

**BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS,
CERTIFIED INTERIOR DESIGNERS AND LANDSCAPE ARCHITECTS
PUBLIC HEARING MINUTES**

The Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects held a public hearing on January 9, 2014, at the Department of Professional and Occupational Regulation, 9960 Mayland Drive, Richmond, Virginia, to receive public comment regarding the Board's proposed regulations updating regulatory standards for experience, education, and training to reflect current industry standards. Additional changes to regulations will be made as necessary.

Board staff present:
Kathleen (Kate) R. Nosbisch, Executive Director

Ms. Nosbisch began the public hearing at 2:00 p.m. and read an introductory statement regarding the purpose and rules of the hearing.

Commencement of Public Hearing

Public Comment Period – Carmen DiGiandomenico, was present for public comment. Mr. DiGiandomenico provided suggested changes to 18VAC10-20-370, Minimum standards and procedures for land boundary surveying practice. In addition, Mr. DiGiandomenico provided comments regarding several regulations under the Standards of Practice and Conduct. (transcript attached)

Public Comment Period

There being no further comment, the meeting was adjourned at 2:20 p.m.

Adjournment

Lorri Finn, Chair

Gordon N. Dixon, Secretary

1 COMMONWEALTH OF VIRGINIA
2 DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
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4 BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND
5 SURVEYORS, CERTIFIED INTERIOR DESIGNERS, LANDSCAPE
6 ARCHITECTS

7
8 IN RE: PUBLIC HEARING

9
10 HEARD BEFORE: KATHLEEN R. NOSBISCH

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12
13 JANUARY 9, 2014
14 SECOND FLOOR CONFERENCE ROOM
15 9960 MAYLAND DRIVE
16 RICHMOND, VIRGINIA 23233
17 02:00 P.M.

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20 Reported by: Terri L. Dolinger

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23 **MADDOX REPORTING SERVICE, INC.**
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1 BOARD ADMINISTRATOR:

2 Kathleen R. Nosbisch, Presiding Officer

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6 ALSO PRESENT: Carmen DiGiandomenico, Speaker

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1 MS. NOSBISCH: Good afternoon, ladies
2 and gentlemen. I'm Kate Nosbisch and I am staff to
3 the Virginia Board for Architects, Professional
4 Engineers, Land Surveyors, Certified Interior
5 Designers, and Landscape Architects. This is a public
6 hearing being held at the Department of Professional
7 and Occupational Regulation, 9960 Mayland Drive,
8 Richmond, Virginia 23233.

9 This hearing is being held pursuant to
10 54.1-310 of the Code of Virginia for the purpose of
11 receiving public comment for the Board's proposed
12 regulations to update regulatory standards for
13 experience, education, and training to reflect current
14 industry standards. Additional changes to regulations
15 will be made as necessary.

16 The list of interested parties and
17 organizations which were notified of this process and
18 invited to comment is available upon written request.
19 The staff of the Department of Professional and
20 Occupational Regulation will prepare a report of all
21 public comment received which will be presented to the
22 Board for consideration.

23 Now I would like to present the rules for
24 this public hearing. Rules for this hearing. Comments
25 will be received from any member of the public and

1 comments will be limited to a maximum of five minutes
2 depending on the number of individuals who wish to
3 speak. If you have not signed up to speak and you wish
4 to give testimony today, please sign your name on the
5 sign-up sheet at this time. I may ask speakers
6 questions to clarify statements. Any speaker who
7 wishes to provide a written statement in addition to
8 his oral testimony or in lieu of an oral testimony may
9 do so until February 28, 2014.

10 You may begin, sir.

11 MR. DiGIANDOMENICO: Thank you, Kate.
12 I appreciate the opportunity to present today. I'll
13 have just a short statement and then -- but the
14 statement directly relates to the changes I've
15 recommended and I've given you a copy of my statement
16 and the changes and I can make those available; my
17 comments to you.

18 MS. NOSBISCH: Thank you.

19 MR. DiGIANDOMENICO: My name is Carmen
20 DiGiandomenico. I own a cottage in Northumberland
21 County. I have interfaced with this Board over the
22 past three years. Based on the interface, I believe
23 the professional integrity of this Board is in serious
24 question. I have only been exposed to two land survey
25 complaints but they both prove my point.

1 In both cases, your subject matter of experts
2 were allowed to be tainted by the respondents. False
3 and misleading information reached the Board's subject
4 matter experts. Subject matter experts reached
5 inappropriate and perhaps even illegal conclusions.
6 Your tainted Board members acted in an arbitrary,
7 capricious, and unprofessional manner. The most recent
8 case was closed on obviously tainted opinions of the
9 subject matter expert. This characterization of the
10 complainant is akin to blaming the rape victim for the
11 crime.

12 The most recent case is a textbook example
13 for two reasons: How not to conduct a land survey and
14 prepare a plat, and second, how not to conduct an
15 unbiased and professional complaint investigation.
16 DPOR documents concerning this subject matter expert
17 who currently sits on this Board demonstrate first, he
18 was tainted by false and misleading information that
19 came from the respondent. Second, he obviously did not
20 understand very basic VAC requirements concerning land
21 surveys, and third, he did not have any idea the harm
22 his actions would do to the public.

23 You, DPOR, have failed to protect the health,
24 safety, and welfare of the public and to enforce the
25 VAC. You have chosen not to follow the requirements of

1 the APA. Left uncorrected, your actions will set a
2 very dangerous professional and legal precedent. To
3 that end, I have provided written recommendations on
4 your proposed changes to the VAC. I believe
5 incorporation of these comments will provide a starting
6 point for corrective action, but only a starting point.
7 Only through a cultural change will you eventually
8 emerge as a world-class organization.

9 In my opinion, DPOR has a set of double
10 standards in at least four critical management areas.
11 The first is truthfulness. On one hand, you demand and
12 require honesty and truthfulness of applicants but on
13 the other hand, you are absolutely silent in demanding
14 the same standards from respondents when they provide
15 input to complaint investigations.

16 Second, informed decision making. We all
17 know that the APA is all about information-gathering so
18 informed decisions can be made. On one hand, you
19 constantly purport to follow and even hide behind the
20 tenets of the APA but on the other hand, you
21 arbitrarily disregard the law when making important
22 decisions that affect the public.

23 Third, avoidance of being tainted. On one
24 hand, you take great pains to avoid becoming tainted
25 during public comment periods but on the other hand,

1 you fail to take any steps to avoid tainting Board
2 members during complaint investigations.

3 And lastly, continuous improvement. On one
4 hand, you demand it of the professionals and regulants
5 but on the other hand, you fail to do it yourself.

6 I hereby make an offer to meet with you and
7 Board members to review DPOR's own documents to
8 demonstrate the veracity of my very serious allegations
9 and assertions.

10 That concludes my verbal comments.

11 MS. NOSBISCH: And Mr. DiGiandomenico,
12 before you go on with your proposed changes to the
13 regulations, those comments would have been more
14 appropriate at a Board meeting because this public
15 hearing is based solely on the proposed regulation but
16 if you would like to continue, I would like you to go
17 through your proposed changes.

18 MR. DIGIANDOMENICO: Off the record.
19 Off the record. We plan on doing this at the next
20 major Board meeting.

21 MS. NOSBISCH: Those comments aren't
22 appropriate here but I do want to hear your comments
23 on the public hearing.

24 MR. DIGIANDOMENICO: The only reason,
25 Kate, they're in there is to set the stage why the

1 comments are in here because the comments would
2 correct these kind of situations happening. That's
3 why. That's all.

4 MS. NOSBISCH: Thank you.

5 MR. DiGIANDOMENICO: Do you want to go
6 through them?

7 MS. NOSBISCH: Yes. And if I have any
8 questions, I'll ask you for clarification. Thank you.

9 MR. DiGIANDOMENICO: Do I need to go
10 slow?

11 MS. NOSBISCH: I'll --

12 COURT REPORTER: You're fine, sir.
13 Thank you.

14 MR. DiGIANDOMENICO: In 18VAC10-20-370,
15 which is the minimum standards and procedures for land
16 boundary surveying practice, paragraph A, my
17 recommendation is that the end of this paragraph we
18 add the following sentence: All documents to which
19 the professional's seal, signature, and date have been
20 affixed shall meet the requirements of this chapter
21 regardless of the status of recordation of the
22 document. And the rationale for this is that this
23 will clarify the fact that all documents to which
24 respondent affixes a seal are required to meet this
25 chapter.

1 This was a critical issue in a recent
2 complaint investigation where the Board's subject
3 matter expert incorrectly concluded that because the
4 plat under investigation had not been recorded, the
5 respondent could be afforded the opportunity to correct
6 violations without sanctions.

7 Second comment again in 370, minimum
8 standards, paragraph B, research procedures. Change
9 the first sentence to read the professional shall
10 search the land records for documents depicting
11 pertinent, valid, and accurate land reference points,
12 and then continue with and for the proper description
13 of the land to be surveyed. The rationale for this
14 comment is this will add the respondent's
15 responsibility to determine the proper land boundary
16 reference points. This again was a critical issue in a
17 recent complaint investigation that went unaddressed by
18 the Board's subject matter expert.

19 Okay. Again in 370, minimum standards,
20 paragraph D, office procedures, subparagraph two, plats
21 and maps: Change to read the following information
22 shall be correct and shall be shown on all plats. This
23 will add the respondent's responsibility not just to
24 include these items but will more clearly require that
25 these items are correct. Although this may appear to

1 be self-explanatory and obviously implied in the
2 current wording, this was a critical issue in the
3 recent complaint investigation where the Board's
4 subject matter concluded that the respondent did not
5 violate the VAC because although he did not have the
6 correct town, he did show a town -- emphasis on A --
7 and thus, avoided violations and sanctions.

8 Okay. 370 again, minimum standards,
9 paragraph D, subparagraph two, sub-subparagraph H
10 changed to read bearings to include bearings of record
11 of all property lines and meanders to the nearest ten
12 seconds of an arc or metric equivalent. And the
13 rationale for this change is based on written
14 statements by the Board's subject matter again in this
15 investigation. There was a serious misconception on
16 his part that bearings of record are only historical
17 and are not used in calculations; his words. This
18 statement is incorrect and this change clarifies the
19 importance of bearings of record.

20 Again in 370, minimum standards, paragraph D.
21 subparagraph two, sub-subparagraph R: Change the
22 beginning of this entry to read a statement that the
23 land boundary survey shown is based on a current field
24 survey or a statement that the land boundary survey is
25 a compilation from deeds. And this is more of an

1 editorial change. If you read the way it's worded
2 right now, it seems like it's one sentence all the way
3 through and it isn't. There's really an alternative.
4 There's one and then an alternative. So this change is
5 editorial. The current wording implies that there's a
6 requirement in one statement. This change will simply
7 clarify there's two alternative statements that can be
8 made.

9 Responsibility to the public. That's -- this
10 is in -- sorry -- 18VAC10-20-690, responsibility to the
11 public. Change the first two sentences to read the
12 primary obligation of the regulant shall be to the
13 general public and not the client. The regulant shall
14 not harm the health, safety, and welfare of the general
15 public when making professional judgments, decisions,
16 practices, and when preparing products and documents.
17 This is an important change because it will clearly
18 require that the regulant shall not endanger the
19 health, safety, and welfare of the general public.

20 Currently, 690 only requires that the
21 regulant merely recognize the fact that his actions can
22 impact the health, safety, and welfare of the general
23 public. This is an important issue in a recent
24 complaint investigation that was not addressed properly
25 by the Board subject matter expert. Despite an obvious

1 harm to the complainant, the Board subject matter
2 expert failed to recognize this important fact and the
3 gravity of his recommendations to close the case.

4 18VAC10-20-700, public statements, paragraph
5 A: Change to read the regulant shall be truthful in
6 all professional matters and shall include all relevant
7 and accurate information in professional reports,
8 documents, statements, or testimony which shall include
9 the date indicating that such information was current.
10 The regulant shall be truthful in preparing client
11 documents that the regulant or the client may place in
12 the public domain.

13 The regulant shall reasonably expect that the
14 client will record the regulant's documents, plats, or
15 reports, or other written deliverables in an official
16 or public repository and thus enter into the public
17 domain and thus potentially affect safety, health, and
18 welfare of the general public. This change will
19 clearly require --

20 I'm sorry. This is rationale. This change
21 will clearly require the professional to be truthful in
22 all documents as well as statements. The change also
23 asserts that the regulant should reasonably expect that
24 the deliverables to the client will enter into the
25 public domain and, therefore, potentially do harm to

1 the general public. Currently, 700 only requires the
2 professional be truthful in professional reports,
3 statements, or testimony.

4 Again in 700, public statements. After
5 paragraph D, add the following paragraph: E, a
6 professional shall not knowingly make a materially
7 false written statement or deliberately fail to
8 disclose a material fact on a document that the
9 professional affixes his seal and signature.

10 The rationale is this change will clearly
11 require the respondent to be truthful in all documents
12 that have the respondent's seal because the respondent
13 should reasonably expect that these sealed documents
14 will enter into the public domain.

15 Again in 700, public statements, add
16 paragraph F: The regulant shall truthfully answer all
17 Department requests associated with an investigation of
18 a complaint and shall not knowingly make a materially
19 false statement or deliberately withhold a material
20 fact requested. The regulant shall specifically and
21 truthfully answer questions and requests for
22 information and shall not submit extraneous and
23 unsolicited answers and materials that might taint
24 individuals conducting the investigation.

25 Although 700 paragraph D addresses the

1 respondent's truthfulness concerning applications, it
2 is silent on similar truthfulness in responding to
3 complaint investigations. This recommended change is a
4 direct result of a recent complaint investigation in
5 which the Board's subject matter expert asked the
6 respondent to provide answers to two very reasonable
7 questions. In his reply, however, the respondent
8 answered the two questions but then went on to provide
9 extraneous and unsolicited information that was false
10 and misleading and obviously tainted the subject matter
11 expert in his deliberations.

12 Based on the false and misleading
13 information, the tainted subject matter expert then
14 went on to make inaccurate conclusions such as to close
15 the case and to categorize the complainant in a manner
16 that was inappropriate and unprofessional.

17 710, conflicts of interest, paragraph D.
18 Begin the paragraph with the regulation shall not
19 accept direction, compensation. Continue on. This
20 change will clearly conclude -- I'm sorry. This change
21 will clearly include the conflict of interest in
22 direction from any parties regardless of compensation.

23 In 740, professional responsibility,
24 paragraph C, begin the paragraph with the regulant
25 shall not knowingly accept a project, task, or contract

1 from a client or associate in a business venture.

2 Rationale: This change will clearly include the
3 professional's responsibility when accepting work from
4 a client who may have fraudulent or dishonest
5 intensions. Currently, 740 limits this issue to
6 business ventures. This may have been the situation in
7 recent complaint investigations.

8 760, use of seal, paragraph A. Make the
9 following change: Affixing of a professional -- and
10 then continue on. This is merely an editorial change
11 in nature and simply avoids using the term application
12 which has other connotations in this chapter and it
13 uses the term affixing which also has been used in this
14 context so it's strictly editorial.

15 760, use of seal, paragraph B, documents to
16 be sealed, subparagraph one. Change the last sentence
17 to read final documents are completed documents or
18 copies delivered to the respondent's client or copies
19 submitted on a client's behalf for approval. This --
20 rationale. This change will clarify that final and
21 completed documents include those delivered to the
22 respondent's client and not just those that have been
23 recorded.

24 This was a critical issue in a recent
25 complaint investigation where the Board's subject

1 matter expert incorrectly concluded that because the
2 plat under investigation had not been recorded, the
3 respondent could be afforded the responsibility to
4 correct violations without sanctions.

5 760, use of seal, paragraph B, documents to
6 be sealed. Add subparagraph three. Revisions to
7 documents that the respondent had previously affixed
8 the seal, signature, and date shall be considered new
9 documents and the respondent shall affix a seal and
10 signature with a new date that reflects incorporation
11 of the revisions.

12 Rationale. Currently, 760 is silent on
13 revisions to sealed documents. Revisions to these
14 documents can be substantial and could have profound
15 adverse impacts on the client and the public as well.
16 Therefore, revised documents should have the same
17 standards apply to them as the previous version of the
18 document.

19 And that concludes my recommendations.

20 MS. NOSBISCH: Thank you very much, Mr.
21 DiGiandomenico.

22 MR. DiGIANDOMENICO: Do you have any
23 questions?

24 MS. NOSBISCH: Not at this time, sir.
25 Thank you.

1 MR. DiGIANDOMENICO: Would you like me
2 to send them electronic?

3 MS. NOSBISCH: Yes, please. Mrs.
4 DiGiandomenico, did you wish to make a comment?

5 MS. DiGIANDOMENICO: No. I agree.
6 Thank you.

7 MS. NOSBISCH: Thank you. I would like
8 to thank you for your comments today. The record of
9 the public hearing will be kept open until Friday,
10 February 28, 2014, and written comment also be
11 accepted through 5:00 p.m. that day. This hearing is
12 now closed. Thank you.

13 MR. DiGIANDOMENICO: Thanks, Kate.

14 MS. NOSBISCH: Thank you. I appreciate
15 you coming in and taking the time to do that.

16 NOTE: Off the record at 2:20 p.m.

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C E R T I F I C A T E

I, Terri L. Dolinger, hereby certify that I was the Court Reporter in the Public Hearing regarding the Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers, and Landscape Architects, at the offices of the Department of Professional and Occupational Regulation, 9960 Mayland Drive, Richmond, Virginia, on January 9, 2014, at the time of the hearing herein.

I further certify that the foregoing transcript is a true and accurate record of the hearing herein

Given under my hand this 22 day of January, 2014.



Terri L. Dolinger, Court Reporter