orlando - site pending

July 8,9,&10, 2008 - Palm Beach/ Ft Lauderdale - 4 Seasons

September 30, October 1,2, 2008 Jacksonville/St Augustine

NSPS Governors Report
February 2008

I just returned from an Area 3, 4 meeting in Asheville NC. where we discussed what is happening in our world of surveying here in the South East. There was a little discussion on the spread of equipment theft to other states still not anything compared to what Florida has experienced but it is increasing. That may be a sign of the times with more people out of work and the increased value of our equipment. As managers of projects we are trying to keep our labor cost down and not have someone guard the GPS base station but in doing so we leave an expensive piece of equipment standing on the side of the road unprotected. Driving four stakes around the tripod with pink ribbon offers no protection against theft. Maybe the yellow legs and the pink ribbon attract the thieves, maybe we need to go camo forget the bright blue and orange and other obnoxious colors and GO CAMO. Now to figure out if Mossy Oak or Real tree is the way to go. The down side of that is the bulldozer operator may not see it either.

Another item of discussion is the status of safety programs in most survey companies and the need for a good survey oriented training video. NSPS has been working on having one made but the donations and sponsors aren't coming in as expected. I have mentioned this to our workman's comp carrier to see if the insurance companies won't kick in some money and help make this happen.

Another big topic of discussion was a national movement in regards to machine control and who takes liability for the information and the process of converting a digital file into the DTM necessary for the machine control programs to do their thing. The disclaimer on the paper plans may say the signed and sealed set of plans approved by the local governing authority is the one to use. But who gave the contractor the digital file? The surveyor or the engineer, it doesn't matter you are going to get sued anyway because they relied on your professional status and trusted what you gave them. Possibly your client told you to give them the file so your limit of liability is wide open because you have no contract with the contractor you can't limit your liability to him. Your contractual understanding of the limit of your liability is with your client not with a third party contractor. He will claim he relied in good faith on your standing as a professional surveyor or engineer and that what he received from you should be accurate and correct. Be careful what your CAD tech sends out without your knowledge and approval it may come back to haunt you.

Until next time stay safe, be prepared, and live ready.

Mike Maxwell
NSPS governor

Florida Surveying and Mapping Society

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To: President Jackson, Executive Director Evers, Officers and Directors,
and the Members of the Florida Surveying and Mapping Society

From: Jack Breed, 2007/2008 Recycled Legal Committee

Re: **Legal Committee Second Quarter Report**

Date: 14 February 2008

Greetings and Go Gators! I regret that I cannot attend the 2nd Board meeting this year, and I hope that you have a productive event in Gainesville. We are encountering another extremely busy year, and I've presented my activities for the first two quarters by category below. As always, and particularly now, given all the issues on the horizon, I encourage our members to support FSMS, get informed, get active, and get involved. There is a great deal of information and documentation for each of these items, and you may call our staff in Tallahassee or give me a call if further information or action is needed.

LEGISLATIVE ISSUES:

L1. The Definitions of Surveying and Mapping are being challenged nationwide, with an organized assault gearing up in Florida. An attack on FS287, a "best value" approach, is being organized and will be a legislative battle on our horizon. Even though there is no current legislative vehicle for this, I am dismayed that the FGFOA has adopted Steve Carnell's "best value" plan. In my opinion, he is gaining traction and sooner or later we will have to confront this issue. Regardless of how he's worded his "best value" amendment, it boils professional services procurement down to simple bidding, no different than ordering a pallet load of toilet paper. Our position must continue to be the highest principles of **Qualifications Based Selection**. Preach it loud and preach it often. Our strategy must be careful not to directly attack pricing or bidding. We have the high ground and must defend it vigorously.

L2. Proposed revisions to FS718 continue to be circulated, and the FSMS needs to declare a position.

L3. Representative Kendrick has filed HB0789, proposing changes to our Trespass immunity and establishing liability for fence damages. Our capable Legislative Team is "on-it", and we hope to defeat this bill.

L4. Former Senate President John McKay continues his push to repeal the sales tax exemption on services and non-profits, and our Legislative Team is monitoring the issue.

L5. Please refer to the Legislative Committee Report, and Ron Vilella's separate report.

FSMS ATTORNEY:

Please refer to Claire Duchemin's separate report.

HOMETOWN DEMOCRACY AMENDMENT

DO NOT THINK THIS BATTLE HAS BEEN WON!! Yes, we kept it off the ballot in 2008, but they WILL make it in 2010. We have 2 short years to prepare for a battle royale. Most of you heard my sermon at the Annual Meeting, along with the subsequent Chamber of Commerce presentation. Preach it loud and preach it often, and STOP THIS AMENDMENT. FSMS MUST continue to take a formal, public stand against this petition, and I recommend the Society join Floridians for Smarter Growth.

FICE/FES:

I have been appointed to the Florida Institute of Consulting Engineer's (FICE) Professional Practices Committee (the Lone Surveyor). The FICE organization is under the overall umbrella of the Florida Engineering Society (FES), and this committee is charged with Contractual/Legal Issues, Ethics, Inter-Professional Issues, and Legislative/Regulatory Issues. We have had 2 meetings thus far, with more issues to come. I continue to recommend that FSMS establish formal liaison positions with FES, ASCE, ASLA-Florida, and FAIA.

CCNA ISSUES

C1. City of Sarasota – I was alerted to a possible CCNA violation in a City RFP, and upon request, an addendum was issued that brought the RFP into compliance.

C2. Greater Orlando Aviation Authority. GOAA issued a Bid request, and local members believed the project to be over the threshold. I spoke with the Purchasing Department, they had a good-faith estimate below the threshold and proceeded with the bid. After the Bid date, I followed up and requested a bid tabulation to ensure CCNA compliance. After several rounds of correspondence, the Purchasing Department referred the matter to their consultant attorneys, who contacted me. After quoting the Florida Statutes, the Bid was cancelled.

C3. Miami-Dade Digital Geo-enhanced Oblique Aerial Imagery RFP. I protested several non-compliant portions of this RFP, and after several rounds of correspondence (compliments to a very cooperative and professional Purchasing Department), the County issued Addendums that conformed to CCNA.

C4. A member complained about a Miami-Dade County Public Schools Consultant procurement process. In my opinion, the MDCPS advertisement and the process shown in the correspondence provided conformed to the Consultants Competitive Negotiations Act (CCNA - Florida Statutes Chapter 287.055). I advised the member that there was nothing the Society could do to assist him, but encouraged him to consult with an attorney when seeking a legal opinion.

C5. A member complained about a large electric utility soliciting survey bids. I wish there was something we could do about the big utilities bidding, but they are private companies, and thus CCNA is not applicable.

C6. The SJRWMD has issued an RFP for Program Management Services for Vertical Datum Conversion, and after lengthy discussions, and addendum was issued which complied with CCNA.

C7. The FDOACS has issued a non-CCNA compliant RFP for a WILDLAND FIRE RISK ASSESSMENT CANOPY INVENTORY. After long study and a lot of conversations, I decided to pass on this one.

C8. As an FYI to Florida: Governor Maxwell reports: QBS Repeal Bill Filed in New Jersey. Legislation was recently introduced in the New Jersey legislature that would repeal an existing law under which New Jersey State architectural, engineering, and land surveying contracts are awarded pursuant to a competitive negotiation process. Under the new bill's provisions these contracts would be competitively bid. The bill's number is S. 484 and was introduced on January 8, 2008 by State Senator Shirley Turner. State Senator Turner introduced similar legislation in the past two sessions and the legislation did not pass either time. COFPAES and ACSM will be following this bill.

C9. The NFWWMD issued an RFP, mostly for Wetlands Sciences, but they are issuing it in accordance with CCNA, which is only required for licensed Professional Services (Surveying and Mapping, Engineering, Architecture and Landscape Architecture). Thus, there's a good presumption that they are seeking licensed firms. Further, they use the term "Surveying and Mapping" for some of the consulting services, and again, this is a licensed activity in Florida, so the District should be presuming compliance. There are no blatant violations, but members have expressed concern that compliance with

FS472 is not specified. If licensed firms, or teams with licensed members, respond, then there would be no violation. I will get a copy of the tabulations of the shortlisted firms, and see if there is a need for further action.

C10. Invitation to Bid ITB-011-2008 - Boundary and Topographical survey for the City of Lake City – Upon receipt of my correspondence expressing concerns with CCNA compliance, the City rescinded the ITB and agreed to re-issue as an RFP.

C11. Bid No. 71012508, Water Valve Assessment And Geographical Mapping Services for the City of Tampa. After several conversations and correspondence, the City agreed to issue an addendum for CCNA compliance for the minor portion of this project that required Surveying and Mapping services.

UNLICENSED PRACTICE COMPLAINTS

UP1. I received yet another complaint, this time from Miami Dade County, about unlicensed survey crews (subcontract crews). I referred the member to the FDBPR complaint procedures. It is my observation that a significant portion of our profession is not aware that this is strictly prohibited by FDBPR. I have spoken with BPSM members and let them know that education on this issue is needed, and encourage the Board to inform the membership. Several Board members seem to be considering further discussions on photogrammetric mapping services and their application to the codes as worded.

FLORIDA STATUTES CHAPTER 472 LAND SURVEYING AND MAPPING 472.005 Definitions.

(9) "Employee" means a person who receives compensation from and is under the supervision and control of an employer who regularly deducts the F.I.C.A. and withholding tax and provides workers' compensation, all as prescribed by law. (10) "Subordinate" means an employee who performs work under the direction, supervision, and responsible charge of a person who is registered under this chapter.

UP2, 3, 4. Members are receiving solicitations from overseas out-sourcing firms, offering CADD and other related services. I have referred them all to the FDBPR complaint procedures. There are many companies marketing off-shoring of professional services, and they are very successful in getting work from a lot of Florida engineering firms. You'd have to check them out on the FDBPR website to see if they are a licensed LB firm.

If they are not, then it is illegal to sub-contract our services to them, and they should be turned in under an unlicensed practice complaint by the Surveyor that receives the solicitation.

A suggested response to an email solicitation is as follows: *"Under Florida law (FS 472), sub-contract Surveying and Mapping services must be provided under the direct supervision and employment of a Florida-licensed Professional Surveyor and Mapper. Please forward either your Florida LB number, or the Florida LS number, as appropriate."* I doubt you will get a response.

UP5. Yet another unlicensed crew solicitation was received, and in this case, after members providing advice, the parties took corrective action and complied with the law.

MEMBER REQUESTS AND OTHER ISSUES

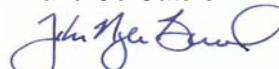
M1. A member raised concerns over a State Agency requesting Surveying and Mapping services through an Environmental sub-contract. Through communication with all parties, the issue was resolved.

M2. In response to a member's concerns, I reviewed a municipal permitting requirement that required an owner to attest that the submittal package (which included a survey) was current in regards to easements and encumbrances. After discussion with several members and with a municipal Surveyor, we agreed that it is reasonable for the City to ask the Owner to attest to this being the "latest and greatest" info available. The problem we've had in other areas has been that the affidavit requires the owner to attest to the current condition of improvements and encroachments, which is clearly not ok, as neighboring construction could invalidate a survey.

- M3. A former member, now in another State has submitted a request that FSMS reconsider a Recordation of Surveys Act.
- M4. The Surveyors in Government had a lengthy email discussion regarding Professional Engineers' certification of Flood Elevations. It is an interesting point, and I hope that they will continue the debate and report back to FSMS.
- M5. I had 2 member calls on employment issues and litigation over boundary disputes. Both were declined and referred to their own attorneys.
- M6. Members are complaining again about Survey Brokers, and I can't think of any provision in 472 that would stop them. Is it legal? That's a question for your attorney. Is it a good business practice? In my personal opinion, NO. Is it price fixing? If FSMS did this, then YES, but it's a private firm trying to set their market rate. If anyone has a suggested way to stop this, then it should be explored.
- M7. We received a request for information on the Statute of Limitations and provided a copy of F.S. Chapter 95, specifically, section 95.11.
- M8. President Machen's comments on the death of agriculture and Florida and the potential to strip IFAS of funds has rallied the Geomatics Advisory Committee. Please refer to Liaison Clyatt's report.
- M9. We were contacted by an Environmental consultant with questions about mapping trees and wetlands. After several emails and telephone conversations, he understood FS472 and will comply by using subconsultant Surveyors.
- M10. One of our members sought advice, and we exchanged correspondence on plat requirements for Minor Subdivisions in rural areas.
- M11. Members expressed concerns with County requirements for As-Built certifications, and after conversations with the County Surveyor, it appeared the situation was well handled locally.

Again, and in closing, it is a privilege to serve the Society.

Best Regards,
and Go Gators!


J. N. "Jack" Breed

