

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #3

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2007 JUL 27 PM 3:26

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: WV Board of Professional Surveyors TITLE NUMBER: 23

CITE AUTHORITY: 30-13A-5

AMENDMENT TO AN EXISTING RULE: YES ☐ NO ☒

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 5

TITLE OF RULE BEING PROPOSED: Standards for Practice of Surveying in West Virginia

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


Authorized Signature

Gregory A. Smith, Chairman

APPENDIX B
FISCAL NOTE FOR PROPOSED RULES

Rule Title: Standards for Practice of Surveying in West Virginia

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: WV Board of Professional Surveyors

Address: P. O. Box 390
Flatwoods, WV 26621-0390

Phone Number: 304-765-0315 Email: wvbps@mail.state.wv.us

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure
will have on costs and revenues of state government.

None.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of
Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues			

Rule Title: _____

Rule Title:

Standards for Practice of Surveying in West Virginia

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

None

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

None

Date: July 27, 2007

Signature of Agency Head or Authorized Representative

Gregory A. Smith
Gregory A. Smith, Chairman

**TITLE 23
LEGISLATIVE RULE
BOARD OF PROFESSIONAL SURVEYORS**

**SERIES 5
STANDARDS FOR THE PRACTICE
OF SURVEYING IN WEST VIRGINIA**

FILED

2007 JUL 27 PM 3:26

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§23-5-1. General Information and Purpose.

1.1. Scope. -- This rule is promulgated by the Board of Professional Surveyors, hereinafter referred to as the Board or WVBPS, to govern the practice of surveying in West Virginia (WV).

1.2. Authority. -- WV Code §30-13A-5.

1.3. Filing Date. --

1.4. Effective Date. --

1.5. This Rule for the practice of surveying is promulgated for the purpose of establishing standards of practice and the administration and enforcement of WV Code §§30-1-1 et seq. and 30-13A-1 et seq. and shall be binding upon persons or firms involved in the practice of surveying under §30-13A-1 et seq.

1.6. Repeal of Former Rules -- This legislative rule, together with legislative rules 23 CSR 1 "Examination and Licensing of Professional Surveyors in West Virginia" and 23 CSR 4 "Fees for Surveyors and Surveying Firms" repeals and replaces West Virginia 23 CSR 1 "Rules and Minimum Standards for Practice of Land Surveying in West Virginia" filed and effective June 6, 2005.

§23-5-2. Definitions

As used in this rule, the following terms have the following meanings unless the context or subject matter clearly requires a different interpretation:

2.1. "Boundary survey" means a surface or subsurface survey, in whole or in part, in which the property or easement lines or the ownership or possession lines of a parcel of land, claim area, possession area or encroachment area have been established by field survey and may include retracing existing property or easement lines; the creation of a new easement or right-of-way; the partition, cut-out or subdivision of lots or parcels from an existing property, or the subdivision of an existing property into several lots, blocks or streets.

2.2. "Certified survey document" means a tangible or digital copy or duplicate of an original survey document with the signature of the licensee ascribed, the seal of the licensee affixed and the endorsement of the licensee, if applicable, and date of signing identified and may be presented to a clerk or public official for recording or filing.

2.3. "Employee" means a person who is hired on a full-time, part-time, or temporary basis and is on the payroll of an employer or firm with the legal obligation to withhold and pay taxes to government agencies based on the salary, wages or other compensation provided by the employer or firm and who does not meet the Internal Revenue Service's definition of a contractor or subcontractor.

2.4. "Endorsement" means an endorsement or authorization to practice underground surveying or in a specialized field of surveying or mapping.

2.5. "Felony" means a felony related to the fitness of a surveyor to engage in the practice of surveying, including those crimes that have dishonesty as a fundamental and necessary element. Felonies that, upon conviction, constitute grounds for disciplinary action by the Board include, but are not limited to:

2.5.a. False swearing or perjury in a court proceeding related to the applicant's practice of surveying;

2.5.b. Felonies involving theft, bribery, embezzlement, forgery, falsification or destruction of records, fraud, or misrepresentation; and

2.5.c. Any other felony offense demonstrating a lack of professional or business integrity or honesty.

2.6. "Incompetence" means the continual or habitual failure to meet minimum standards and generally accepted practices of surveying or practicing in fields of expertise when the surveyor is unqualified and lacks the necessary experience and education.

2.7. "Inspection" means a mortgage or loan inspection.

2.8. "Loan inspection" has the same meaning as mortgage inspection.

2.9. "Mortgage inspection" means a substandard survey of a lot or parcel of land in which property lines and corners have not been established and is performed for the sole purpose of obtaining mortgage title insurance. This includes the location of the improvements and utilities as they relate to the property and a cursory check for violations or encroachments onto the subject lot or parcel based on existing but unconfirmed evidence and does not constitute a boundary survey and is subject to any inaccuracies that a subsequent boundary survey may disclose.

2.10. "Original survey document" means a plat, description, report, map, plan, drawing or other survey related document prepared manually or digitally under the professional charge of a licensee as a final survey document or work product and retained by the licensee as a permanent record.

2.11. "Owner," when used in the context of ownership requirements for firms seeking a certificate of authorization to engage in the practice of surveying, means a person who owns at least a majority interest of a firm or business entity.

2.12. "Ownership line" means a line or series of lines that define the limits of ownership supported by documents of public record.

2.13. "Possession line" means a line or series of lines that define the limits of an area claimed or used by a landowner and can only be established as a boundary by an order of the court.

2.14. "Professional negligence" means negligence demonstrating a wanton indifference to the interests of the public that caused, or that had a substantial likelihood of causing, serious harm to the public. A civil judgment for malpractice in the practice of land surveying is not conclusive proof that a surveyor is guilty of professional negligence sufficient to support the imposition of professional discipline.

2.15. "Record line" means the line between the position of the original monuments cited in the original operative conveyance that a surveyor is required to retrace or establish as the boundary or property lines of a parcel of land.

2.16. "Special Supervision" means a licensee has made application and has been approved by the Board to be in professional charge of an unlicensed individual who is seeking licensure with the Board and is not an employee of the licensee nor employed by the same firm as the licensee.

2.17. "Uniform width strip" means a parcel of land, easement or right-of-way that maintains the same width throughout its length and may be described by the perimeter or strip method.

2.18. "Unlicensed practice" means the unlawful practice of surveying, as set forth in §30-13A-32, by a person or firm who has not obtained a license, endorsement or authorization under the provisions of §30-13A-1 et seq. and is not exempt as set forth in §30-13A-36.

2.19. "Variable width strip" means a parcel of land, easement or right-of-way that has a width that varies or is an irregular shape throughout its length and may be described by the perimeter or strip method.

2.20. "Willful departure from accepted standards of professional conduct" means:

2.20.a. Default on obligations owed to the state in connection with the practice of surveying, including but not limited to obligations under the West Virginia workers' compensation act, the West Virginia unemployment compensation act, and West Virginia state tax and revenue laws;

2.20.b. Willful failure to substantially perform in accordance with the terms of a contract or subcontract, or failure to perform after accepting compensation for professional services;

2.20.c. Performance in violation of standards established by law or generally accepted standards for the practice of surveying amounting to intentionally deficient or grossly negligent performance on a contract; or

2.20.d. Making intentionally false or misleading statements during an investigation, inquiry or hearing of the Board.

2.20.e. Any other cause of a serious and compelling nature amounting to knowing and willful misconduct in the practice of surveying.

§23-5-3. Certificate of Authorization and Firm Requirements

3.1. Certificate of Authorization

3.1.a. A firm or business entity may not engage in, offer to engage in, or hold itself out to the public as being engaged in, the practice of surveying as defined in WV Code §30-13A-1 et seq. without first obtaining a certificate of authorization issued by the Board for each business location or branch office offering such services.

3.1.b. No firm shall be issued a certificate without having as its owner or officer or in its employ a licensed professional surveyor, designated as the surveyor-in-charge, for each business location or branch office unless otherwise approved by the Board. An initial application fee and an annual renewal fee as established by the Board by rule is due on or before the thirty-first (31st) day of December of each year and shall accompany the application or renewal application forms provided by the Board.

3.1.c. Any firm is required to notify the Board within thirty (30) days of any change in ownership, name, address, surveyor in charge, surveyor authorized to certify documents, or other relevant information included on the application.

3.2. Professional Limited Liability Companies

3.2.a. Professional surveyors who desire to render services as a professional limited liability company shall comply with the provisions of WV Code §30-13A-1 et seq, WV Code §31B-13-1 et seq. and the rules of the Board.

3.2.b. No person may be a member of a professional limited liability company that provides surveying services who is not licensed and legally authorized to render such services by this Board.

3.2.c. Copies of the professional surveyor's current license to practice and the company's valid certificate of authorization shall accompany the application with the Secretary of State.

§23-5-4. Seals and Document Certification.

4.1. Seal of the Board. The seal of the Board shall be affixed to each certificate or license issued by the Board.

4.2. Seal of the Licensee

4.2.a. The types of seals approved by the Board are the stamp seal, embossing seal and digital seal. The licensee shall have in his or her possession a stamp or embosser. The digital seal is optional.

4.2.b. All seals made on or after the effective date of this rule shall comply with the format and size standards and as a minimum the quality standards as set forth in subdivision 4.2.c. of this rule. A prior seal will be legitimate after the effective date of this rule if it complies with all seal requirements as set forth in WV Code §30-13A-19(a) and generally meets the formatting standards that preceded the effective date of this rule.

4.2.c. The seal shall contain the following information (the example may not be to scale):

4.2.c.1. An outer circle using a "rope" line type that measures one and five-eighths (1 5/8") inches outside to outside.

4.2.c.2. An inner concentric circle using the "knurled" line type that measures one (1") inch outside to outside.

4.2.c.3. The legal name of the licensee shall be uppercase and centered on the top between the two concentric circles. Any combination of the first, middle and last name; first name, middle initial and last name; or first initial, middle name and last name is acceptable.

4.2.c.4. The words "Professional Surveyor" shall be uppercase and centered on the bottom between the two concentric circles.

4.2.c.5. Two stars will be located on left and right side of the seal between the concentric circles. One star will precede the word "Professional" and the other will follow the word "Surveyor" with a space between the words and the stars.

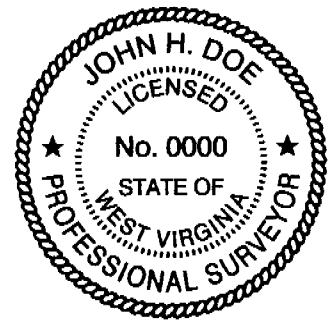
4.2.c.6. The word "Licensed" shall be uppercase, centered and aligned along the inside top of the inner circle.

4.2.c.7. The words "West Virginia" shall be uppercase, centered and aligned along the inside bottom of the inner circle.

4.2.c.8. The words "State of" shall be uppercase and centered above "West Virginia."

4.2.c.9. The license number shall be in the center of the inner circle and more prominent than the other words within the inner circle.

4.2.d. When an applicant is granted licensure, the Board shall provide the initial stamp seal. All other seals procured by the licensee shall meet the format and size standards and shall meet as a minimum the same quality as the Board provided seal.



4.2.e. It is the responsibility of each licensee to report to the Board the loss or theft of his or her seal or the illegal use of the seal as soon as practical after the loss, theft or illegal use is discovered.

4.3. Document Certification by Licensee

4.3.a. The seal, signature and endorsement, if applicable, of the licensee and the date of signing shall be on all certified survey documents whenever presented to a client or public agency to certify that the work product was completed under the professional charge of the licensee.

4.3.a.1. An original handwritten signature of the licensee shall be affixed to a survey document before it is considered as certified.

4.3.a.2. The seal shall be affixed and the signature shall be ascribed in a manner that a copy of the certified survey document is readily identifiable.

4.3.a.3. Digital signatures, signature stamps or other such facsimiles are prohibited on all certified survey documents. Other survey related documents may have either a digital seal or digital signature, or facsimile thereof, but both cannot be on the same document.

4.3.b. Licensees shall not affix their seal or ascribe their signature to any survey document unless they are in active status with the Board; the survey work related to the document was performed under their professional charge, unless multiple disciplines or professions are involved as set forth in subdivision 4.3.d. of this rule; and they are competent to perform the survey related work by virtue of education or experience.

4.3.b.1. In the event a question arises as to the competence of a licensee to perform a surveying assignment in a specific technical field of surveying which cannot be otherwise resolved to the Board's satisfaction, the Board, either upon request of the surveyor or by its own volition, may require the surveyor to submit to an appropriate examination as determined by the Board.

4.3.c. Plats, descriptions, reports, maps, plans, drawings, or other survey documents will be deemed to have been prepared under the professional charge or direct supervision of a licensee only when all the following conditions have been met:

4.3.c.1. The client, agent or authorized representative requesting preparation of such survey documents makes the request directly to the licensee, or a member or employee of the licensee's firm.

4.3.c.2. The licensee directly supervises the preparation of such survey documents and has an opportunity for input into their preparation prior to their completion;

4.3.c.3. The licensee reviews the final survey documents.

4.3.c.4. The licensee has the authority to and may make any necessary and appropriate changes to the work products or survey documents submitted to the client or displayed to the public.

4.3.c.5. The licensee in professional charge is responsible for meeting all of the preceding requirements whether the work is being performed remotely or locally. Remote supervision is exclusive to a member or employee of the licensee's firm unless the licensee has applied for and received prior approval from the Board to provide special supervision as set forth in section 5 of this rule.

4.3.d. When a plat, map or drawing contains more than one sheet, the first or title page shall be sealed and signed by the licensee who is in professional charge. Two or more licensees may affix their signatures and seals provided it is designated by a note under the seal the specific subject matter for which each is responsible. In addition,

each drawing shall be sealed and signed by the licensee or licensees responsible for each sheet. When a firm, partnership or corporation performs the work, each drawing shall be sealed by the licensee or licensees who was/were in professional charge of the work.

4.3.e. Digital seals may be used on final original plats and drawings provided a handwritten signature is placed adjacent to or across the seal and the date is written below the seal. Certified survey documents may be transmitted electronically but shall have the digital seal, if any, removed before transmitting and shall have the following inserted in lieu of the signature and date: "This document originally issued and sealed by (name of licensee, P.S.#--- on (date of sealing)). This document should not be considered a certified document."

4.3.f. Any revision to a survey document containing the seal and signature of a licensee shall be described and dated. If the original licensee is unavailable, the current licensee in professional charge shall sign and seal the revisions.

4.3.g. In circumstances where a licensee in professional charge of the work is unavailable to complete the work, a successor licensee may take professional charge by performing all professional services. The burden is on the successor licensee to show such compliance. The successor licensee shall have control of and responsibility for the work product and the signed and sealed originals of all documents.

4.3.h. Copies or modifications of certified survey documents shall not be filed with any county clerk or accepted by any public official unless initialed and dated by the licensee in the presence of the clerk, public official or their respective representative.

4.3.i. Working drawings or unfinished documents are not required to have a seal and signature if the working drawing or preliminary document contains a statement to the effect "Preliminary, not for construction, recording purposes, or implementation."

§23-5-5. Special Supervision by Licensees

5.1. A licensee may apply to the Board to request special supervision and shall satisfy the following requirements at the time of application:

5.1.a. Licensee shall be in active status with the Board.

5.1.b. Licensee shall fill out the application form and provide a written explanation to justify the request being made to the Board. The application form shall be signed and dated by the licensee and supervisee.

5.1.c. Licensee shall pay the special supervision application fee as set forth in 23 CSR 4 et seq.

5.2. Special supervision shall not be provided by the licensee until the application has been approved and written authorization has been issued by the Board.

5.3. Special supervision applications, whether original or renewal, expire on the thirtieth (30th) day of June following the date of issuance or renewal. The renewal fees shall be paid to the Board as set forth in 23 CSR 4 et seq.

5.4. Special supervision will become invalid if the licensee does not maintain active status with the Board or is the subject of a disciplinary action and order of the Board. Special supervision may be reinstated when the offending matters are rectified.

5.5. A supervision allowance shall be provided to licensees who are instructors associated with an educational institution and workshop providers while supervising students or attendees during surveying related course and seminar activities.

§23-5-6. Standards of Professional Conduct

6.1. Licensee's Obligation to the Public

6.1.a. Licensees, in the performance of their services for clients, employers, and customers, shall be cognizant that their first and foremost responsibility is to the public health, safety and welfare.

6.1.b. Licensees shall approve and seal only those documents that conform to accepted surveying standards.

6.1.c. Licensees shall notify their employer or client and such other authority as may be appropriate when their professional judgment is compromised under circumstances where the life, health, property, or welfare of the public is endangered.

6.1.d. Licensees shall be objective and truthful in professional reports, statements, or testimony.

6.1.e. Licensees shall express a professional opinion publicly only when it is founded upon an adequate knowledge of the facts and a competent evaluation of the subject matter.

6.1.f. Licensees shall issue no statements, criticisms, or arguments on technical matters which are inspired or paid for by interested parties, unless they explicitly identify the interested parties on whose behalf they are speaking and reveal any interest they have in the matters.

6.1.g. Licensees shall not knowingly permit the use of their name or firm name by, nor associate in the business ventures with, any person or firm, which is engaging in fraudulent or dishonest business or professional practices.

6.1.h. Licensees shall not intentionally make statements to the public that result in, or have the potential of resulting in, insult or injury.

6.1.i. Licensees having knowledge of possible violations of any of these standards of professional conduct shall provide the Board with the information and assistance necessary to make the final determination of such violation.

6.2. Licensee's Obligation to Profession, Clients and Employer

6.2.a. Licensees shall undertake to perform assignments only when qualified by education or experience in the specific technical fields of surveying involved.

6.2.b. Licensees may accept assignments for coordination of an entire project, provided that each segment is signed and sealed by the licensee responsible for preparation of that segment. A surveyor may accept an assignment requiring education or experience outside of his or her own field of competence, but only to the extent that his or her services are restricted to those phases of the project in which he or she is qualified. All other phases of the project shall be performed by qualified associates, consultants or employees.

6.2.c. Licensees should not reveal or disseminate facts, data, or information obtained in a professional capacity to the public, including other professionals, without the prior consent of the client or employer if it has the

potential to damage or harm the client or other parties except as authorized or required by law, rule or written contract.

6.2.c.1. The licensee should use discretion when disseminating any information in their professional capacity even when authorized to do so.

6.2.c.2. The licensee should retain all rights of ownership to the work product and the production of survey related documents, including the original survey documents and records.

6.2.c.3. The client may retain the right to preclude dissemination of the work product or survey documents if set out in writing.

6.2.d. Licensees shall provide to the client, or designated representative, certified survey documents along with copies, if requested, according to the surveyor-client agreement and the standards of practice as set forth by law or rule.

6.2.e. Licensees shall make full prior disclosures to their employers or clients of potential conflicts of interest or other circumstances which could influence or appear to influence their judgment or the quality of their service.

6.2.f. Licensees shall not accept compensation, financial or otherwise, from more than one party for services while working on the same project, unless the circumstances are fully disclosed and agreed to by all interested parties.

6.2.g. Licensees shall not solicit gratuities, directly or indirectly, from contractors, their agents, or other parties in connection with work for employers or clients.

6.2.h. Licensees shall not solicit or accept a professional contract from a governmental body on which a principal or officer of their organization serves as a member without proper disclosure and written waiver thereof. Conversely, licensees serving as members, advisors, or employees of a government body or department, who are the principals or employees of a private concern, shall not participate in decisions with respect to professional services offered or provided by said concern to the governmental body which they serve.

6.3. Licensee's Obligation to Other Licensees

6.3.a. Licensees shall not falsify or permit misrepresentation of their, or their associates', academic or professional qualifications. They shall not misrepresent or exaggerate their degree of responsibility in prior assignments nor the complexity of said assignments. Presentations incident to the solicitation of employment or business shall not misrepresent pertinent facts concerning employers, employees, associates, joint ventures, or past accomplishments.

6.3.b. Licensees shall not offer, give, solicit, or receive, either directly or indirectly, any commission, or gift, or other valuable consideration in order to secure work, and shall not make any political contribution with the intent to influence the award of a contract by public authority.

6.3.c. Licensees shall not attempt to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice, or employment of other licensees, nor indiscriminately criticize other licensees' work or deter third persons from associating or dealing with the licensee.

§23-5-7. Minimum Standards for Surveys.

7.1. The purpose of these standards is to establish minimum technical criteria to govern the practice of surveying when more stringent specifications are not required. Further, the purpose is to protect the inhabitants of this state from dishonest or incompetent surveying and generally to protect the public health, safety and welfare.

7.2. General Standards applicable to all surveys and inspections:

7.2.a. The licensee in professional charge, or a designated representative, shall discuss with the client the purpose of the survey, scope of services to be provided, time frames, fees and all pertinent details of the contract prior to performing the work.

7.2.b. A licensee, endorsee, an exempt person under §30-13A-1 et seq. or persons under the direct supervision or special supervision of a licensee, endorsee or exempt person shall physically go to the site and perform a field survey.

7.2.c. The surveyor shall use methods and equipment suitable for the purpose of the survey.

7.2.d. The field notes shall be retained as a permanent record and may be handwritten or by electronic data collection or a combination thereof. When electronic data collection is used in conjunction with handwritten notes, the electronic files and the written notes constitute the entirety of the field notes.

7.2.e. The observations shall be measured to a precision that will produce the desired level of accuracy:

7.2.e.1. Angles or directions shall be reported in degrees, or parts thereof, except for the arc element of a curve which should be reported as a general direction, such as westerly or southwesterly.

7.2.e.2. Distances shall be reported on a horizontal plane in feet, based on the United States standard, or meters, or parts thereof, unless required otherwise by law, rule or regulation.

7.2.e.3. Areas shall be reported on a horizontal plane in acres, based on the United States standard, or hectares, or parts thereof, unless required otherwise by law, rule or regulation.

7.2.e.3. All curved segments or lines shall be reported with the following minimum curve elements: arc length and general direction; and the long chord direction and distance.

7.2.f. Centerline and baseline alignments shall use the standard method of stationing to reference significant points along the alignment.

7.2.f.1. Points offset from an alignment shall be referenced by the station and offset distance left or right of the alignment.

7.2.f.2. Offset distances shall be normal to the alignment, right angle to straight segments or radial to curved segments.

7.2.g. All measuring devices shall be checked periodically for accuracy and condition.

7.3. Minimum Standards for Boundary Surveys

7.3.a. In addition to the general standards in subsection 7.2. of this rule, the discussion prior to the survey shall also cover disputes with adjoining, claim or possession areas, encroachments and other relevant information that will affect the final location of the boundary.

7.3.b. The record search shall be retained as a permanent record and shall include the record description based on current and prior deeds, conveyance from common grantor, or if necessary, the original survey or grant. It shall also include descriptions of adjoining properties, other sources of information or resolution of conflicts in descriptions.

7.3.c. A reasonable attempt shall be made to notify the adjoiners during the course of the survey and gather information from those individuals having knowledge of the boundaries. The surveyor may use his or her professional discretion when deciding which individuals have vital knowledge that will aid in determining boundary locations.

7.3.d. The field survey shall consist of the following:

7.3.d.1. A field search for controlling evidence.

7.3.d.2. The location of evidence by appropriate methods and procedures.

7.3.d.3. A reasonable attempt to discuss the evidence with the owner or client, if deemed necessary by the surveyor.

7.3.e. Monumentation is required for all new or reestablished corners, or reference monuments for inaccessible corners, and is encouraged but not required at intervisible points between corners.

7.3.e.1. Natural objects chosen for monuments shall be durable, unique and easily identifiable.

7.3.e.2. Set monuments shall be durable, reasonably stable and firmly placed, able to maintain its position when subjected to extreme temperature changes and other severe weather conditions, able to be located with current or future technology and have the following dimensions:

7.3.e.2.A. Iron or steel pipes shall have a minimum inside diameter of one (1") inch and a minimum length of thirty (30") inches, when feasible;

7.3.e.2.B. Reinforcing rods (rebars) shall have a minimum outside diameter of five-eighths (5/8") inch and a minimum length of thirty (30") inches, when feasible;

7.3.e.2.C. Other artificial markers shall have a minimum cross-sectional area of one-half (1/2) square inch and shall be made of durable material, identifiable and unique and be of sufficient length to maintain its position as set forth in paragraph 7.3.e.2.

7.3.e.3. All monuments, except for natural objects, shall have caps or some other means to identify the surveyor in professional change or surveying firm responsible for setting the monument.

7.3.f. The area of the tract being surveyed shall be measured and reported to a precision consistent with the needs of the client and accepted standards of practice.

7.3.g. A plat shall be prepared for all boundary or partition surveys and subdivisions and be to a scale large enough to show significant details. The plat shall show the results of the field survey and be provided to the client. The client may prohibit a plat in the contract unless a plat is required by law, rule or regulation. The following information shall be shown on the plats, when applicable:

7.3.g.1. A north arrow and the meridian used as the basis of directions (bearings);

7.3.g.2. The outlined area of the property and all significant parts, including streets, alleys and nonlotted areas of a subdivision;

7.3.g.3. The name and location of any significant creeks, rivers or roads within the scope of the survey;

7.3.g.4. The measured length and direction of each straight boundary line by distance, bearing and quadrant or the arc length and general direction of each curved boundary, along with the long chord direction and distance and at least two (2) other curve elements: Provided, that in the case of a strip survey the station and offset method may be utilized to describe the strip. When the station and offset method is used, the alignment geometry and the control point monumentation shall also be shown on the plat.

7.3.g.5. Reference or tie lines by direction and distance to significant monuments and objects;

7.3.g.6. The description of all corners or reference monuments, including whether the monuments were found or set;

7.3.g.7. The evidence of any possession and claim areas and potential encroachments, including any overlaps or gaps, compared to the location of the record boundary line;

7.3.g.8. The tax map and parcel number, if available, of all the tracts or parcels shown on the plat;

7.3.g.9. The names of the current or past owners of the subject property, or both, and the adjoining landowners;

7.3.g.10. The current conveyance references for the subject property and the adjoining landowners;

7.3.g.11. The area, acreage or square footage, of the property;

7.3.g.12. The title of the plat for reference when recording;

7.3.g.13. General location information including the municipality, district, county, state, watershed and other information that will aid in locating the subject property. Subdivisions will include the name, lot, block and plat reference;

7.3.g.14. A written or graphical scale, or both;

7.3.g.15. The date of the survey;

7.3.g.16. The name, address, license number, signature and seal of the surveyor in professional charge.

7.3.h. A description of survey shall be prepared for all boundary surveys and be provided to the client. Descriptions shall be written using either the perimeter method or the strip method and a reference to a simultaneously or previously recorded plat or report attaching them to and making them a part of the description. The following shall be included in a description of survey, when applicable:

7.3.h.1. Descriptions referenced to a centerline or baseline alignment shall include:

7.3.h.1.A. The basis of the centerline or baseline geometry.

7.3.h.1.B. The alignment geometry and control point monumentation shall be described in a manner that another licensee will be able to retrace the alignment at a later date.

7.3.h.1.C. The beginning and ending point of the alignment shall be tied to at least one (1) property corner in the vicinity of each intersection of the alignment and the boundary line. An alignment that passes through multiple tracts shall be required to tie to at least one (1) property corner in the vicinity of each intersection of the alignment and the boundary line.

7.3.h.1.D. The federal, state or local project numbers or references, if applicable.

7.3.h.1.E. Multiple alignments may be used in a description provided the required geometric information is included or referenced for all alignments.

7.3.h.2. Perimeter Description Method.

7.3.h.2.A. A perimeter description shall be described using metes and bounds and may be used for tracts of land or easements having any shape or strip length.

7.3.h.2.B. The preamble of a perimeter description shall include the general location information, which may include the watershed, topographic location or similar information that provides a general location of the tract or easement being described; the lot and block numbers of existing subdivision; district or municipality; county and state where the property is located; and the statement, "more particularly described as follows:"

7.3.h.2.C. The body of a perimeter description shall include the point of beginning; the length and direction of each straight and curved line, including the required curve elements; the description of monumentation at each corner and relevant objects encountered along the line; the call for the adjoining landowners; the area by survey; the term "as surveyed by" followed by the name of the licensee or firm and survey dates. Strip perimeter descriptions shall include the alignment station reference and offset distance for any change in direction, significant point or event along the perimeter.

7.3.h.3. Strip Description Method.

7.3.h.3.A. A strip description may be used for strips with a uniform or variable width when a centerline or baseline alignment is being used as the control.

7.3.h.3.B. The preamble of a strip description shall include the same requirements as a perimeter method preamble as set forth in subparagraph 7.3.h.2.B. of this subdivision, if applicable.

7.3.h.3.C. The body of a uniform strip description shall include the same requirements as the perimeter method as set forth in subparagraph 7.3.h.2.C. of this subdivision, if applicable, except the calls shall describe the centerline or baseline alignment rather than the perimeter and shall include: the overall width of the strip; the offset distances left and right of the alignment; and the length and direction of each straight and curved segment.

7.3.h.3.D. The body of a variable strip description shall include the same requirements as the perimeter method as set forth in subparagraph 7.3.h.2.C. of this subdivision, if applicable, and the calls shall describe the centerline or baseline alignment as set forth in subparagraph 7.3.h.3.C. of this subdivision, except any change in direction, significant point or event along either side of the strip shall be referenced by a station and offset distance along the alignment.

7.3.h.4. The perimeter or strip method being clause shall include whether it is the same as or part of an existing tract or the lot and block numbers for newly platted partitions or subdivisions; the reference to the document by which the current owner claims title, including the grantor and grantee or devisor and devisee, date and recording reference.

7.3.h.5. The being clause shall be followed by the name, license number, signature, date of signature and seal of the licensee in professional charge. The name of a Surveyor Intern preparing the description should be shown, if applicable. In cases where the description is shown on the plat a single certification will cover both the description and the plat.

7.3.i. The report of survey shall be used when the plat and the description of survey do not adequately address all matters considered by the surveyor in performing the survey and shall be attached to and made a part of the plat and description of survey and provided to the client. The report of survey shall include:

7.3.i.1. A summary of the research and the weight given to the significant documents;

7.3.i.2. The names of persons contacted and the information they supplied.

7.3.i.3. All unusual circumstances surrounding the survey, with weight being given to conflicting evidence and encroachments, overlaps or gaps and how they were resolved.

7.3.i.4. The name of the individual preparing the report and the name, address, license number, signature and seal of the surveyor in professional charge.

7.4. Minimum Standards for Mortgage or Loan Inspections

7.4.a. Mortgage inspections or loan inspections are subject to the general standards applicable to all surveys as set forth in subsection 7.2. of this rule, unless specified otherwise, but do not meet the definition or standards of a boundary survey and are exempt from the minimum standards for boundary survey as set forth in subsection 7.3. of this rule.

7.4.b. The licensee in professional charge, or designated representative, shall obtain recorded documentation that is sufficient to demonstrate a general knowledge of the subject property.

7.4.c. The field crew shall be provided with current information necessary to determine the property dimensions in the field and shall perform a search for existing property evidence and shall locate the property evidence, improvements, utilities and encroachments that fall within the definition of an inspection as set forth in section 2 of this rule as set forth by the Board.

7.4.d. A plat of the inspection shall be prepared and used in support of the certificate of mortgage inspection. The following items shall be shown and identified on the inspection plat:

7.4.d.1. A north arrow showing the meridian to be based on record or deed north;

7.4.d.2. A graphic scale shall be shown;

7.4.d.3. The evidence of property corners and lines found during the field survey and the property lines and the dimensions (directions and distances) shall be based on the description or plat on record and shall use the units of measurement specified therein;

7.4.d.4. Major improvements such as, but not limited to: residences, garages, outbuildings, barns, driveways, pools, porches and patios.

7.4.d.5. Location dimensions of the major improvements as they relate to the approximate location of the property lines shall be shown using: direction and distance to purported property corners; or by offset perpendicular to straight property lines; or by offset radial to curved property lines;

7.4.d.6. Apparent encroachments shall be noted, described and clearly shown;

7.4.d.7. Means of access shall be shown clearly and graphically, including shared access and shared driveways;

7.4.d.8. Platted and apparent easements shall be clearly identified, including the source of record information;

7.4.d.9. Platted setback lines shall be shown graphically;

7.4.d.10. Adjacent owner and record source shall be noted;

7.4.d.11. Physical address of the subject property, if available;

7.4.d.12. The statement "this is a mortgage inspection only, not a boundary survey" shall be clearly shown on the plat;

7.4.d.13. The name of the individual preparing the plat and the name, address, license number, signature and seal of the licensee in professional charge.

7.4.e. Flood plain certification, if required, is restricted to a review of the Flood Insurance Rate Map (FIRM) and shall not be construed as a confirmation or denial of flooding potential.

7.4.f. The surveyor must supply written notice to the landowner or other person commissioning his/her services that an inspection was performed and not a boundary survey.

7.4.g. Written legal descriptions shall not be prepared based on a mortgage inspection.

7.5. ALTA/ACSM Land Title Surveys, which are based on standards set by the American Land Title Association (ALTA) and the American Congress of Surveying and Mapping (ACSM), shall at a minimum comply with the minimum standards for a boundary survey as set forth in subsection 7.3. of this rule.

§23-5-8. Unethical Practices.

In addition to the reasons for suspension or revocation of a license set forth in WV Code §§30-1-1 et seq. or 30-13A-1 et seq., any licensee who has committed any of the following unethical practices may be subject to disciplinary action by the Board:

8.1. Failing or refusing to comply with any provision of WV Code §30-13A-1 et seq. or any rule promulgated by the Board or any request, order or final decision of the Board. For the purposes of this subsection:

8.1.a. If any licensee orders, counsels, encourages, incites, supports, helps, or assists another person to fail or refuse to comply with any statutory provision, rule, request, order or final decision; or,

8.1.b. After the failure or refusal, if a licensee helps or assists the other person to avoid detection of the failure or refusal, then the licensee is considered to have also failed or refused to comply;

8.2. Failing to respond within thirty (30) days to written communications from the Board and to make available any records relevant to an inquiry or complaint about the licensee's professional conduct. The thirty (30) day period begins on the date when the communication was sent by the Board by certified mail with return receipt requested to the last known address of the surveyor;

- 8.3. Accepting, paying, or offering to pay, either directly or indirectly, any gift, bribe, or other consideration to make an improper survey;
- 8.4. Associating with any survey project known by the licensee to be fraudulent or dishonest in character;
- 8.5. Reviewing the work of another surveyor for the same client, except with the knowledge of the surveyor, or unless the contractual relationship of the surveyor and the client has been terminated;
- 8.6. Using advertising that is false, fraudulent, deceptive, misleading or unlawful; or
- 8.7. Accepting and undertaking to perform survey services which the surveyor is not competent to perform without obtaining qualified associates, consultants or employees, or failing to directly supervise the work of subordinates in performing these services.

§23-5-9. Disciplinary Actions by the Board

- 9.1. The Board may at any time upon its own motion and shall upon the verified written complaint of any person conduct an investigation to determine whether there are any grounds for a disciplinary action relevant to a license issued under the provisions of WV Code §§ 30-1-1 et seq. or 30-13A-1 et seq. and the rules issued by the Board.
- 9.2. The Board may place on probation, suspend or revoke any license; may issue a letter of caution or reprimand, cease and desist order, settlement agreement, consent agreement and order, probable cause order, final or administrative order resulting from a formal hearing or other similar agreements and orders; may impose a fine not to exceed one thousand dollars (\$1,000.00) per infraction; may require additional education or training; or may impose any combination of these disciplinary actions, when it finds a licensee has:
- 9.2.a. Been convicted of a felony or a crime involving moral turpitude;
 - 9.2.b. Obtained a license by means of fraud or deceit;
 - 9.2.c. Been incompetent or guilty of fraud, deceit, professional negligence, willful departure from accepted standards of professional conduct or other misconduct in the practice of surveying; or
 - 9.2.d. Failed or refused to comply with the provisions of WV Code §30-13A-1 et seq. or any reasonable rule promulgated by the Board or any order or final decision of the Board.
- 9.3. Upon a final decision of the Board finding grounds for any disciplinary action, the Board may assess costs against the licensee for reimbursement of the costs of investigation, hearings and other administrative expenses relative to the complaint.
- 9.4. The Board shall also suspend or revoke any license if it finds the existence of any ground which would justify the denial of an application for the license if application were then being made for it.
- 9.4.a. Any suspension of a license continues for the period specified in the order of suspension.
 - 9.4.b. Revocation of a license shall not preclude application to reinstate his or her license and meeting all the licensing requirements in effect at the time of application. The Board shall process the application in the same manner, approve or deny the application and issue or refuse the license on the same grounds as any other application for a license is processed, considered and determined, except that any previous suspension and the revocation may be given weight in deciding whether to approve or deny the application and issue or refuse to issue the license as is meet and proper under all the circumstances.

9.5. Whenever the Board denies an application for any original or renewal license or suspends or revokes any license, it shall make and enter an order to that effect and serve a copy on the applicant or licensee, as the case may be, by certified mail, return receipt requested.

9.5.a. The order shall state the grounds for the action taken and shall require that any license suspended or revoked by the order shall be returned to the Board by the licensee within twenty (20) days after receipt of the order.

9.5.b. Any person adversely affected by any order is entitled to a hearing (as to all issues not excluded from the definition of a "contested case" as set forth in WV Code §29A-1-1 et seq.) if, within twenty (20) days after receipt of a copy, the applicant files with the Board a written demand for a hearing.

9.5.c. The Board may require the person demanding the hearing to give reasonable security for costs and if the person does not substantially prevail at the hearing costs shall be assessed against the person and may be collected by an action at law or other proper remedy.

§23-5-10. Judicial Review

10.1. Any person adversely affected by a decision of the Board rendered after a hearing held in accordance with this rule and the Board's Rule, Disciplinary and Complaint Procedures for Professional Surveyors, 23 CSR 3, is entitled to judicial review of the decision. All of the pertinent provisions of WV Code §29A-5-4 apply to and govern judicial review.

10.2. The judgment of the circuit court is final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of WV Code §29A-6-1.

10.3. Legal counsel and services for the Board in all appeal proceedings in any circuit court and the supreme court of appeals shall be provided by the attorney general or his or her assistants and in any circuit court by the prosecuting attorney of the county as well, all without additional compensation.

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 27, 2007

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) WV Board of Professional Surveyors
P. O. Box 390
Flatwoods, WV 26621-0390
304-765-0315

LEGISLATIVE RULE TITLE: 23 CSR 5: Standards for Practice of Surveying in
West Virginia

1. Authorizing statute(s) citation 30-13A-5
2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 7, 2007
- b. What other notice, including advertising, did you give of the hearing?
All licensees were notified by mail on May 25, 2007 of the proposed rule changes and the public hearing scheduled for July 9, 2007.
- c. Date of Public Hearing(s) *or* Public Comment Period ended:
July 9, 2007
- d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.
- Attached x No comments received _____

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 27, 2007

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all written correspondence regarding this rule: (Please type)

Marilee Bright, Board Administrator
WV Board of Professional Surveyors
P. O. Box 390

Flatwoods, WV 26621

Phone: 304-765-0315, Fax 304-765-0316, e-mail: wvbps@mail.state.wv.us

- g. **IF DIFFERENT FROM ITEM 'f',** please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

Mark Hornish, Board Member

(See f. above)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

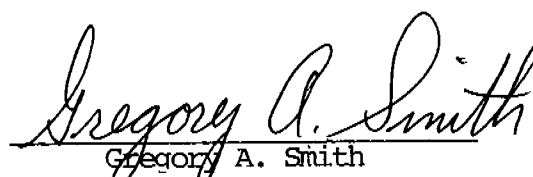
- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

b. Date of hearing or comment period:

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached



Gregory A. Smith
Chairman

CHAIRMAN
Gregory A. Smith

SECRETARY
Leon K. Spencer

Mark H. Hornish Roy E. Shrewsbury, II Anthony J. Sparacino, Jr.

STATE OF WEST VIRGINIA
BOARD OF PROFESSIONAL SURVEYORS
Mailing address: P. O. Box 390, Flatwoods, West Virginia 26621-0390
Courier address: 2298 Sutton Lane, Flatwoods, West Virginia 26621
Telephone (304) 765-0315 Fax (304) 765-0316
wvbps@mail.state.wv.us



WVBPS RESPONSE TO PUBLIC COMMENTS

23 CSR SERIES 1, 4 AND 5

Introduction

The West Virginia Board of Professional Surveyors (WVBPS or Board) held a public hearing on July 9, 2007 at the Days Hotel located in Flatwoods, WV, regarding the proposed rule changes to 23 CSR Series 1 and the addition of Series 4 and 5 as filed in the Secretary of State's Office on June 7, 2007. Those in attendance were: Gregory A. Smith, P.S., WVBPS Chairman; Mark H. Hornish, P.S., WVBPS Member; J. Marilee Bright, WVBPS Board Administrator; S. Pat Roberts, P.S., President of the West Virginia Society of Professional Surveyors (WVSPS); John L. Green, P.S., WVSPS Legislative Committee Chair; Donald Teter, P.S., WVSPS and personally; Allen Witschi, P.S., WVSPS and personally; Lantz Rankin, P.S., personally; and Senator David Sybolt, P.S., personally.

The WVBPS also received written comments from the West Virginia Society of Professional Surveyors (WVSPS or Society) dated July 4, 2007 (received July 6th), Senator David C. Sybolt, P.S. dated July 9, 2007 (received the same day), and Donald L. Teter, P.S. dated July 9, 2007 (received the same day), which are attached to this response.

Knud Hermansen, Ph.D., is a nationally known attorney, professional engineer and professional surveyor licensed in several states. He is currently a professor of surveying technology at the University of Maine and operates a consulting firm. He has also authored several books on surveying. He submitted comments on the proposed rules to the Board at its request on May 19, 2007.

Several changes have been made since the initial submittal in June, 2007. Some of the subsection, subdivisions, etc., in the agency approved rules have been renumbered to accommodate the changes proposed in the written statements or comments made at the public hearing. The Board has made a diligent attempt to correlate the comments in its response with the numbering changes but may not have caught them all. We apologize ahead of time for any oversights.

Public Comments and WVBPS Response

SERIES 1 - EXAMINATION AND LICENSING OF PROFESSIONAL SURVEYORS

23-1-1.1. – The Society’s comment about making a reference to the “Board” seems reasonable and the Board is willing to make this change if it will bring clarity to the rule. The same change was made to Series 4 and 5.

23-1-1.5. – The Society’s comment appears to be redundant since the purpose clearly states that it is for “qualifying for examination, licensing and endorsing of Professional Surveyors ...” The Board does not recommend this change because the original wording was prepared by Doren Burrell, the former Attorney General (AG) Representative for the Board. The Board recommends this remain unchanged.

23-1-2.9. – The Society’s comment about “Expired status” is correct regarding the WV Code. However, it has been the longstanding practice of the Board to renew or reinstate the original license number of an expired license rather than issue a “new” license number. It would be an administrative nightmare to manage multiple license numbers for a single licensee. The Board does not believe this policy conflicts with the WV Code but brings clarification to existing policy. The Board recommends this remain unchanged.

23-1-2.10. – The Society’s comment about the License definition is correct in that the Board will be issuing a wallet card and license suitable for display. The license will be displayed at the principal place of practice in compliance with WV Code §30-13A-18 and the wallet card is a convenient way to verify the licensee’s active status if needed. The license and wallet card are printed in-house and are processed simultaneously through the licensee data base. The additional costs are very minimal. The Board recommends this remain unchanged.

23-1-2.16. – Mr. Witschi’s comment about the retired status definition is noted and the last sentence has been deleted.

23-1-3.1.d. – The Society’s comment has been noted and the word “shall” has been substituted for “should.”

23-1-3.4.a.2. – Senator Sypolt’s “Objection 1” regarding the letter of intent has been noted. However, the Board has determined, along with the Attorney General’s office, that WV Code §30-13A-8(a)(1)(D) does not specify December 31, 2004 as a deadline for notification by an applicant. This paragraph states that a person who has begun but not completed one of the education, experience or examination requirements prior to December 31, 2004 must notify the Board that he or she is applying for licensure under this subdivision. It places no time limit on when the notification is to occur. The paragraph in this rule will require a letter of intent to be submitted before an application will be considered complete and subject to review. The Board recommends this paragraph remain unchanged. “Objection 2” is noted and has been changed accordingly.

23-1-3.4.a.4. – The Society’s comment has been noted and the paragraph has been changed to 23-1-3.4.a.3.

23-1-3.4.b.1. – Senator Sybolt’s “Objection 1” and “Objection 2” about “WV Code” are noted and have been changed accordingly.

23-1-3.4.c.3. – Senator Sybolt commented during the public hearing (page 16 of the transcript) there was no provision made for an individual with a 2-year degree with more than ten (10) credit hours of surveying to receive an experience equivalent. The Board admitted this was an oversight. The following sentence replaces this paragraph and the “no degree” equivalent was moved to paragraph 3.4.c.5., “Associate degree with at least ten (10) credit hours in surveying courses may be substituted for one (1) year experience.” The Board recommends this paragraph be changed accordingly.

23-1-3.4.c.5. – The Society’s comment about lack of a surveying specific certificate degree is noted. This term would be difficult to define because of the numerous courses available and there is no practical way to pre-evaluate or pre-approve these courses. The only fair way to evaluate a course of this nature is on a case-by-case basis. The matter is insignificant since the amount of experience credit is minimal. The Board recommends no change.

23-1-3.4.c.6. – The Society’s comment about lack of a related technical certificate degree is noted and the response for 23-1-3.4.c.5. is applicable here as well.

23-1-3.6.b. – The Society’s comment about comity applicants is not applicable to this paragraph since this subsection applies to PS licensure under this jurisdiction. Comity applicants are covered in subsection 3.7. The Board recommends no change.

23-1-3.8.a. – The Society’s comment about expired licenses is noted but is not applicable to long standing policy of the Board. Please see the Board’s response under 23-1-2.9.

23-1-5.2.a. – The Society’s comment about the SI certificate is redundant since this subdivision falls under the subsection “Survey Intern Certificates.” The Board recommends no change.

23-1-5.2.f.1. – The Society’s comment about not providing for extenuating circumstances is not correct. Under “Applications Generally” in subsection 3.1. the extenuating circumstances are defined in subdivision 3.1.g. and apply to all applicants. The Board recommends no change.

23-1-5.2.f.2. – The Society’s comment about not providing for extenuating circumstances is not correct. Please refer to the Board’s prior response to 23-1-5.2.f.1.

23-1-5.3.c. – The Society’s comment about the wallet size license would be in conflict with WV Code §30-13A-18. Please refer to the Board’s prior response to 23-1-2.10.

23-1-5.3.d. – The Society’s comment about the validity of this subdivision is noted. The Board recently attended an Auditor’s training which covered file storage and retention schedules. WV Code 30-1 et seq. requires this type of policy. The Board believes it is important to have a written statement in this rule regarding the manner in which licensee files are maintained and stored and recommends no change.

23-1-5.5.c. – The Society’s comment about the conflict with WV Code §30-13A-15(d) is again noted. Please refer to the Board’s prior response to 23-1-2.9. The Board recommends no change.

23-1-5.5.d. – Senator Sypolt’s “Objection 1” regarding the renewal fee being the same for active and inactive status is noted. Mr. Smith explained during the public hearing the processing and overhead costs are the same for both. A licensee can switch from inactive to active status at any time during the year at no additional cost. The fee for inactive status is waived for military deployment and at the Board’s discretion when the licensee requests a waiver due to extenuating circumstances. Precedent has been established by other boards regarding their rules covering inactive status, while at least one board has abolished inactive status. The Board recommends this paragraph remain unchanged.

23-1-5.5.d.4. – The Society’s and Mr. Teter’s comments and Senator Sypolt’s “Objection 1” regarding the word “acquire” and having an incomplete thought in this paragraph have been noted and corrected by removing the strike-through in the words “acquire PDHs for.”

23-1-5.5.e. – Mr. Witschi’s comments during the public hearing and written statement about Retired Status have been noted. The Board has reformatted this subdivision and made some of the changes but has decided not to offer an early retirement option. After researching the subject, none of the boards offer an early retirement option. The Board, after much deliberation, recommends the following: increase the retirement age from sixty-two (62) to sixty-five (65) to stay consistent with the age limit set by the architecture board; allow limited use of the honorific title “retired;” and keep the exception for licensees experiencing a debilitating illness or long-term disability. The Board recommends this subdivision be changed accordingly.

SERIES 4 – FEES FOR SURVEYORS AND SURVEYING FIRMS

23-4-1.1. – The Society's comment regarding referring to the "Board" (see Series 1 comment) is noted. Also, the word "Services" is a typographical error and has been replaced with "Surveyors." The Board recommends the subsection be changed accordingly.

23-4-1.5. – The Society's comment regarding endorsement has been noted. However, the Board believes this subsection is accurate as stated and recommends no change. Endorsements are applicable to Professional Surveyors, not applicants for licensure.

23-4-2 – The Society's and Senator Sypolt's comments are noted and the section number has been changed from 23-5-2 to 23-4-2.

23-4-2.3. – The Society's comment regarding the COA Late Fee is noted and the last sentence has been removed from this subsection.

23-4-2.4. – The Society's comment regarding the Endorsement Late Fee is noted. However, the Board recommends this subsection be deleted entirely because renewal fees do not apply to endorsements. All subsequent subsections have been renumbered accordingly.

23-4-2.5. – The Society's comment regarding the Failure to Respond Fee is noted. The amount of this fee is necessary due to the excessive costs associated with licensees who fail to respond in a timely manner. Typically, a licensee who ignores a Board request will do so repeatedly. The time limit for complaints imposed by the legislature makes it necessary to keep complaints flowing in a timely manner. Comments during the public hearing pointed out some confusion about naming this a Failure to Respond Fee and suggested it be renamed something on the order of a re-notification fee. The Board recommends this subsection remain unchanged with the exception of renaming this definition to "Re-Notification Fee" and renumbering the subsection as previously noted.

23-4-2.10. – The Society's comment regarding the PS License Late Fee is noted and has been changed to insert "PS license" and delete the last sentence about the rate. The numbering for this subsection has been changed as previously noted.

23-4-2.11. – The Society's comment regarding the Returned Check is noted and has been changed to Returned Check Fee in the definition and the Section 23-4-4, Fee Schedule. The numbering for this subsection has been changed as previously noted.

23-4-4. – The Society's comment regarding the Special Supervision Application Fee is noted. Special supervision is when a licensee is granted permission by the Board to supervise an individual who is not an employee of the licensee or employed by the same firm as the licensee. This type of supervision is needed on a limited basis and was implemented to benefit those seeking licensure but were lacking boundary experience. Many problems have surfaced in the past when licensees did not provide accountability to those working under their charge. The result has been "rubber stamping" of shoddy work. Currently, there is one special supervision relationship approved in the state over the past three (3) years. Licensees that enter into a supervisory relationship with an individual must understand their responsibility and prove to the Board it is necessary. The fee is not unrealistic when

compared to past history of the charges paid to the licensee by the supervisee for certifying the survey documents.

The second comment by the Society about raising the fees every year is simply not true. The last time fees were increased was in 2005 when the words "not to exceed" were removed during legislative action to standardize wording on a rule revision. The current PS license fee increase will not be in effect until July 1, 2009. Obviously, there are some members of the Society that do not have a problem with the proposed fee increases. The Board recommends the fee schedule remain unchanged.

Senator Sypolt's "Objection 1" regarding the fee for inactive status is noted. Please refer to the Board's prior response under 23-1-5.5.d. The Board recommends the inactive fee remain the same.

Senator Sypolt's "Objection 2" regarding the certificate of authorization fees is noted. The fee structure is designed to assess the fees in a more equitable way. The current structure treats everyone the same, whether there are five hundred (500) employees or five (5). The majority of the surveying firms are fifty (50) employees or less. The Senator's proposal would reduce the current revenues and produce a shortfall in the budget. The Board recommends the fee structure and amounts remain unchanged.

The Board edited the Late Fees to be "20% per month or portion thereof" in response to the aforesaid changes in the definitions.

- 23-4-5. – The Society's comment regarding the assessment of administrative costs is noted. There are circumstances in which the Board assesses administrative costs without issuing a final administrative order as a result of a formal hearing as set forth in WV Code §30-13A-29. The Board enters into consent agreements and orders, settlement agreements, etc., with licensees that include administrative costs as part of the agreement between the Board and the licensee. These orders are an expeditious and efficient way to resolve or dispose of complaints. These receipts apply directly to the licensee who is involved in the complaint and help to keep other fees from rising.

SERIES 5 – STANDARDS FOR THE PRACTICE OF SURVEYING

- 23-5-1.1. – The Society's comment regarding referring to the "Board" (see Series 1 comment) is noted and has been changed accordingly.
- 23-5-2.1. – The definition of boundary survey was discussed during the public hearing regarding the terms easement versus right-of-way. Out of that discussion it was mentioned that Dr. Hermansen suggested to the Board the addition of the words "surface and mineral." There was also a discussion about partial versus complete surveys. As a result, this definition has been revised as follows, "Boundary survey' means a surface or subsurface survey, in whole or in part, in which the property and easement lines ..." The Board recommends this definition be changed accordingly.
- 23-5-2.3. – The Society's comment about the endorsement definition is noted. This definition is not inconsistent with the WV Code §30-13A-2(k) and provides for the addition of other endorsements. The Board recommends this subsection remain unchanged.
- 23-5-2.5. – The Society's comment about the definition for incompetence is noted. This definition is new but this has been an accepted understanding of incompetence for a long time. The Board recommends this subsection remain unchanged.
- 23-5-2.6. (formerly 2.4.) – The Society's comment about the definition for inspection is noted. Please refer to the Board's response to 23-5-2.8.
- 23-5-2.7. (formerly 2.5.) – The Society's comment about the definition for loan inspection is noted. Please refer to the Board's response to 23-5-2.8.
- 23-5-2.8. (formerly 2.6.) – The Society's comment about the definition for mortgage inspection is noted. Please refer to the 23-5-7.3.h. and 23-5-7.4.a. response contained herein for more information on this topic. The Board recommends this subsection remain unchanged in order to differentiate between this type of survey and a boundary survey and help to put the public on notice.
- 23-5-2.11. – Mr. Teter's comment about the definition of an ownership line is noted. This definition was supplied by Dr. Knud Hermansen, who is both a surveyor and an attorney. The initial definition was an error by the Board. The Board does not believe Dr. Hermansen intended for surveyors to certify good marketable title but to understand the difference between an ownership line and a record line, for example. During the public hearing, this issue was discussed at length and the general agreement was to use the phrase, "... supported by documents of public record" rather than "... supported by good marketable title." The Board has revised this definition and recommends it be changed accordingly.
- 23-5-2.15. – The Society's comment about the definition for unlicensed practice is noted. This subsection has been revised as follows, "Unlicensed practice means the unlawful practice of surveying as set forth in 30-13A-32 by a person or firm who has not obtained a license, ..." The Board recommends this subsection be changed accordingly.

23-5-3.1.b. – The Society’s comment about adding the surveyor-in-charge to this subdivision is noted and has been changed to add “designated as the surveyor-in-charge ...” The Board recommends this subdivision be changed accordingly.

23-5-3.2.b. – The Society’s comment about professional limited liability companies is noted. This wording has not changed from the original language and is consistent with the Secretary of State’s requirements. The Board recommends this subdivision remain unchanged.

23-5-4. – Senator Sypolt’s and Mr. Teter’s comments about the section syntax is noted and has been changed accordingly.

23-5-4.2. – The Society’s comment about the new seal is noted. The designation requirement in WV Code §30-13A-19(b) is still in effect. If more endorsements are added in the future then it would be impracticable to expect all endorsements to be noted on the seal. This change is to keep this proposed rule from being in conflict with a future change. See the response for 4.2.c.9. below for more information. The Board recommends this subdivision remain unchanged.

23-5-4.2.b. – Senator Sypolt’s “Objection 1” and Mr. Teter’s comment about accepting existing seals are noted. The Board does not expect licensees to replace their existing seals as long as they generally meet the prior formatting standards and they comply with all the requirements as set forth in WV Code §30-13A-19(a). The Board recommends the wording in this subdivision be replaced with the following, “All seals made on or after the effective date of this rule shall comply with the format and size standards and as a minimum the quality standards as set forth in subdivision 4.2.c. of this rule. A prior seal will be legitimate after the effective date of this rule if it complies with all seal requirements as set forth in WV Code §30-13A-19(a) and generally meets the formatting standards that preceded the effective date of this rule.”

23-5-4.2.c.9. – Senator Sypolt’s “Objection 1” and the Society’s comment about the endorsement designation are noted. The designation requirement for an endorsement remains in effect as set forth in WV Code §30-13A-19(b). Technological advancements may necessitate other endorsements be added in the future. It would be impracticable to expect a licensee with multiple endorsements to add each of them to the seal. This omission will prevent this proposed rule from being in conflict with any future changes to the code in this regard. The Board recommends this paragraph remain unchanged.

23-5-4.2.d. – Senator Sypolt’s “Objection 1” about accepting the existing seals is noted. Please refer to the Board’s response under 23 CSR 5-4.2.b.

23-5-4.3.a.1. – Senator Sypolt’s “Objection 1” and the Society’s and Mr. Teter’s comments about changing the word “an” to “as” is noted and has been changed accordingly.

23-5-4.3.a.2. – Senator Sypolt’s “Objection 1” about the embossing type seal is noted. An embossed seal on a survey document can be made more evident using several different methods of shading. Only certified survey documents should be recorded. If the seal is not

evident on the document, it should not be recorded. The board recommends this subdivision remain unchanged.

23-5-4.3.b.1. – The Society’s comment about a specific technical field is noted. This wording has not been changed from the original language. The fact is testing is required for licensees before they can be authorized to survey on the surface and underground. In addition, licensees are tested by government agencies before they are approved to perform certain work in a specified field of expertise. The Board recommends this paragraph remain unchanged.

23-5-4.3.c.5. – The Society’s comment about remote supervision is noted. Remote supervision is not special supervision. It is the direct supervision of an employee of the licensee or an individual employed by the same firm as the licensee that may not work at the same base location as the licensee but is within reasonable working distance of the licensee’s base. A similar definition has been added to subsection 2 of this rule. The Board recommends this paragraph remain unchanged.

23-5-4.3.e. – The Society’s comment about the electronic transmission of digital seals is noted. The intent of this subsection is to prohibit the electronic transmission of a previously certified survey document unless the electronic seal has been removed and the statement confirming the prior certification added. This will minimize the possibility of forgery or the illegal use of a seal by someone other than the licensee. The second sentence of this subdivision has been revised as follows, “Certified survey documents may be transmitted electronically but shall have the digital seal, if any, removed before transmitting and shall have the following inserted in lieu of the signature and date: ...” The Board recommends this subdivision be changed accordingly.

23-5-4.3.f. (now 4.3.h) – The Society’s comment about initialing revised documents prior to recording and the numbering error is noted. This paragraph is not intended to overstep authority but give the licensee guidance in regards to altered survey documents and is in agreement with WV Code §30-13A-24. The Board recommends this paragraph remain unchanged with the exception of the numbering error.

23-5-4.3.g. (now 4.3.i) – The Society’s comment about the numbering error is noted. The Board recommends this paragraph be changed accordingly.

23-5-5. – The Society’s comments about special supervision is noted. Special supervision is not a new policy and has been in effect in its current form since 2002. Licensees were required to annually report the names of those individuals they were supervising that were not their employees nor employed by the same firm prior to that time. It is a unique relationship between a licensee and the one he or she is mentoring. The purpose is to allow a licensee to sign and seal the work of a person seeking licensure but is unable to gain the required boundary experience at their current place of employment. It also stresses the importance of the licensee to provide proper supervision when they are not able to directly supervise the work. In addition, it deters “moonlighting” and “rubber stamping” which have proven to be harmful to the public. The proposed fee is not unrealistic and should help to place significance on this type of application. The Board is fully aware of the fact that this rule

will not eliminate shoddy, unprofessional supervision. The definitions for employee” and “special supervision” have been added and the rule has been revised accordingly. The Board recommends the addition of the aforementioned definitions to Section 2 and the revisions in Section 5.

23-5-5.3. (now 5.5.) – The Society’s comments about the supervision allowance is noted. A response to the majority of the comments is unnecessary since the title of this subsection is “Special Supervision by Licensees.” This subdivision was added as a result of a comment by Dr. Hermansen, who is a surveying instructor. The Board is not trying to expand our jurisdiction to include educational institutions and such. However, many instructors and workshop providers are licensees of this Board and this subdivision clarifies their role and releases them from any undue burden while providing a vital service to the surveying community. The Board recommends this remain unchanged.

23-5-6.1.d. – Mr. Teter’s comment about relevant and pertinent information is noted. The last sentence has been deleted. The Board recommends this subdivision be changed accordingly.

23-5-6.1.h. – The Society’s comment about public statements is noted. The Board believes the subdivision speaks for itself and recommends it remain unchanged.

23-5-6.2.c. – Senator Sypolt’s “Objection 1” and the Society’s and Mr. Teter’ comments are noted. The Board acknowledges the Senator’s objection and has agreed to change the word “shall” to “should.” This change was also agreed to during a meeting with the Society last April and was overlooked. This rule is based on a similar, more general rule approved by the National Council of Examiners for Engineering and Surveying (NCEES) and included in their most recent version of the Model Rules. The fact is some licensees have disseminated information after their client has requested them to keep the information confidential. The result brings harm to the public, encourages unnecessary litigation and exposes the licensee to needless liability. This rule will not eliminate the possibility of sharing information if the licensee informs their client ahead of time. This change should soften the impact of this rule and inform the licensees they do not have exclusive rights to information generated for and paid by his or her client. The Board recommends this subdivision remain unchanged except for the change from “shall” to “should.”

23-5-6.2.d. – The Society’s comments about delivering certified survey documents to the client is noted. The Board recommends to word “delivered” be changed to “provide.”

23-5-6.2.f. – The Society’s comments about accepting compensation is noted. The purpose of this rule is to make sure the right hand knows what the left hand is doing and not to control information. This is an integrity issue pertaining to payment of services, not payment of information under the heading of “Licensee’s Obligation to Profession, Clients and Employer.” This subdivision has been revised to read as follows: “Licensees shall not accept compensation, financial or otherwise, from more than one party for services while working on the same project, ...” For clarification purposes, the Board recommends the subdivision be changed accordingly.

23-5-6.3.c. – The Society’s comments about “the Board attempts now to control our speech” is noted. The first portion of this subdivision is verbatim the NCEES Model Rules, revised August 2005. The last statement, “or deter third persons from associating or dealing with the licensee” is verbatim the existing 23 CSR 1-7.6. and has been approved by prior Boards and the Legislature since 1991. The remainder of subsection 7.6. was removed from the proposed rule because it was a duplication of the wording in the Model Rule. The Society’s comment implies the last statement is something new and the Board is trying to usurp authority and this is simply not true. The precedent for this statement is well established and it complies with the accepted standard of practice in the surveying profession. The standard across professional boundaries is the exercise of discipline and self-control when a professional speaks about another professional and their comments should be objective and factual. This statement is important in cases where a licensee has made statements against another professional for the purpose of elevating their professional status or gaining financially. This subdivision has been reviewed by the Board’s AG representatives, Doren Burrell, Barry Koerber and Jake Wegman, for legal content. The Board recommends it remain unchanged.

23-5-7.2.d. (now 7.2.e.) – The Society’s comments about the word “foot” is noted. The phrase has been added, “... reported in feet, based on the United States standard, or meters...” Upon the Board’s discretion, this subdivision has also been modified to require distances and areas to be reported on a horizontal plane and an exception granted for curved boundary lines to report a general direction of the arc rather than a specific direction of degrees, or parts thereof, and have created paragraphs to differentiate between the distance and direction requirements. The Board recommends this subdivision be changed accordingly.

23-5-7.3.e. – The Society’s and Mr. Teter’s comments about monumentation are noted. The Board felt it was necessary to reformat this subdivision based on the comments. The proposed rule was based on comments made by Dr. Hermansen. In reference to the Society’s comment, “located by current technology” means being able to recover existing monuments using a metal detector, magnetic locator or some other device. This is very important for other licensees and third parties attempting to recover these monuments. The word “future” is added. The Board recommends the new wording be approved.

Mr. Teter’s concern requiring the name of the licensee is noted. The Board agrees the purpose of monument identification is to allow a third party to locate the licensee responsible for setting the monument and the name is not the only means to do so. The Board has revised the rule to reflect the intent and recommends the new wording be approved.

23-5-7.3.e.1. – Mr. Teter’s comments about adding the words “when feasible” is noted. The Board agrees with his comment and recommends the wording be added to the rule.

23-5-7.3.e.2. – Mr. Teter’s comments about adding the words “when feasible” is noted. The Board agrees with his comment and recommends the wording be added to the rule.

23-5-7.3.f. – The Society’s comments about area precision is noted. This subdivision is based on comments provided by Dr. Hermansen. The term “accepted standards of practice” is found throughout the WV Code and rules and means the prevailing standards of the profession

established by recognized sources and experts in the surveying profession which are not specifically noted in the WV Code or rules. The proposed wording is specific to reporting the area and gives more latitude to the licensee in professional charge by allowing the needs of the client to be considered while maintaining the standards of practice. The Board recommends this subdivision remain unchanged.

23-5-7.3.g. – Senator Sypolt’s “Objection 1” and the Society’s comments about the requirement of the plat and closure standards are noted. The Board agrees there are justifiable circumstances in which a plat should not be required. However, the client does not have the right to override other sections of the WV Code, Board rules or regulations established by a government agency. Each licensee has the responsibility to meet the standards for angular and distance closure and the Board is not going to systematically perform mathematical checks of the calls on a plat for compliance unless there are extenuating circumstances. The Senator’s objection about clarification of the intent is also noted. The intent of this subdivision is to recognize the fact that a client has legal grounds to prohibit a plat in a contract as set forth in WV Code §30-13A-26(j) as long as it is not precluded elsewhere. For clarification purposes the wording in the third sentence has been changed to read as follows, “The client may prohibit a plat in the contract unless a plat is required by law, rule or regulation.” The Board recommends this subdivision be changed as noted.

23-5-7.3.g.3. – Mr. Teter’s comment about “the name and location of creeks, streams, etc.” is noted. The word “any” has been replaced with the word “significant.” The Board recommends this paragraph be changed as noted.

23-5-7.3.g.4. – The Society’s comment about a curved boundary line on a plat is noted. The subdivision has been revised to include the requirement of the bearing and distance of the long chord and at least two other elements of the curve. The Board recommends this paragraph be changed as noted.

23-5-7.3.g.6. – Senator Sypolt’s “Objection 1” and Mr. Teter’s comment about the “fd” abbreviation are noted. The Board agrees and recommends it be stricken from this paragraph.

23-5-7.3.g.14. – The Society’s comments about the scale of the plat is noted. Paragraph 7.3.g.15. has been renumbered to 7.3.g.16. and replaced with, “A written or graphical scale, or both.” The Board recommends paragraph 7.3.g.15. be renumbered to 7.3.g.16. and be replaced as noted.

23-5-7.3.h. – Senator Sypolt’s “Objection 1” and the Society’s comments about an exception for preparing a description are noted. The Board agrees with the Senator in that an exception for a description is justified and under certain circumstances does not benefit the public. However, there is no exception in the WV Code for doing so as there is for a plat. During the public hearing, there was some discussion about an interpretive rule to possibly resolve this inconsistency. The Society’s comment about inserting the words “except mortgage inspection surveys” is noted. According to the Board’s records, this was discussed but not agreed upon. Subdivision 7.4.g. of this rule clearly states that descriptions shall not be prepared based on a mortgage inspection. The Board wants to draw a clear line between a

boundary survey and a mortgage inspection because the public is constantly mistaking an inspection for a boundary survey. Placing that statement in this section could cause that line to become fuzzy. The Board recommends this subdivision remain unchanged other than the inclusion of a strip description as noted below.

- 23-5-7.3.h.1. (now 7.3.h.2.B.) – Mr. Teter’s comment about the word “type” is noted. Type refers to whether it is a tract or parcel or land, a strip easement or parcel of land, a lot in a subdivision, etc. In order to avoid confusion, the phrase “the type of parcel or lot being described;” has been stricken. The Board recommends this subdivision be changed accordingly.
- 23-5-7.3.h.2. (now 7.3.h.2.C.) – The Society’s comments about the requirement for licensee or firm name, line length requirement, curve elements on the plat and the addition of strip descriptions are noted. The name requirement is valid whether the description is a separate document or incorporated onto the plat. See paragraph 7.3.h.4. for additional comments. The Board has added a statement about the arc element requirements in the subsection 7.2., general standards, of this rule. A curved line now requires a general direction such as “southeasterly” or “northerly” as revised in subdivision 7.2.d. of this rule. The long chord requirement will maintain consistency with the plat requirements as revised in paragraph 7.3.g.4. of this rule. Subdivision 7.3.h. has been edited and reformatted to reflect the Society’s comments. The Board recommends the aforementioned changes be approved.

Mr. Teter’s comment about attaching the description to the plat or report is noted. The Board sees a definite need to have minimum standards for descriptions. Both documents are necessary to depict the results of a survey. The general public should expect a description to contain specific information that is presented in a accepted logical format. Experts in the field of surveying, including F. Henry Sipe in his book *Compass Land Surveying*, used this same format. Word processors make this change a simple one. Standardization eases the process of locating detailed information for everyone and that standard should be set by surveyors. The Board recommends this portion of the subdivision remain unchanged.

- 23-5-7.3.h.2.a. (now 7.3.h.) – The Society’s comments about strip descriptions are noted. Subdivision 7.3.h. has been edited to reflect the comments. The Board recommends this subdivision be changed accordingly.
- 23-5-7.3.h.2.a.1. (now 7.3.h.3.) – The Society’s comments about “uniform” strips are noted. Paragraph 7.3.h.3. has been added to reflect the comments. The Board recommends this subparagraph be added.
- 23-5-7.3.h.2.a.2 (now 7.3.h.3.). – The Society’s comments about “irregular” strips are noted. Paragraph 7.3.h.3. has been added to reflect the comments. The Board recommends this paragraph be added.
- 23-5-7.3.h.4. (now 7.3.h.5.) – The Society’s comments about this subdivision is noted. This subdivision describes what is required when a licensee certifies the description as a separate document. If the description is shown on the plat then the certification on the plat will also cover the description. This sentence has been added to clarify this point, “In cases where the

description is shown on the plat a single certification will cover both the description and the plat.” The Board recommends the aforementioned changes be approved.

23-5-7.3.i.1. – Mr. Teter’s comments about documentation of the research are noted. The wording has been revised as follows, “A summary of the research and the weight given to the significant documents.” The Board recommends this paragraph be changed accordingly.

23-5-7.4.a. – The Society’s comments about mortgage inspections are noted. The proposed minimum standards are based on a report submitted to the Board in 2001 and prepared by the Society. As stated earlier, the public will pay for an inspection thinking they are getting a boundary survey. The current minimum standard in WV Code §30-13A-26(p) requires a mortgage inspection plat must be stamped “a mortgage inspection survey only, not a boundary survey.” There is an established precedent to differentiate between two. Many administrative boards in other states, such as Kentucky and Ohio, have minimum standards for these types of surveys and were reviewed when preparing subdivision 7.4. The Board recommends this subsection remain unchanged unless otherwise specified below.

23-5-7.4.d.4. – Senator Sypolt’s “Objection 1” about a minimum of 2 dimensions is noted. The last sentence has been stricken from this paragraph based on the discussion at the public hearing. The Board recommends this change be approved.

23-5-7.4.d.5. – Mr. Teter’s comments about the location dimensions are noted. The first sentence has been revised as follows, “Location dimensions of the major improvements as they relate to the approximate location of the property lines shall be shown using ...” The Board recommends this paragraph be changed accordingly.

23-5-7.4.g. – The Society’s and Mr. Teter’s comments about descriptions written from mortgage inspections are noted. This subdivision has been revised to read as follows, “Written legal descriptions shall not be prepared based on a mortgage inspection.” The Board recommends this subdivision be changed accordingly.

23-5-9.4.b. – Senator Sypolt’s “Objection 1” about the phrase meet and proper is noted. Marilee Bright, the Board Administrator, assured everyone it was not a typographical error. This wording has remained unchanged since the 1991 revision. The Board recommends this subdivision remain unchanged.

23-5-9.5.b. – The Society’s comments about the automatic stay is noted. This subdivision as written does not take away the licensee’s due process and was recommended by our AG representative, Jake Wegman. As stated by the Society, the licensee still has the right to submit a motion to stay an order. According to Mr. Wegman, the other administrative boards are not encumbered by this type of restriction. The Board recommends this subdivision remain unchanged.

WVBPS General Comments

Senator Sypolt's comment about properly citing the WV Code is noted and has been changed in all series of the rules.

It is the opinion of this Board the rules, as submitted, will make the rule-making process more efficient and effective in the future. Surveying is a profession that is changing almost on a daily basis. The demand for accurate mapping tied to global and local networks is on the rise. Licensing boards in other states are setting the standard for what surveying will become in the future. West Virginia must keep its professionals in stride with the national standards and trends.

The Society made several accusations about the Board stepping over our jurisdictional boundaries and usurping authority. These claims are simply not true. The Board has developed policies and procedures over the years that have never been set out in rules. This is an attempt to do so and answer the questions the members and staff get asked on a daily basis. The Board admits there are some changes and enhancements but the goal is to improve the practice of surveying, not to impose more restrictions.

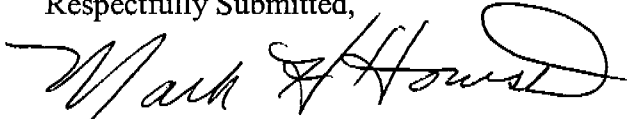
There has been controversy surrounding the idea of moving the minimum standards from the WV Code to the rules. In the mid-1990's, the Society pressed the Board for rules regarding minimum standards. The Board at that time did not agree and refused to have them written or submitted. The Society succeeded in getting WV Code §30-13A revised to include the basis of the minimum standards we have today. Senator Sypolt and Chairman Smith provided sound reasoning at the public hearing and explained why this change is necessary at this time. A few years ago the Government Organization Committee Counsel made the same recommendation to the Board and this in part is an attempt to comply with that request. Minimum standards are technical in nature and should be reviewed by an assigned committee rather than on the floor of the legislature. The Society and the public will have a greater voice in the rule-making process as a result. After much debate it appears that those within the Society who understand the legislative process are in agreement with the proposed changes.

The Society members present at the public hearing had the general opinion that the rules are much more palatable than they were a year and a half ago. However, they also claim the general membership would not approve these rules in their edited form if it went to a vote. At the same time those members of the Society that have been directly involved in the process, the ones that have hands-on knowledge, agree they have no reason to oppose them. The Board has been diligent to present to the legislature sound, workable rules that will provide protection and promote the public welfare.

The Board has worked with the Society since the initial submittal in 2006 to present an improved set of rules to the legislature. There are currently about 1,000 licensees in active status. The Society represents about one-third (1/3) of the total licensee population. The Board attended the last two annual conventions of the Society with attendance of about 350 people each year. The Board was provided the opportunity to discuss the rule changes with the general membership during each of the conventions. The Board has not received any communications, pro or con, by telephone, email or otherwise except for the written statements and comments received at the

public hearing. The Board Chairman has received positive comments from several sources that are prominent in the surveying community. Sometimes, no news is good news.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Mark H. Hornish". The signature is fluid and cursive, with a large loop at the end.

Mark H. Hornish, P.S., Member
Complaint Review Committee Chairman



HC 82 Box 40b, Lewisburg, West Virginia 24901
Phone: 304-645-1052 Fax: 304-645-1053

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WVBPS

July 4, 2007

Mr. Gregory A. Smith
Chairman,
State of West Virginia
Board of Professional Surveyors
P. O. Box 390
Flatwoods, WV 26621-0390

Re: Proposed Legislative Rules

Mr. Smith,

Transmitted herewith are one set of the West Virginia Society of Professional Surveyors' comments on the proposed revisions to the Code of State Rules 23 CSR Series 1 and the proposed new rules 23 CSR Series 4 and 23 CSR Series 5, which proposed rules and revisions were filed with the Secretary of State on June 7, 2007.

These are a compilation of comments made by individual members and represent the result of a thorough review by the society in which all members were given the opportunity to participate.

We offer these comments in the spirit of constructive cooperation with the Board in its efforts to protect the public safety and welfare and also in the interests of the betterment, promotion and protection of the surveying profession. We welcome the opportunity to discuss any of these comments further. Please contact us if you have any questions.

Thank you for your attention.

A handwritten signature in cursive script that reads "John L. Green".

John L. Green
Chair, WVSPS Legislative Committee

West Virginia Society of Professional Surveyors
Comments on
the proposed changes to the administrative rule
23 CSR Series 1
filed with the Secretary of State on June 7, 2007
by the West Virginia Board of Professional Surveyors

July 4, 2007

23-1-1.1 In my notes I had that they should add "herein after referred to as the Board"
[RH]

23-1-1.5 This section should be changed from "and shall be binding upon persons or firms involved in the practice of surveying under §30-13A-1 et seq." to "and shall be binding upon persons or firms applying for examination, licensure or endorsement to engage in the practice of surveying under §30-13A-1 et seq." [JLG]

23-1-2.9 "Expired status" This section is still contrary to §30-13A-15(d) which says a person whose license or endorsement has expired must reapply for a new license or endorsement. In this definition the words **"to be reinstated"** must be removed and replaced with the words **"for a new license or endorsement"**. [JLG]

23-1-2.10 License" I understand this section to mean the board will be issuing both a wallet card and a license suitable for display with each annual renewal from now on. Is that really necessary? Is this part of the reason for the license fee increase? [JLG]

23-1-3.1.d I have that we were not sure if this was an opinion of the board or a fact and that the word should needs to be changed to shall or the entire subsection stricken. [RH]

23-1-3.4.a.4 should be 3.4.a.3 they skipped 3 in the numbering. [RH]

23-1-3.4.c.5 No definition for "Surveying specific certificate degree" has been provided. [JLG], [RH]

23-1-3.4.c.6 No definition for "Related technical certificate degree" has been provided. [JLG], [RH]

23-1-3.6.b This statement is invalid as written. Comity applicants may be a PS in another jurisdiction at the time of application and not an SI. [JLG]

23-1-3.8.a The change was made as agreed but it is still incorrect. "expired" licenses can not be reinstated, see §30-13A-15(d). "Expired status" should be removed from this section and added to 23-1-3.8.b. [JLG]

23-1-5.2.a I have that SI should be added to read All SI certificates shall expire. [RH]

23-1-5.2.f.1 and 23-1-5.2.f.2 The recommended changes were not made. Our comment here was, there should be language added providing for exceptions in the event of extenuating circumstances such as catastrophe or military deployment abroad. [JLG]

23-1-5.3.c The recommended changes were not made. Our comment here was, the language should be changed because the board only issues a wallet size license annually. The recommended changes were not made because according to 23-1-2.10 the board does indeed intend to begin issuing both a wallet size license and a license for display. [JLG]

23-1-5.3.d This seems to be a procedural rule. Does it really belong in this series? [JLG]

23-1-5.5.c Lapsed was changed to expired but the application for a new license was not required. This rule is in conflict with code §30-13A-15(d). [JLG]

23-1-5.5.d.4 the word "acquire" should not be stricken. [RH]

**West Virginia Society of Professional Surveyors
Comments on
the proposed administrative rule
23 CSR Series 4
filed with the Secretary of State on June 7, 2007
by the West Virginia Board of Professional Surveyors**

July 4, 2007

23-4-1.5 The words “or endorsement” should be added. This section should read in part, “This rule applies to all applicants for licensure, or endorsement,...” [JLG]

23-4-2 Definitions. This section is incorrectly numbered. It should be “23-4-2” instead of “23-5-2”. [JLG]

23-4-2.3 The rate should not be included here because it is listed in the fee schedule below and subject to change. [JLG] [RH]

23-4-2.4 The word “Endorsement” should be inserted preceding the words “renewal fee”. The rate should not be included here because it is listed in the fee schedule below and subject to change. [JLG]

23-4-2.5 This is a fine not an administrative fee and the WVBPS is not supposed to keep fines. [JLG] [RH]

23-4-2.10 The words “PS license” should be inserted preceding the words “renewal fee”. The rate should not be included here because it is listed in the fee schedule below and subject to change. [JLG] [RH]

23-4-2.11 The word “Fee” should be inserted. The term should read “Returned Check Fee” not “Returned Check”. [JLG]

23-4-4 The board reduced the both the Special Supervision Application Fee and the Special Supervision annual renewal fee from \$300 to \$200. Is that acceptable? I believe this category and fee should not be instituted at this time. See additional comments on 23-5-5. [JLG]

Fees should not be increased every year. [GT]

23-4-5 It should be clearly stated in this section that costs incurred in disciplinary actions may only be assessed against a licensee who has been convicted of a felony or has been found to have engaged in conduct, practices or acts constituting professional negligence or a willful departure from accepted standards of professional conduct. See §30-1-8(a). [JLG]

Personally I think the fees are fine. At least they are going to directly support and promote my profession unlike all the taxes I pay. [RH]

West Virginia Society of Professional Surveyors
Comments on
the proposed administrative rule
23 CSR Series 5
filed with the Secretary of State on June 7, 2007
by the West Virginia Board of Professional Surveyors

July 4, 2007

23-5-2.3 This definition is new. It was never reviewed by the WVSPS. I have no problem with it. However it is inconsistent with or oversteps the definition in §30-13A-2(k). Will a code revision be necessary to legitimize this definition? [JLG]

23-5-2.4, 2.5 & 2.6 I do not believe that the word inspection should be used, it would appear that we would be approving the location when we are only reporting the location. [SW]

23-5-2.5 I do not like the phrase "or practicing in fields of expertise when the surveyor is unqualified and lacks the necessary experience and education." I would say we would all be considered incompetent at some point by this definition. Because the Board does not define "fields of expertise" then I would consider myself to have expertise in surveying and anything related to surveying. There maybe things I have not done or done a lot of but it is all still surveying. If I were uncertain about something I would contact one of you fine surveyors for guidance. I would rather not leave the definition of "fields of expertise" up to the Board. [RH]

23-5-2.15 No action was taken. The board agreed to add the words "the practice of surveying by" immediately after the word "means" but this was not done. This change really should be made in order to convey the clear and correct message and display proper grammar. [JLG]

23-5-3.1.b This section should mention the surveyor-in-charge requirement contained in §30-13A-20(b)2.

§30-13A-20(b) says "The board shall issue a certificate of authorization to a firm that: (2) Provides proof that the firm has employed a surveyor-in-charge;" yet the term "surveyor-in-charge" is not mentioned in this section. I think it should be to ensure clarity and consistency of terms.

Perhaps this section could be re-worded to read in part:

"3.1.b. No firm shall be issued a certificate without having as its owner or in its employ a licensed professional surveyor designated as the surveyor-in-charge for each business location or branch office unless otherwise approved by the board..." [JLG]

23-5-3.2.b I do not think the board has the authority to require this. I would think that as long as the PLLC has a PS employed as the survey-in-charge what's the problem? I

would also think if one member was a PS and another member was not all they would need to do is specify in their member agreement that the PS has authority over surveying matters. [JLG]

23-5-4.2.c.9 This section is part of previous 23-5-4.2.b.6. The requirement for the endorsement designation (ie "SU") has been removed. This requirement should be restored to this section. [JLG]

23-5-4.3.a.1 This section is new but it does not constitute a significant change. The word "an" immediately preceding the word "certified" should be stricken or changed to "as". [JLG] [RH]

23-5-4.3.b.1 Here again they use the term "specific technical field" without a definition. What is a specific technical field? Are we talking oil & gas, boundary, subdivision, construction layout, surface mine, municipal, etc.? Darn I thought I was a Professional Surveyor! I thought I graduated with a degree in surveying put in the years of experience under the supervision of another and passed the test. To me this implies I can only do the same type of work that the companies I received my experience under performed. (which is pretty much everything I listed and then some but what about those who only work for a company that does boundary work or surface mine work). [RH]

23-5-4.3.c.5 What constitutes "Remote Supervision" in the eyes of the board. This term should be defined. [JLG]

23-5-4.3.e This section was previously 23-5-4.3.j.2. The language is unclear regarding the electronically transmitted documents. If the document does not require certification, which is herein defined as a document bearing an original seal, signature, etc., then why is the statement "this document was originally issued and sealed by..." required? If certification is not required why would it have been signed and sealed? I think I understand what the board intends here but I am not sure. I think they mean to say if certification is not requested, expected or desired by the client but required by law then the electronically transmitted document must have the specified statement attached. In such a case I would think the board would require a tangible hardcopy duplicate document, with the appropriate certification required by law, to be transmitted to the client in addition to the electronic document. The language in this section should be made clear. If licensees can't understand it we can't comply with certainty and future board members can't enforce it with certainty. We are left in legal limbo. [JLG]

23-5-4.3.f This is a duplicated section number. It should be 23-5-4.3.h. This section is new. I don't disagree with the statement but it appears to give direction to or regulate the activity of public officials over which the board has no authority. How does the board propose to enforce this rule? This requirement should be in the appropriate place in the West Virginia state code and should not be in the board's rules where it has no force or effect. [JLG]

23-5-4.3.g This is a duplicated section number. It should be 23-5-4.3.i. This was previously part of 23-5-4.3.d. There is no significant change. [JLG]

23-5-5 Personally I still have a problem with this special supervision section. I see it as an undue burden on small businesses and an unfair business advantage for larger firms. Consider a small firm who experiences difficulties such as an employee injured, activated by military deployment or otherwise becomes unavailable, and the firm must find part time or temporary help, perhaps borrow an employee on a weekend or something. Would this small firm have to pay an extra \$200 a year fee? Consider a larger firm with a small surveying department who can commandeer a draftsman or technician from time to time as needed. This larger firm does not have to pay.

I understand the board has instituted this authorization to prevent rubber stamping but I really don't see how it will be effective. I would think such an authorization would be limited to a specific term, for example a project duration, but with this annual authorization a person could pay the \$200 and be authorized to rubberstamp a non-employee's work for a whole year. There will still be people who will tell the board they are employing and/or directly supervising when they are not, and who will continue to sign and seal unsupervised work. Seems to me all they are really required to do is cut the board in on the action. But I am sure this is because I am not seeing the whole picture.

There are some points about this category that are still very unclear. Just what is Special Supervision? Is it merely signing and sealing the work of another or is it actually supervising and directing their activities? If it is the latter, what's wrong with that as long as the work is done in compliance with the law? Why should it require an extra fee? Does it involve the question of whose COA the work is done under or who the client is paying for the services? I think the board needs to define exactly what it is if they are going to require licensees to comply.

There is also the question of what constitutes an "employee"? Would the small firm borrowing temporary help in my example above really need to apply for Special Supervision or would his temporary help be considered an employee? I am sure the board does not intend to create inequalities in business opportunities so how would they handle this? What is the definition of "employee"? I did a search of the WV code for the phrase "'Employee' means" and got 352 results. There are at least 352 ways in which "employee" is defined in the WV code. Imagine that. It seems almost every agency, etc. has their own definition of what they consider an employee to be, as the term relates to their respective authority. Perhaps the WVBPS should adopt a definition as well and include it in the rules for clarification. I have included below some of the 352 I found for information and/or discussion.

I think the board should define "Special Supervision" and "Employee" or refrain from instituting this category at this time until these concerns can be addressed. [JLG]

§23-2-1a. Employees subject to chapter. *(This is the Worker's Compensation section)*

(a) Employees subject to this chapter are all persons in the service of employers and employed by them for the purpose of carrying on the industry, business, service or work

in which they are engaged, including, but not limited to:

- (1) Persons regularly employed in the state whose duties necessitate employment of a temporary or transitory nature by the same employer without the state;
 - (2) Every person in the service of the state or of any political subdivision or agency thereof, under any contract of hire, express or implied, and every appointed official or officer thereof while performing his or her official duties;
 - (3) Checkweighmen employed according to law;
 - (4) All members of rescue teams assisting in mine accidents with the consent of the owner who, in such case, shall be deemed the employer, or at the direction of the director of the department of mines;
 - (5) All forest firefighters who, under the supervision of the director of the department of natural resources or his or her designated representative, assist in the prevention, confinement and suppression of any forest fire; and
 - (6) Students while participating in a work-based learning experience with an employer approved as a part of the curriculum by the county board. The county board shall be the employer of record of students while participating in unpaid work-based experiences off school premises with employers other than the county board. Students in unpaid work-based learning experiences shall be considered to be paid the amount of wages so as to provide the minimum workers' compensation weekly benefits required by section six, article four of this chapter.
- (b) The right to receive compensation under this chapter shall not be affected by the fact that a minor is employed or is permitted to be employed in violation of the laws of this state relating to the employment of minors, or that he or she obtained his or her employment by misrepresenting his or her age.

§18-29-2. Definitions.

- (c) "Employee" means any person hired as a temporary, probationary or permanent employee by an institution either full or part time. A substitute is considered an employee only on matters related to days worked for an institution or when there is a violation, misapplication or misinterpretation of a statute, policy, rule, regulation or written agreement relating to such substitute.

§6C-1-2. Definitions.

- (b) "Employee" means a person who performs a full or part-time service for wages, salary, or other remuneration under a contract of hire, written or oral, express or implied, for a public body.

§5-10B-2. Definitions.

- (e) "Employee" means any person, whether appointed, elected or under contract, providing services for the state employer or public employer for which compensation is paid.

§48-18-125. Employment and income reporting.

- (1) "Employee" means an individual who is an "employee" for purposes of federal income tax withholding, as defined in 26 U.S.C. §3401;

§7-20-12. Countywide service fees.

(B) "Employee" means any individual who is employed at or physically reports to one or more locations within the county and is on the payroll of an employer, on a full-time or part-time basis or temporary basis, in exchange for salary, wages or other compensation.

25-5-4.2 The change in the surveyors stamp is ridiculous. Mine will need two stars added to make it legal. Will the board provide me one? If not I would bet that there will need to be 2000 new seals made which is more cost to the surveyors. [GT]

This was discussed with the board and they assured us their intent was to impose these requirements on all stamps and seals issued in the future. Licensees with existing stamps and seals which are in compliance with the laws in effect at the time they were issued or procured will not be required to be replaced. However, this intent is not reflected in the proposed text of this rule. [JLG]

25-5-5.3 This section is new. This section exceeds the authority of the board and should be removed. It implies that the board believes it has the authority to authorize, or deny, the activities of instructors or workshop providers associated with educational institutions. Otherwise why grant such an allowance? Could the board remove this allowance in the future? The board clearly does not have this authority. As long as these institutions do not provide, or hold themselves out to the public as providing, surveying services they are not practicing surveying and cannot be regulated by the board, nor can they be required to be licensed by the board, nor can they be required to apply for special supervision privileges from the board. According to the corporate exemption in §30-13A-36(1) these individuals would be exempt from regulation and licensing anyway as long as their activities are performed exclusively for the educational institution employing them.

If this section is enforceable any person teaching others to do any of the items listed in §30-13A-3(hh) could be required to hold an active surveying license and be subject to regulation by the board. [JLG]

23-5-6.1.h Does this mean I am not allowed to criticize anyone publicly. [SW]

23-5-6.2 I agree that the sections regulating the use and dissemination of our work product are too vague and would require greater review and discussion than what time we have. [RH]

23-5-6.2.c This new section addresses the control the surveyor has over his or her information. Who decides, in this context, what "potential damage or harm to the client" means?

Clearly it is to be the Board. Does the surveyor no longer have the capacity to use his or her own discretion to determine what appropriate dissemination of a work product is? I think this goes beyond the Board's role.

What happens to the status of this information if it is sold to another firm? Won't these limitations diminish the value of the information in the potential new owner's eyes? Must the new owner look up the original client, who sold the property 10 years earlier, to get permission to use it? This is a complicated issue, and one the Board should stay out of. [MR]

23-5-6.2.d I am not too keen on the use of the word "deliver" in this proposed section. Does this obligate a surveyor to fly to Florida to deliver a survey if a disgruntled client reads this rule and requires it? Perhaps "provide" or "make available" would be a better option. [MR]

23-5-6.2.f I agree with the sentiment, but feel that this rule, like the first above, is attempting to control the surveyor's use of his or her own information, something that is beyond what I believe the Board should be regulating. Information changes value over time, and the surveyor should have the right to benefit from that value under the appropriate circumstances. I don't think the Board is qualified to make such decisions for a surveyor. [MR]

23-5-6-3.c In this section, the Board attempts now to control our speech. Once again, by adding the last part of the last sentence, it is seeking to extend its control over what we say (the existing rule already exercises some control). We have libel and slander laws already, and the Board should stay out of this. If asked by a third party to offer an opinion of another's surveyor's competence, we should feel free to speak truthfully, and in fact are, I think, ethically obligated to do so. This last part clearly precludes that. If this part of the rule is passed, it is one that I will certainly violate. I would feel obligated to do so. I am frequently asked my opinion of other's surveyor's work, and I have adopted the response, if I feel the surveyor to be incompetent, that "I have not found his work to be reliable". If this precludes someone from utilizing their services, I have violated the law. This is nuts. [MR]

This section does not say that it must be in the contract for services so I read it to say that the client could at any time send a letter asking that the survey and related work product not be disseminated. I especially do not like the use of the term work product. The plat and description might be one thing but the work product is mine not the clients and I should have the right to use it for an adjoining survey or any other purpose including sale to another surveyor when and if I decide to sell my company and work product. I agree with MR, without this right our companies would lose significant value. [RH]

23-5-7.2.d The word "foot" should be stricken and the term "U. S. survey foot" inserted in lieu thereof. [JLG]

23-5-7.3.e The third sentence of this section was revised. Actually the previous third and fourth sentences were revised and combined into one. The phrase "able to be located with current technology" was added. What does this mean? This phrase should be stricken. The whole idea of monumentation is that it be locatable by future technology, or in the absence of knowledge about future technology, no technology at all. As with natural monuments, set monuments should be unique, or distinct, and easily identifiable. The previous proposal and existing §30-13A-26(h) both say "Set monuments shall be made of durable material, set firmly in the ground..." What's wrong with that? I think this last sentence in this section should read"

"Set monuments shall be durable, unique and easily identifiable and set firmly in the ground, with the name of the licensee or surveying firm identified on the monument, and shall have the following dimensions:" [JLG]

23-5-7.3.f This section was revised as follows. The phrase "to a precision consistent with the purpose of the survey" was changed to read "to a precision consistent with the needs of the client and accepted standards of practice". Why was this done? I don't think I disagree with this but what does it mean? Are we just using different words to say the same thing? Where do we find these standards? Standards of practice accepted by whom? The board? The prudent surveyor? The professional in charge? Previously it was clear this standard was left to the judgement of the professional in charge. It appears to me that is still the case, so why the change in the language? [JLG]

23-5-7.3.g Another personal preference comment. This section seems contradictory. It requires a plat to "be prepared" but allows the client to request a plat "not to be supplied". With no mandatory recordation requirement in the law what use is an unwanted, unrecorded or unsupplied plat? I am a surveyor. I understand the value of a plat, but a lay client who just wants to build a fence or erect a structure might not. If I were the client in such a survey I might feel if the board is going to require it then the board should have to pay for it.

I personally think there are justifiable circumstances in which a plat should not be required for a boundary survey, and I think the board should recognize that and deal with it. But that is a matter for another day. [JLG]

So much effort is placed on what is required on a plat yet I see no standards for angular or distance closure.

A good looking plat could have a closure of 90 degrees and a distance closure of 1' in 2' and still be acceptable. [GT]

23-5-7.3.g.4 This section should include a requirement to show the curved boundary line elements required in the description of survey in 23-5-7.3.h.2. The plat should probably require full curve geometry and not just arc length and two additional elements. [JLG]

23-5-7.3.g.14 Perhaps in this subsection, but certainly in this section somewhere, there should be a requirement to show the scale of the plat, perhaps graphically. [JLG]

23-5-7.3.h Current code §30-13A-26(l) says "A description of survey shall be prepared for all boundary, partition and retracement surveys, **except mortgage inspection surveys,...**". The board agreed to re-insert this into 23-5-7.3.h but this was not done. [JLG]

23-5-7.3.h.2 states that I must include my name and other information at the end of my description, 7.3.h.4 states similar information must go after the being clause. Is all this information still applicable if my description is on my drawing. [SW]

23-5-7.3.h.2 This section was revised to address our concerns regarding "relevant objects" along the line, however, I still have a couple significant problems with it.

First, it should be made perfectly clear that the length of every boundary line is required, including the arc length of curved boundary lines. In the case of curved boundary lines two additional curve elements should be required.

Secondly, why are these same curved boundary line elements not required on the plat by the requirements in 23-5-7.3.g.4? They should be.

Thirdly, this section must be revised to allow for strip descriptions such as those currently used by the WVDOT DOH. The problems I see at first blush are:

Should stations and offsets be required at corners? Maybe not necessarily. An easement might be described as being, "... 20 feet in width centered on the following centerline alignment; beginning at a point in the west boundary line of..."

A description of the centerline or baseline geometry the strip description is based on or a reference to the plans, plat or map where the geometry can be found, including a record reference if available, should be required in the description. If it is associated with a federal, state or local project a reference to the appropriate project number should also be required in the description. I have included some suggested language below. [JLG]

"7.3.h.2.a. In the case of strip descriptions, usually used for descriptions of easements or rights of way, the body of the description must be in one of the following two forms: A "uniform" strip in which the strip maintains the same width throughout its length, or an "irregular" strip in which the width varies.

7.3.h.2.a.1. In the case of a "uniform" strip the body of the description shall include all the same elements required for metes and bounds descriptions as set forth in 7.3.h.2 above with the exception that instead of describing the boundary lines it shall include the length and direction of all segments of the alignment the strip is based on, including the arc length and two additional geometric curve elements of curved segments; and the width of the strip left and right of the alignment;

7.3.h.2.a.2. In the case of an "irregular" strip the body of the description shall include, in addition to all the same elements required for metes and bounds descriptions as set forth in 7.3.h.2 above, an offset distance from a specific station along the alignment on which the strip is based, for each point where the boundary

changes direction or intersects another relevant line, such as a boundary line, property line, right of way line or the like. Offset distances shall be at right angle to straight alignment segments or radial to curved alignment segments. The alignment geometry and control point monumentation shall also be included, either literally or by reference to the map, plat or plan where the geometry and monumentation information can be found, including a record reference if available. If the strip is related to a federal, state or local project a reference to the appropriate federal, state or local project numbers shall be included. Multiple alignments may be used in a description provided the required geometric information is included or referenced for all alignments used."

It is my experience from attempting to digitally recreate surveys from paper maps or descriptions that the **three main elements necessary are the radius, the chord bearing and the chord distance. Without the chord data all of the rest allows only the creation of the curve, but not the orientation of it and hence no real closure.** This is true for boundary work where the lines are not necessarily following a tangent and leaving on another tangent. In route surveying of course any ability to construct the curve is adequate. I have been a surveyor since 1974 when I began my own practice, but as assessor of the county I get a unique perspective of survey maps. It is my job to place these surveys on our GIS in the correct place as best as we can. I have been surprised at the large number of maps that do not close, do not have complete data for all lines, and that are almost impossible to really understand (segments and total lines unclear etc). Many are so small that even when enlarged it is hard to read. This is more the fault of the clerk reducing them for recordation. It is also clear to me that ties to clear geography (road intersection, stream intersection etc) which appear on the photo are as useful as ties to boundary of the parent tract, which is also sometimes lacking. [FW, Assessor, Hampshire County]

23-5-7.4.a This section has been slightly revised but there is no significant change. This section states that mortgage loan inspections do not meet the definition of boundary surveys. It is my personal opinion that if you read the definition of boundary surveys in 23-5-2.1 and the minimum standard requirements for mortgage loan inspections contained in this section they absolutely do meet the definition of boundary surveys. If the board chooses to call them something else and label them substandard and relying on unconfirmed evidence etc. as in 23-5-2.8 and to exempt them from the minimum standards for boundary surveys because they are to be relied on only for the specific purpose of title insurance then so be it, but they absolutely *do* constitute boundary surveying, in my opinion. Furthermore, no matter what you call them, they are now, have been in the past and will continue in the future to be relied on by the public as boundary surveys. This rule change will do nothing whatsoever to change that. The board has taken a two sentence paragraph in §30-13A-26(p) and turned it into a page and a half of questionable technical requirements only to define these surveys in 23-5-2.8 as substandard, based on unconfirmed evidence and not to be relied on. An exercise in futility. §30-1-1a. says, "The fundamental purpose of licensure and registration is to protect the public,..." §30-13A-5(23) says one of the powers and duties of the board is to "Propose rules in accordance with the provisions of article three, chapter twenty-nine-a of

this code to implement the provisions of this article;" in other words, to protect the public. In my opinion this rule falls woefully short. In fact it may make the problem worse by giving these surveys a false validity with all these technical requirements. This is all my personal opinion and won't compel me to oppose this proposed rule change but I think the board should seriously reconsider the direction they are taking here. [JLG]

23-5-7.4.g This section is new. This rule says "written legal descriptions" shall not be prepared based on mortgage inspections. Surveyors write "descriptions of survey". How can you write a description of survey if you don't do a survey? This rule cannot prevent attorneys or others from writing "legal descriptions" based on these "inspections". The rule goes on to say "unless the minimum standards for boundary surveys" were met. If those standards were met it is a boundary survey and not a mortgage inspection. Another exercise in futility. In my opinion, this rule demonstrates the board's recognition of the ambiguity between a mortgage inspection and a boundary survey and the board's recognition there is a problem. [JLG]

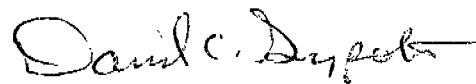
23-5-9.5.b This section has been significantly changed. The previous version stated, "A demand for hearing operates automatically to stay or suspend the execution of any order suspending or revoking a license or denying an application for a renewal license." This sentence has been completely removed. My first response was that this could have a devastating affect on businesses, clients and all the families of employees, if the surveyor in charge is unjustly or mistakenly adversely affected by such an order and demands a hearing. This is not something new. This provision is contained in existing rule in 23-1-8.2. This is a right, or privilege, we have had all along that the board has all of the sudden decided to take away with no notice or explanation. It seems to me the board is taking away our right to due process. Why would the board do this? If they have the hearing in a timely manner, say 30 days, what's the big deal? What has changed between April 24, 2007 and now that compels the board to do this?

In a phone conversation on 6/22/07 I asked Mark Hornish about this. Mark said this was done at the recommendation of the representative from the Attorney General's office. The statement deleted provided that the demand for hearing would operate "automatically" to stay an order, etc. Mark said the licensee still has a right to file a motion with the board to stay the order, etc., which they routinely do, but the A.G. representative recommended the removal of the "automatic" language in order to be consistent with other boards (Mark said none of them have this automatic provision) and to be consistent with the intent of some of the changes the board is proposing to series 3, which we have not yet seen, and because it is not beneficial to the board.

My concern here is that our right to due process not be denied. Mark says it is not. [JLG]

Comments on
WV CSR 23-1, 23-4, and 23-5
Proposed 2007 Rule Changes
Promulgated by the
State of West Virginia
Board of Professional Surveyors

By Dave Sypolt, PS
07-09-2007


PS #879

General

In each occurrence where a West Virginia Code is cited, it should be clearly identified by the words "WV Code" to avoid confusing the Code of State Rules with the WV Code when a cite is made. There are numerous occasions throughout 23 CSR 1, 4, and 5 of this incorrect syntax such that I will not call out each instance, unless also commenting on some other aspect of that particular section or subsection.

23 CSR 1

§23-1-3.4.a.2.

This subsection outlines one of the requirements in the procedure for applying for SI Certification, namely: "The applicant shall also attach a letter notifying the Board of his or her intent to make application under §30-13A-8(a)(1)(D) (*sic*), except in such cases where the board has on file a letter of intent submitted by the applicant beforehand.

Objection 1) According to WV Code §30-13A-8(a)(1)(D), the letter of intent must be submitted prior to the thirty-first day of December, two thousand four.

Objection 2) The WV Code reference is not clearly identified as WV Code.

§23-1-3.4.b.1.

Objection 1) The subsection displays incorrect syntax when referencing the WV Code.

Objection 2) WV Code reference is not clearly identified as WV Code.

§23-1-5.5.d.

Objection 1) The Board has required both inactive status and Active Status licensees to pay the same licensing fees, even though under inactive status, a person may not practice professionally. This is unfair and I believe a licensee who has qualified as inactive should be required to pay only \$50 per year.

§23-1-5.5.d.4.

Objection 1) The subsection is incorrectly written as modified and does not convey a complete thought.

23 CSR 4

§23-5-2. should be §23-4-2. Definitions.

§23-4-4.

Objection 1) The Board has required both inactive status and Active Status licensees to pay the same licensing fees, even though under inactive status, a person may not practice professionally. This is unfair and I believe a licensee who has qualified as inactive should be required to pay only \$50 per year.

Objection 2) The Certificate of Authorization fee increases are unreasonable. Fees which would be more in line are:

Less than ten (10) employees	\$ 50
Ten (10) employees to less than Fifty (50) employees	\$100
Fifty (50) or more employees	\$200

23 CSR 5

§23-5-4. should be §23-5-4. Seals and Document Certification.

§23-5-4.2.b.

Objection 1) There is no provision to accept the existing seals which were previously accepted by the Board.

§23-5-4.2.c.9.

Objection 1) There is no mention of including the licensee's endorsement, if any.

§23-5-4.2.d.

Objection 1) There is no provision to accept the existing seals which were previously accepted by the Board.

§23-5-4.3.a.1.

Objection 1) Typographical error "considered an certified" should be "considered as certified."

§23-5-4.3.a.2.

Objection 1) This requirement may be impossible to comply with while using a embossing type seal, even though an embossing type seal is accepted under CSR §23-5-4.2.a. This rule should be removed.

§23-5-6.2.c.

Objection 1) This is a dangerous requirement and should be removed. This rule should be removed, or at the very least, the "shall" should be changed to "should."

§23-5-7.3.g.

Objection 1) What does "The client may request a plat not to be supplied by the surveyor unless required by law, rule or regulation." mean? I agree that not all clients require a survey plat, but does this imply the surveyor does not have to prepare a plat, or just that the surveyor does not have to supply it to the client? This rule needs to be clarified.

§23-5-7.3.g.6.

Objection 1) Designating a standard abbreviation for the word "found" serves no purpose. This part of the rule should be removed.

§23-5-7.3.h.

Objection 1) Since there is an exception for preparing a plat (CSR §23-5-7.3.g.), then there should be an exemption for preparing a description added to this rule.

§23-5-7.4.d.4.

Objection 1) It states "A minimum of two (2) dimensions shall be shown for each improvement unless it is irregular in shape." However, the rule never states whether more or fewer dimensions are required if the parcel is irregular. The dimension part of this rule needs to be either clarified or removed.

§23-5-9.4.b.

Objection 1) The last line, "or refuse to issue the license as is meet and proper under all circumstances." has a typographical error.

Comments on Legislative Rules submitted by the WV Board of Professional Surveyors
(Title 23, Series 1, 4 and 5)
By Donald L. Teter, PS, July 9, 2007

General Comments

The bulk of my comments apply to the Series 5 rules.

I am not entirely comfortable being here today to make these comments. I respect the members of the Board of Professional Surveyors both personally and professionally, and do not question their motives in proposing these rule changes. Some members of the Board may feel that my being here to comment demonstrates a failure on my part to live up to an implied agreement not to oppose the proposals.

I participated in a meeting with the Board on April 25, 2007, along with other members of the Legislative Committee of the West Virginia Society of Professional Surveyors. I left that meeting with the distinct impression that they would be getting back to us with revisions before making the final submission, but that did not happen. Either I had the wrong impression, or they forgot or neglected that commitment to us. It is my opinion that not all of our concerns have been adequately met, and that some of the language added since our meeting was not discussed at all.

What I did not adequately express to the Board on April 25 was my opinion that we were not there because we thought the proposals were a good idea and merely needed to be refined and improved. Instead, we were there because we thought many of the proposals were bad ideas being foisted upon us and we desperately felt the need to attempt to remove or revise the most onerous provisions.

It is my opinion that the Board needs to carefully reexamine the concept that writing new rules will somehow solve the problems of inadequate surveys and careless surveyors. Based upon my experience during 25 years as a licensed surveyor, and over 6 years as a member of the Board's Complaint Review Committee, I do not believe this to be the case. There is clearly a difference between their philosophy and mine. Most of the cases I have seen of incompetence, negligence, carelessness, etc., have involved reasonably clear violations under the existing rules, and additional rules would not have been required for the Board to take action. Too many of the proposed Series 5 rules will simply create nit-picking ways to chastise or discipline perfectly good surveyors for purely technical violations which have little or nothing to do with the quality of their work. We have been assured that it is not the intention of this Board to do that, but can they speak for future Board members? The proposed rules are so detailed and voluminous that it may be nearly impossible for many surveyors to not find themselves in technical violation of some of them, unless they set aside several hours each week for reviewing the rules.

The Board may be technically correct with their statement that there will be no "impact ... on costs and revenues of state government". There may not be a direct cost in tax dollars, but some of the rules will inevitably lead to somewhat higher survey costs, and many of the rules directly entail higher costs of doing business for surveyors, and those costs must be passed on to the consumers of surveys. In the Board's Introduction to the proposed changes they state "This has been a significant investment by this Board and other interested parties to refine these rules ...". There is at least an implication here that the "other interested parties" were willing participants in this process, cheerfully volunteering their time. In reality, many of us who took part in the process did so because we were seriously concerned about the potential harm some of the rules as originally proposed could have caused. We invested that time in self-defense. I have personally spent nearly a week of my own time (as well as motel, mileage and meal expenses) in this process, and I am sure some others have spent at least that much time or more. This is not an insignificant burden for a self-employed small businessman. It is also worth noting that we were told on April 25 (after considerable waffling around and lowering of the numbers) that the Board has made a minimal financial investment in the rule revision process, but they now point with pride to their "significant investment."

The Board also states that "it is our belief the future returns for the public health, safety and welfare will be immeasurable." It is my opinion that this statement is at the very least overoptimistic, and at the very worst could be considered naive.

I believe it is time for the Board to slow down the cycle of constant rule revisions, in order to concentrate more of its time and energy on enforcing the existing rules. It is also time to allow members of the profession to spend more time actually solving surveying problems instead of having to constantly review rule change proposals. This comment is particularly relevant to changes in the minimum standards rules.

In our discussions with the Board, we were frequently told that the proposed rules did not really say what we thought they did. Surveying rules should be in simple and direct language, which clearly means what it says. Surveyors should not have to hire attorneys to advise them as to what the surveying rules actually mean.

In general, the current document is much less troublesome than previous versions, and I am not here to stridently oppose these proposals. Indeed, the revision process cited by the Board has considerably improved the submitted documents. However, if these rules are approved, I would like to clearly state to the Board my opinion that this is enough. Constant re-writing of the rules makes it difficult for surveyors to keep up. In particular, making changes more often than every four years does not seem prudent when there is a four year cycle for the required continuing education courses on standards. When substantial changes are made more often than every four years, it is entirely possible for extensive re-writes to have occurred twice or more before a surveyor has to re-take the minimum standards course. The best way to help ensure that surveyors stay abreast of and in compliance with the rules is to allow the rules to have some stability, rather than being subjected to frequent tweaking and revision.

Specific Comments:

These are not the only areas of concern I have with the proposals, and I am in general agreement with comments being made today by other members of the West Virginia Society of Professional Surveyors.

Series 1

§23-1-5.5.d.4 It appears to me that the words "acquire PDH's" should not be struck from this paragraph.

Series 5

§23-5-2.11 (This is in Definitions) "Ownership line" means a line or series of lines that define the limits of ownership supported by good marketable title.

The previous proposed version (2.8) stated that an "ownership line" "can only be established as a boundary by order of the court."

We seem to have abandoned that idea. I am unsure of the reasoning, but am quite confident that surveyors should not be making judgments regarding who has "good, marketable title", and I do not believe most attorneys would look kindly on surveyors offering opinions on that subject. This may be another of those cases where the Board would say the statement does not mean what I think it does, but I believe that words sometimes mean what they say.

§23-5.4 is probably intended to be §23-5-4. This is the section on Seals and Document Certification. Many surveyors, myself included, are still using seals which were perfectly in compliance when they were obtained. In fact, I bought my seal from the supplier recommended by the Board, and it was apparently made exactly on the pattern they specified. Although we were informally assured that the Board has no intention of going after surveyors using seals which do not meet the proposed standards, but which were in compliance when first obtained, we have no guarantee that future Boards will not do so. It would be a simple matter to add a statement to the effect that "Seals which complied with the patterns provided by the Board when they were obtained may still be used."

§23-5-4.3.a.1 There is a typographical error here, the last two words should apparently be "as certified" instead of "an certified"

§23-5-6.1.d I have no problem with the statement that "Licensees shall be objective and truthful in professional reports, statements, or testimony." However, the rest of the rule saying "They shall

include relevant and pertinent information in such reports, statements, or testimony.” makes me uncomfortable. My notes indicate that we (or at least I personally) expressed concern over this statement in the April 25 meeting. My specific concern here is the question of who decides what is “relevant and pertinent” and the possibility for second-guessing of a surveyor’s professional judgment as to what should be included in a report.

§23-5-6.2.c (1)(2) and (3) I am not entirely comfortable with all of the language regarding information sharing, but it is considerably less troublesome than the previous versions. I am still concerned that 6.2.c. could have the unwelcome effect of stifling the sharing of information among surveyors. Such information sharing has traditionally been of tremendous value to both surveyors and their clients.

§23-5-7.3.e reads in part “Set monuments shall be durable, reasonably stable, with the name of the licensee or surveying firm identified on the monument ...” Does this mean that my current caps, and those of many other surveyors, which bear the surveyor’s initials and license number, will no longer be legal, because they do not have the surveyor’s name on them? Is this really what is intended? I am more easily and certainly identified with my initials and license number than I am with my name. The language in the previous version of the proposal said rebars, pipes, etc. “shall have caps or some other means to identify the surveyor...” and that language was much better. The intent is apparently to allow other parties to identify the surveyor, but the rule is now going to be too specific by requiring the name.

§23-5-7.3.e.1, 2, and 3 3 allows “other artificial markers” to “be of sufficient length to maintain its position”, yet 1 and 2 allow no such discretion with pipes and rebars. A minimum length requirement is desirable, but I would like to see the addition of some words such as “when feasible”.

§23-5-7.3.g.3 (Plat requirements) “The name and location of any creeks, rivers or roads within the scope of the survey” Who decides just how detailed and precise such information must be? Must logging roads or four-wheeler trails be shown? How about abandoned or overgrown roads? Does every small drain or water-course have to be shown? The language needs to be modified to allow the surveyor to use judgment regarding which roads and streams are significant and which are not.

§23-5-7.3.g.6 Although this language is generally the same as in existing rules, I have long felt that it is somewhat silly to specify the abbreviation for found as being (fd). When I use that abbreviation I generally place a period after the d. Would strict interpretation of this rule mean that use of the period is not appropriate? My point is that such excessive detail in rules is not appropriate.

§23-5-7.3.h.1 (Description requirements) “The preamble shall include the type of parcel or lot...” My notes from previous discussions have the word “Huh?” written beside “type”, and I still feel that way. What does the word mean here?

§23-5-7.3.h.2 It will now be required that the body of the description will include “a reference to the accompanying plat or report attaching it to and making it a part of the description.” I have often found it useful to include in the *preamble* words such as “being designated as Parcel A on the plat attached to and made a part of this description”. Now it will be against the rules for me to include that in the preamble instead of the body of the description, and this is simply ridiculous. This is a good example of the unforeseen problems created when rulemaking becomes too specific in technical matters. I do not believe it is necessary to have detailed rules about description writing.

§23-5-7.3.i.1 (Report requirements) “Documentation of the research and the weight given to the significant documents” I agree with the concept of explaining the weight being given to significant documents. I am not comfortable with the phrase “Documentation of the research” and believe that it will often be interpreted as requiring a listing of all documents examined in the course of the

research. I feel that such lists are not useful, since they do not explain the weight given to documents, and they can be misleading regarding the depth of the surveyor's boundary analysis. There is also the danger that an inadvertent omission of one or two documents from a lengthy list could be unjustly cited as evidence that a surveyor did not properly do their job.

§23-5-7.4.d.5 (Mortgage Inspection plats) says "Location dimensions of the major improvements as they relate to the property line shall be shown ..." When it is supposedly clear that mortgage inspection surveys do not involve the actual determination of boundaries, such dimensions should only be approximate and the rule should say so.

§23-5-7.4.g Written legal descriptions for a tract or parcel of land shall not be prepared based on a mortgage inspection unless the minimum standards for a boundary survey are met as set forth in subsection 7.3. of this rule. Since I am complaining about numerous matters in the proposals, I feel that I should commend the Board for adding this language at our urging.

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PUBLIC HEARING HELD

BY THE

WEST VIRGINIA BOARD OF PROFESSIONAL SURVEYORS

AT FLATWOODS, WV

July 9, 2007

Appearances by:

S. Pat. Roberts, president WVSPS.

Donald Teter, WVSPS.

Allan Witschi, WVSPS & surveyor.

Lantz G. Rankin, self.

John L. Green, WVSPS.

Mark Hornish, WVBPS Member.

Dave Sypolt, WVSPS & Surveyor.

Marilee Bright, WVBPS, board administrator.

Greg Smith, WVBPS Chairman.

Karen Elkin, Court Reporter.

MR. SMITH: Time is 9:10 July 8, 2007. We'll open the public hearing held by the West Virginia Board of Professional Surveyor's regarding proposed rules under Title 23. The rules referred to as series 1, series 4 and series 5.

I understand that we received some written comments on the rules on July 5th from the State Society of Surveyors, which I was just handed a few minutes ago.

We'll deal with the rules this morning in order just as far as going through with series 1. We'll take comments on those and try to provide some brief comments relative to any answers or anything that we can provide to help clarify any concerns. Our whole goal and mission is to protect the public, improve what we can do for public protection from surveyors as far as unscrupulous bunch which are members of your all's Society. They have to be dealt with too. They all fall under the long arm of the law I guess.

The other thing with the rules changes and everything, efficiency and operation of the board is one thing we really need to be concerned with as you all know. Keeping our professions separated, where we have our own entity and own identity should be the utmost goal. It will create better products and therefore creating better protection for the public and the people of West Virginia.

At this time, I'll open any comments on the floor. Do you want to speak for the Society or...

MR. GREEN: Well I can say one thing. You've got our written comments and I just would like to confirm understanding that you will be reviewing those comments and you will be responding to them one way or the other?

MR. SMITH: That is correct, we will.

MR. GREEN: Will that be given to the Secretary of State or

will we receive something on those or?

MR. SMITH: It has to go to the Secretary of State as far as...

MR. GREEN: Do you know if that will be posted for us to download and review?

MR. SMITH: Yes, as far as comments? I believe it is.

MS. BRIGHT: I'm not sure about all the comments, but you could well be.

MR. SMITH: I know the changes that came out from the comments you know is approved by the board to make the suggested changes or address concerns that maybe were not addressed in the rules as they were submitted would be provided back out, and I know that will be posted.

MR. GREEN: The only question I really have would be do you know what the timeline will be? I know you have a deadline for submitting your final fruit.

MR. SMITH: We have about, we've got 45 days total, which is already the clock is already running on.

MS. BRIGHT: Be the 27th.

MR. SMITH: 27th.

MR. GREEN: So shortly thereafter if they are posted, we should be able to...

MR. SMITH: Yes, they should be up in just a day or 2 after that. It's just in an effort to where we have understanding and cooperation from the Society. We'll get comments back out and address any changes or anything prior to that to you all. And that way if we need any dialogue or anything so we understand what your concerns are. Or vice versa, why we feel something's needed, just so there's clarification and everybody knows where we're coming from.

MR. GREEN: Or that it wasn't needed.

MR. SMITH: Yes. Is there anything in particular in series 1

that you all want to highlight on or Mark, have you had a chance to read the comments that were submitted over the holiday there?

MR. HORNISH: The preliminary ones, not the official one.

MR. SMITH: Okay.

MR. HORNISH: So maybe if you want to highlight what has changed or do you want to make any specific comments?

MR. GREEN: Well there's a whole lot of stuff there. We can go through them if you want, but I want to see if you guys have any questions or anything about them really. Because like I say, a lot of them are pretty much the same stuff that was in the, actually almost all of them are pretty much the same stuff as in the preliminary stuff, with the exception of I think 1 page or 2. But one other comment which had to do with the description we were talking about earlier. About requiring chord bearing elements.

MR. HORNISH: You're just inquiring on 1 at this time?

MR. GREEN: I thought he was talking about in general.

MR. SMITH: No, just series 1 for right now.

MR. GREEN: I was referring to the general comment about the whole thing.

MR. TETER: I also have general comments and then a few specific comments. The only thing I had specifically in series 1 was in 5.5.d.4 is probably a typographical error is the words "acquire PDH's" I don't believe should be struck from that paragraph.

MR. HORNISH: What site is that?

MR. TETER: 5.5.d.4.

MR. HORNISH: Should not be stricken. That's the very last comment we see.

MR. TETER: Yeah, that comment may also have been incorporated in the comments John made. It's more of a

probably just a typographical. Doesn't really have anything to do with actual substance. And some of my other comments might also have been incorporated, probably were in John's.

MR. GREEN: I'm sure they were. Some of them weren't though. You have some that I didn't get, but I knew you were gonna submit yours separately here so I didn't bother to go through it.

MR. TETER: And just the same way, one of the things that I was going to say in my general comments is I generally agree with the comments that John has made, even though I haven't specifically made some of those same comments myself.

MR. SMITH: Mr. Allen?

MR. WITSCHI: Yeah, I have a question on retired status. You put in there an age limit of 62 years old. I've been licensed for 31 years, been in my own business. I'm only 55, only! If I want to retire today, I'd like to be able to retire today and not wait until I'm 63 years old or be declared physically disabled or have a debilitating illness to be to have the honor or still being a surveyor in retired status, rather than waiting until I'm 62 years old so I can do the same.

I think I've earned that right. I think putting an age limit on it is putting a burden on someone who may feel that they're not capable of doing adequate work and would like to retire from the profession with dignity. Maybe more, I'd rather have them retire with dignity than attempt to try to practice or go on an inactive status and then maybe try to practice at a later date.

There are many reasons why a person should retire, and putting an age limit on it has nothing to do with your ability to survey. So I would like to see the age taken out. I didn't realize that there were reasons that it was

put in. The solution to a problem possibly, but I do not believe that is the correct solution. It is a solution, it's just not the right one. Because it's hurting more than it's helping.

MR. SMITH: Well I would disagree with that, but I hope to be in the same boat you are. That's my full intentions. I want, I'm not gonna stick around and wait for 62 to retire either. I intend to do that just as soon as possible, but look at it from the other standpoint on it. What we had, and it was a problem when the age restriction was removed, a person at age 40 or 35 whatever they wanted they could file to retire, get their retired status. They could work for the government. They could work for you know another firm and not work in an official capacity having to sign anything. They decide they want to come back to West Virginia. They've been out of here for 10 years, 15 years they have been retired, and maybe weren't even in surveying, may have went into another profession. They come back, they want to get their license back and the only thing the way it was set up all they had to do was reapply and back up and get their Con Ed units and they could start practicing. Now is that protection for the public, somebody that's distanced themselves from a profession for 10 or 15 years the way technology is today? I'm not saying a true professional you know wouldn't brush up and do that, but that's what we were having people skirt the law. That's what was happening with it. They were using it as a skirt, not to have to pay their registration fees once they retired from government and went back into private practice to go to work, then they're wanting to get reinstated and you know go right back out. So what have they lost by not staying abreast, the technology, the law changes, you know by being out that timeframe.

Is that good for the state? Is that good for your profession? You know any law doesn't... No law makes it right for everyone, and I'm sure in your, you know your scenario is exactly right. But you know people don't use it for that. It's treated as an honorific title. That's all it is, and that's the way the national NCSS looks at it. It has no fees or anything attached with it. Once you go under retired, be inactive all you have to do is pay your fees you know if you want to just let your license rest, and you may want to start back up and do something. You might have to keep up with Con Ed.

If you know the exact solution, we can, we'll be glad to listen to it. I mean it started out as an honorific gesture, and that's the way it you know, and they need something. Those people ought to have that title and recognition, but then it got abused. So... People find ways. They look for more ways to skirt the law than what they do you know. It's sometimes simpler to just abide by whatever's there than it is to... Same way with recording issues. They've done the same thing.

MR. GREEN: Is that why the inactive status was created?

MR. SMITH: Yes. It provided a means you know if you want to let it set, and not sure what you want to do.

MR. WITSCHI: Would it not be better to leave it to the board's discretion as to whether a retiree should be reinstated or the qualifications that that retiree should be reinstated, rather than trying to put an age limit on it? If you see that a person has deliberately gone through and retired and does not have a reasonable excuse to come back into the practice, you could then declare him using the inactive, he should have used the inactive status. There are situations both ways, but leaving it entirely to the

discretion of the board rather than putting an age limit on it. Numbers are dangerous. Any numbers are dangerous in a rule.

MR. SMITH: Well you know we fought to have an aspect of age discrimination, okay? So if you leave it open then you're discriminating against somebody that ought to be able to come back in. So either way, what you're doing is opening yourself up, or you're opening the board up to litigation is what you're doing. And that's coming out of the AG's office as far as the recommendation you know with the retirement. You know if you try to make it, you know individual process by application that was just their recommendation. And what good is it you know? How does it serve your profession? You've gotta think more than just a few highly qualified people that's got good morals and stuff like that that's gonna take care of everything.

MR. WITSCHI: I think I'll fund a study at WVU saying that not wanting to survey anymore is a debilitating illness because that gives somebody the legal out. That way the board would be off the hook.

MR. GREEN: Allan what section was that?

MR. WITSCHI: It's under status 5.5.e.

MR. GREEN: 5.5.e?

MR. WITSCHI: Yes, that item... 5.5.e is the retired status and then the e.4 is the area dealing with the disability or illness.

MR. RANKIN: There's nothing in the statute about experience or years of experience and I think people who retire from the state, you know they have like the rule of 80. If your years of experience plus your age adds up to 80 a person can retire. That means if a person if 25 years of age and or that has 25 years experience and they're 55 you know 25 and

55 is 80. Could something be done to account for experience in the retirement status? Would that solve some of these concerns, or did you consider that in your deliberation?

Q. Now who does that now?

MR. SMITH: State or teacher retirement.

MR. GREEN: Should we be mentioning our names for her benefit?

COURT REPORTER: I was gonna ask you when you get done, who everybody is. I'm just kinda trying to keep up.

MR. SMITH: We have a sign in sheet and we'll provide that to you so you'll have it for the record.

COURT REPORTER: Okay thank you.

MR. SMITH: I think everybody signed in.

MR. HORNISH: We did not consider that an option.

MR. RANKIN: The way it's written someone 62 and has 1 year experience they can retire you know as a surveyor. Or they can be 62 and have 35 years experience, you make no discrimination between the 2 you know in which case I can see the point where you've spent a long time. He can have 30 years by the time he's 55 and you know might deserve that more than somebody that has 1 year's experience and is 62. I just wondered why wasn't that considered in there?

MR. SMITH: Never been a question or no one ever, I don't recall it being brought up.

MR. WITSCHI: Well the question was raised by Mr. Canfield several years ago when retired status was brought into place, and obviously his question at that time was what happens if somebody asks me to come back, and we did not have inactive status portion of that. Just had the retired status, and he had a couple of valid points you know. He served his profession for many, many years, and at some point in time regardless of what he's done he should be able to retire at

whatever age he decides to retire, and have the respect of the surveyors that he has served for that period of time. And I believe that a solution is not 62, but years under the profession.

MR. HORNISH: I have a question for you Lantz. With this formula that they have, do they also have you know you can retire at age such and such or before that point, you know if everything adds up to 80 then you know is he also qualified? Is it 2 criteria that they measure?

MR. RANKIN: I really don't know. I just know I hear 'em talk you know the guys go into the system that 25 years of age...

MR. SMITH: It's age and service must equal. Yeah, because my dad didn't start with the state until later on.

MR. RANKIN: You know I'm just wondering is that...

MR. SMITH: We'll entertain some language. Do you want to put some language together? That's fine. Now is this the Society comment with the retired?

MR. GREEN: I don't think that was included in ours because we had discussed that with you guys at our meeting in April and you guys had explained that to us. I think that's a separate comment. You should probably log that as a separate comment.

MR. SMITH: Okay. That's an individual. Allen Witschi.

MR. WITSCHI: One other comment I'd like to make on that, if as long as you're going for that review, obviously in '95 we had several hundred people licensed that were actually not a member, they were a quasi member of our profession, engineers namely. They were licensed and brought in in '95. Does their time status start in '95 or when they started working in the '70's, '60's as surveyors?

MR. SMITH: We'll review your recommendation.

Q. So you're asking about experience as professional surveyor?

MR. WITSCHI: If you're going to qualify it by experience, when would that experience start for each individual, by licensure or by the date of actual practice, even if you was not licensed by this board? This also protects the PE who wants to retire who has a surveying license and was grandfathered in.

MR. SMITH: Do you want to add a couple scenarios?

MS. BRIGHT: That would also apply to people coming in from other states. We would actually have to offer whatever they have to do.

MR. GREEN: So basically what you're saying is that if a guy comes in at age 61 and he would... Well let's make this simple. If he comes in at 60 as far as let's say and assuming that we're gonna use the PS as a criteria and he needs to add up to 80. That means he could have started... Is that how it works?

MR. RANKIN: And well again I've not followed. As he brought this up, the question that I had was had you considered experience in the retirement status? I think the way it is well let's say somebody had a job with the state at age 60, they can still retire at 62 or 65. So the other is a mechanism for them to retire earlier or to get the retired status earlier. I mean I would think that if a person had worked self professionally for you know for all of his life and then decided at 60 years old he wanted to become licensed and wanted to retire at 62, that's fine. I can also see his point where he's worked there thirty some years and wants to retire before 62. I just, the general question I had was that had you considered experience in your criteria for retirement and is there an avenue for you to do that?

MR. GREEN: And I think that one of the things that Allan brought up, one of his concerns that he mentioned being expressed by Jess Canfield some years ago was that he retired completely full intention of never surveying again, okay? But he wanted that retired status like you say an honorific, but he just still had to consider the possibility that what if he was called back for some reason. What if he was called to be an expert witness or something which constitutes surveying under the code? Where would he be? Would he be able to do that? Would he not be able to do that?

MR. SMITH: A judge can qualify anybody as an expert witness whether they've got license or not.

MR. GREEN: Then after testifying would he be surveying without a license?

MR. WITSCHI: But the defense could also turn around and say Mr. Canfield did you have an active license as a surveyor.

MR. GREEN: As I recall, that's one of the things that Jess brought up when he was making that point.

MR. SYPOLT: Which also puts it back on the burden of the board to basically be able to yay or nay retirees under the terms and conditions that they set forth. They may need to reactivate someone's license immediately so that a problem could be solved helping the public out. And there's some cases that the board may turn around and say you have done more harm than good, and have that discretion.

MR. SMITH: Well we've already had that happen as far as license revoked. They had a retired license and they took retired status as a settlement agreement and then tried to come back in.

MR. SYPOLT: Was he 62?

MR. SMITH: Oh, yeah.

MR. GREEN: I was just mentioning that because that's gonna

be a concern in whatever alternative you end up with.

MR. SMITH: Like I said, if you can get some wording on that, that would be and I also would like to see what...

MR. GREEN: Yeah, my response from our meeting that we had was that there just wasn't any easy answer on this issue.

MR. SMITH: There's not.

MR. GREEN: It's a tough one. It really is.

MR. HORNISH: Right now to answer that retired status issue, the only thing a person retired status can not function as a professional surveyor or be in professional charge. In other words that just simply means can't certify the work.

MR. WITSCHI: But to a jury? To a jury when the question is are you a surveyor. Are you or have you been a surveyor, yes. Are you a surveyor in good standing with the board, I'm in retired status. Well I read the code and it says you can't survey.

MR. SMITH: Well it does now.

MR. WITSCHI: Or better yet, are you 62 years old? Answer that. 62 years old, what disabilities or what disability illness do you have?

MR. HORNISH: Well see the thing of it is as it stands right now then what you're saying is absolutely correct, but we have changed that to soften that for the retirees. The way that this is currently written that is gonna because currently as it stands right now they can't do any surveying. You know as far as the rule stands right now.

MR. WITSCHI: I agree on that portion of it. I guess it's just the extreme in which, the condition that you put on it as far as the age limit.

MR. HORNISH: I think that's a valid argument and I'm speaking for myself personally. I never heard that before. I don't see that that's not something we couldn't at least

consider.

MR. GREEN: The question came up in our local chapter from an individual working for the government, ready to retire PE, PS and gonna travel the country. Has no, I don't want to be a PE anymore. I don't really want to be a surveyor any more. All I want to do is retire and spend the money that I made off the government.

MR. SMITH: Fair enough.

MR. GREEN: I'm not 62 years old and I should have the right to be able to carry those initials after my name regardless, and his comment was as long as the board isn't funding my retirement, they can't tell me when I can retire. The years of experience that the state was looking at saying if you have this many years and you're this age and it totals up to 80, whatever that number is because you can't qualify for payment from the government as a retired individual. Until this board says we'll start paying you when you retire, I don't think they have a reasonable request to say that you can't retire until you're 62 years old.

MR. SMITH: That's fine. You're talking your own issue or somebody else's issue, but the point is you know you guys you know operate a professional society and you're to improve your profession. Take that into consideration any of your comments.

MR. GREEN: That comment was taken from our chapter meeting, not necessarily the society.

MR. SMITH: That's fine. You got a profession. You all are a pro-active voice. You need to protect it. You know if you want everybody jumping in and out, you know that's I don't care.

This again is an example, we're not going to beat this thing to death. You just give us some wording.

We'll consider it and we'll bring it back up and provide you our feedback.

MR. GREEN: But you do have a deadline on your...

MR. SMITH: Yeah, the 27th. We need them next week, okay? And it's short. Just one little paragraph right there. I mean you've got some combinations being kicked around. Last year legislative or a bill pertaining worker's compensation act, a guy wanted special retirement provision put into the code. If you were, it wasn't 62, it was 65 and you had 1 person employed that was...

MR. GREEN: Oh, you're talking about the surveying thing?

MR. SMITH: Yes, I mean and all they're doing you know they're looking for ways to skirt the law. Yeah, didn't have to pay fees, didn't have to pay license, taxes. They didn't have to do anything.

MR. GREEN: Or be regulated by the board?

MR. SMITH: Right.

MS. BRIGHT: That's a guy who will not get his continuing education. He was retired, came back in got retired for 1 year and just won't get Con Ed. That's the bottom line.

MR. SYPOLT: Without beating the dead horse, could you discuss for a moment the educational requirements differential between retired status and inactive status? Because you brought up Con Ed as one of the reasons why you wanted to have retired status set at a higher age. So that it's more difficult a person can't bounce out and come back in. Is there any deviation in the requirements for a person who's gone to inactive status?

MR. SMITH: In inactive, no, they don't have to, but before they can enter back into practice they have to bring back up 16 PEH's, that's 2 years worth.

MR. GREEN: Is that the same for retirees?

MR. SMITH: Yes.

MR. SYPOLT: So there's functionally no difference between the 2 except for the fee that's being paid?

MR. SMITH: Right.

MR. SYPOLT: The problem with the argument that a person in retired status would be a detriment to society is invalid in that a person in active status would have the same requirements, but yet that's allowed.

MR. SMITH: Right. The only thing it's providing was retire at 62, you can retire and if you want to come back you just do your Con Ed. You're not paying fees, okay? Prior to that you know you'd be inactive but you're still paying a license fee just to keep that license.

MR. SYPOLT: I have several comments about series 1, if it's my turn?

MR. SMITH: Mr. Dave Sypolt.

MR. SYPOLT. Thank you Mr. Smith, Mr. Chairman. Generally I would like to make a comment that the West Virginia Code is not properly cited throughout the entire text there. It's used indiscriminately cited with the CSR code, which is quite confusing for any West Virginia Code cite should be indicated by WV Code. I just mention that, but I won't bring out the individual instances or each count, 10-15 times that occurred.

MR. SMITH: Okay.

MR. SYPOLT: More a a syntax type thing. Under 23-1-3.4c there's an educational requirement and the equivalent for experience. I notice or it was brought to our attention that there is no provision in there for an individual who has a 2 year degree with more than 10 credit hours of surveying. There's a provision for a baccalaureate degree with greater than 10 hours surveying and baccalaureate with less than 10

hours of surveying. No degree with 8 credit hours of surveying and an associate degree is less than 10 hours of surveying. I think there should be some sort of a experience equivalent for someone who has a 2 year degree with greater than 10 hours of surveying education.

MR. HORNISH: You're looking at 3.4.c.4 where they're talking about less than 10 you're saying that...

MR. SYPOLT: Yes.

MR. HORNISH: You're saying that there should be something there for minimal?

MR. SMITH: Well that shouldn't be a change. I mean that's proposed change. The 2 year degree was done several years ago. The 2 and the 4.

MR. SYPOLT: Uh huh.

MR. HORNISH: It's on its way out.

MR. SMITH: Right, but you're saying add another section.

MR. SYPOLT: Well I'm just saying you're recognizing associate degrees with less than 10 credit hours in surveying if you have an associate degree with greater than 10 hours of surveying, then it should have more than half year's experience equivalent.

MR. SMITH: Two and 4 and that's 6 right?

MS. BRIGHT: So it's just an oversight.

MR. SMITH: Okay. Yeah, there is credit for that and we've got an evaluation and experience form, but it's not outlined in here.

MS. BRIGHT: It's an oversight I think.

MR. SYPOLT: In other words it was supposed to be in here, but it wasn't.

MR. SMITH: Okay we can take care of that.

MR. SYPOLT: That's what I thought. Okay because there are people who may be attempting to become licensed under the old

rule and we have some time to have to do that.

MR. SMITH: Well and we want all of them you know especially going through school.

MS. BRIGHT: But it's the same under both.

MR. SMITH: Yes. Thank you.

MR. SYPOLT: Section 3.4.a.2. outlines one of the requirements in the procedure for applying for SI Certification, namely: "The applicant shall also attach a letter notifying the board of his or her intent to make application, except in such cases where the board has on file a letter of intent submitted by the applicant beforehand. My objection to that is it's my understanding at the time that the law was written that section of the code was that the letter of intent had to be submitted prior to the 31st day of December, 2004.

MR. SMITH: That's right. That was the intent.

MR. SYPOLT: However we are beyond that point now so actually is it not correct to say that that door's been closed?

MR. SMITH: Not by counsel's recommendation, and they beat it around. We've already talked to the AG's office as far as and we've got a couple different opinions.

MR. HORNISH: The wording in the law did not get there to clearly define that, and so what the board has finally interpreted as far as how that is right now the Code reads is that the window is going to be open until 2012, which will be 8 years after the law was passed. Now...

MR. SMITH: Yes, it's the applicant's responsibility at that point to produce the documentation that they had started their experience route prior to that. So the burden of proof is upon them.

MR. GREEN: Even though they may not have yet sent their letter?

MR. SMITH: Right. And we had to swallow that one very hard. It was not pleasing.

MR. HORNISH: I will say this, that many of the states that have gone to mandatory education 4 year degree we are right there in sync with them as far as when their deadlines are. So we are very consistent with the rest of the states as far as passing mandatory education and giving them time lines for people's experience to come through. So we are consistent with other states now.

MR. SYPOLT: Okay under sub section 3.4.b.1 educational experience just a syntax error that cites the West Virginia Code so syntax is incorrect.

MR. HORNISH: Then you're just saying West Virginia Code needs to be in there?

MR. SYPOLT: Yeah, well that's right but also you have the section in there twice, should only be one. 3.4.b.1. And subsection 5.5.d the board has required, my objection is the board has required both inactive status and active status licensees to pay the same licensing fee, even though the inactive status person may not practice professionally, and I think that's unfair, and I believe a licensee who has qualified as inactive should be required to pay a smaller fee perhaps.

MR. SMITH: Takes the same amount of time to monitor, register and report to the state on a licensee whether they're active or inactive. It takes the same maintenance costs to maintain the reports that must be filed.

MR. GREEN: Do they have to renew that status every year?

MR. SMITH: Yes, I mean it's a choice that they make.

MR. SYPOLT: Under sub section 5.5.d.4 on page 11, my objection is the subsection is incorrectly written as modified and does not convey a complete thought. So there's

something not right in there.

MR. RANKIN: That's the one earlier that we determined that the word prior PDH for each year exempted do not meet... So we've already discussed that.

MR. TETER: The words acquire PDH should remain there.

MR. SMITH: Yeah, up to a maximum of 2 years requirements. Very good.

MR. SYPOLT: And that's all I have for series 1.

MR. SMITH: Thank you dear senator. Very good. You couldn't get any more out of it than that? Any other comments?

MR. RANKIN: Yes, I'm Lantz Rankin, L-a-n-t-z R-a-n-k-i-n and part 4.1 under examinations generally. It talks about the board will give an examination at least once each year. I would ask the board to consider, since the number of applicants are going down, the possibility that a person could say could come into your office and pay the examination fee and take their test something other than once a year. Especially as we have fewer and fewer people becoming qualified they couldn't be more valuable that we need to get them working into the profession you know as soon as we can and you know if a person has to wait 9 months and 10 months to take a test. You know that just seems like a detriment to having those people in now. I know that's a difficulty for the board with the person taking the exam and coming they're paying to have the exam administered you know. That's just a suggestion that we do.

MR. SMITH: That's a 2 part question I guess. Yes, it would be. First on NCSS it's only offered twice a year, okay and you have to do it the same day. Every state in the union or United States does it the same day. So you don't have an option on that. The once a year requirement, if we do not have enough people or if there's a funding situation then we

could only offer the test one time a year, okay? So there's just a hole there. It's open if the board would ever have to cut back to that. Because you've got to pay for the exams and then you got to pay them to record it, and right now we're losing money when we have small applicants like that because we have to buy a certain number of tests and you know.

MR. RANKIN: Where it come from from me is if a person is ready to take that next step and it's just you know...

MR. SMITH: That's our goal too, as far as the board. And we have discussed this, but you know we're still in the change mode here. We've went to 5. You know we didn't have the funding to operate really you know to take it up to those. It's gonna come in behind us as far as you know getting the funding to support what we've done, so we've had to cut a lot of things out. As far as what we can do, as efficiency in the board office and stuff, the underground exam has been set up that way where we can administer inside, okay? That's being done that way. They're being offered just keep rolling them over and you know hopefully we can get to the point we can do that with the state exam. Nationally you don't have any choice. It's twice a year, but the state exam could be administered that way.

MR. RANKIN: Again, just my concern was let's say it personally. If you're only getting it once a year that really slows down a person's ability to come in and take the test and take that next step, and I can see it more as a problem as the requirement of what we've done ratchets down the number of applications.

MR. SMITH: You're certainly correct. It does. And the only thing is, the rules this is a minimum that has to be done, okay?

Was that an individual comment or Society?

MR. RANKIN: That was an individual comment.

MR. HORNISH: It might be noted that the applications we're giving out, the majority of the applicants are coming through the experience route, not the education route.

MR. RANKIN: And again that's gonna quit. That will cease.

MR. SMITH: Right.

MR. RANKIN: And I think that when you get past 2012 you're gonna have very few where you're gonna say, oh, I can't afford to give the test. So it's gonna get you know, unless things get ratcheted up and people start meeting the educational requirement it's gonna be tough.

MR. SMITH: I agree.

MR. RANKIN: The time that an applicant goes to another state and takes all your fundamentals and comes back here and takes the state portion, I think that you're not getting ahead.

MR. SMITH: Yeah, we don't want to be doing that, and there's not, you know there's not a need for that, and I don't think we'll ever see that. Or I hope the profession holds stronger than that. The one thing you may want to make note of as far as our percentage and pass rate, it's the one coming in from out of state that's coming and passing the test. Our percentage rate in the state's not very good.

MR. RANKIN: It means they need to take it more often to be able to get...

MR. SMITH: The test or...

MR. RANKIN: Yes.

MR. SMITH: Or open the textbook more?

MR. RANKIN: Well it's just a concern.

MR. HORNISH: The NCSS is considering computer based testing. They are looking into that, but I don't think that they're gonna change how often the exam, even if they go to computer

based. Unless and they get into, and there's not any talk that I know of they are planning to change how many times it's offered.

MR. SMITH: It's the expense and the security of it that was holding that up. That was demo'd whenever I first went on 10-12 years ago or something.

Anything else series 1?

MR. RANKIN: The only other comment I would have is that I take exception to the minimum standard being removed from the code and into the rule.

MR. SMITH: Comment on it again, but we've beat that horse to death, but you know that was a recommendation by government organization committee that that's what needed to happen, but you've gotta have them in place in the rules before you can drop them from the code.

Dear Senator would you like to comment on that?

MR. SYPOLT: Sure. It makes perfect sense if you think about who passes the legislation containing the sentence. Obviously most legislators don't know squat about surveying so they'd be looking at laws which mean absolutely nothing to them and they just take the advice of whoever talked to them. Now if in rules and regulations then professionals sitting on the board of examiner's would promulgate those rules and basically that's the purpose of creating a professional licensing board and giving them a certain amount of legislative power in order to keep the technical details away from the legislature if you're going to do it.

MR. SMITH: And society has more voice in the rules committee than what you would on a legislative floor. Do you agree with that?

MR. SYPOLT: I would agree.

MR. RANKIN I still register the view though.

MR. SMITH: Puts you all in a better position putting 'em there.

MR. RANKIN: That's the end of my comments.

MR. SMITH: Anything else series 1? Mr. Witschi you're gonna provide us some proposed wording or the Society on the retirement, some alternatives?

MR. WITSCHI: We'll work on it, yes.

MR. GREEN: He needs them quick.

MR. WITSCHI: Yes.

MR. SMITH: Let's go to series 4. Any comments on series 4? Basically it's just a fee rule pulling everything out of the rules as far as numbers and putting it in one place.

MR. GREEN: Again from the Surveyor Society concern for me anyway, John Green, you've got our written comments there. Unless you have any questions I don't really have any other comments, except the fact that by and large the general comments that I received were not in favor of raising the fees.

MR. SMITH: The fees? You mean just fees?

MR. GREEN: Yes.

MR. SMITH: Have we received anything, any comment at all other than the Society's comments?

MS. BRIGHT: Not as of Friday.

MR. SMITH: Okay.

MR. WITSCHI Two comments that were made to me on this section as the, the one comment what is the annual fee increase of 50, maybe 50% is getting out of hand. The West Virginia Professional Engineers fee is now only \$40.00 per year.

MR. SMITH: How many members of PE?

MR. WITSCHI: I'm, following that up. Yes, I understand we have less members. Same costs, less members, probably more

costs, less members on an advisory position. Yes, I believe the fees have to go up. Whether or not these new rules and regulations will cause us to have less people, would that mean more money, and when do we say enough is enough?

His other comment was on the roster that you have listed as roster for marketing purposes, \$250.00. For some reason, he was getting 'phone calls going where do they get this from? And I explained to him that I don't think it came from the board, but I don't know. What exactly does the PS roster for marketing purposes, what do you give out and who do you give it out to?

MR. SMITH: Marilee?

MR. WITSCHI: I don't see it any place in any other regulation as to what this definition is.

MS. BRIGHT: It's basically given out to people vendors who are using the list to send our surveyors notices of Continuing Education classes.

MR. WITSCHI: That's all?

MR. SMITH: Or junk flyers.

MS. BRIGHT: Or junk flyers.

MR. WITSCHI: So if any vendor is willing to pay \$250.00 you will give them all of our names?

MR. SMITH: They can go to the Secretary of State's office and get it right now anyway. It's on the web page. We're not a supply house. If they want it from us, we're gonna charge 'em for it. They can go to the state and get it for free.

MS. BRIGHT: Many of the...

MR. GREEN: Do other boards do the same thing?

MS. BRIGHT: Some of the boards do, yes. I've seen some of the web sites and because you have like the bar association they sell it by name.

MR. SMITH: Yes.

MS. BRIGHT: They have different scenarios.

MR. SMITH: We can't even get it from the bar association.

MR. ROBERTS: I have another question about that. I have seen some other web site for boards in other states, and when you guys have a web site will that information be free on the web site?

MR. SMITH: As far as names and PS number. I don't know what all has to be listed on that, I mean the personal data will not be, no.

MS. BRIGHT: We haven't discussed it recently, but when we originally discussed it would not be available. People can search and pull up a name but they could not pull up addresses, but that has not been discussed.

MR. HORNISH: We have searched rosters on like PE boards in other jurisdiction, and the only information we get off of that is the name and the fact that they are a PE. It doesn't even tell us if they're mechanical or electrical or whatever. Gives no information as far as address, 'phone number, any contact. When we call them, they won't even give us that, will they?

MS. BRIGHT: Well they won't give it because they don't have it. They don't request it from the licensee when they submit their licenses you know so.

MR. SMITH: I think the Secretary of State you can get an address with the name, if I'm not mistaken.

MR. WITSCHI: Also is this the electronic version that you're giving out or is this a...

MS. BRIGHT: The board's rule is a paper version.

MR. WITSCHI: Paper version only?

MS. BRIGHT: Paper version only.

MR. WITSCHI: Those are obviously questions he just sees this

listed on here and not knowing exactly what the qualifications are and that no place in the code or the regulations does it say what you can and won't disclose. That we find, unless you know of some other place...

MR. SMITH: It got to be a public nuisance, calling in you know requesting the roster and stuff like that. It was available you know, but the ladies are very busy. They take care of a lot of stuff right there on a very limited staff.

MR. GREEN: But that is public information?

MR. SMITH: That is.

MR. GREEN: And they are required by law to keep that list.

MS. BRIGHT: And it's given to surveyors who want it. It's not charged. It's only charged to vendors who are going to use it for marketing purposes.

UNKNOWN: So you're gonna send us for marketing purposes?

MR. SMITH: That's I believe what it says. It's probably going...

MS. BRIGHT: And most of those are out of state.

MR. SMITH: It's probably domain info. If your Society wants to pick it up and redistribute it, that's your... You know we're just not a clearing house, same way as we're not a bank. That's why we've got 5% on late fees.

MR. WITSCHI: As I said, this is just a comment that was made to him obviously after receiving 'phone calls and information. Trying to figure out how they got hold of his name and receiving those 'phone calls and then reviewing this going, well that's how they got it.

MS. BRIGHT: Well we don't distribute any 'phone numbers.

MR. WITSCHI: But looking at this, he had no way of interpreting whether it came from you or not. All he knew was, as long as you got 250 bucks you were gonna give him information, whatever that information was.

MR. GREEN: Well that may have been a bad assumption on his part.

MR. TETER: Well I haven't gotten any 'phone calls. I get the mailings, but no 'phone calls.

MR. SMITH: Okay I know we've you know talked about the fees at several different meetings we had, but basically is everybody clear on that? I mean it's you know "X" number of people and this is our budget. It operates very efficiently. There is not, we got an extreme load still of, there's a good turnover right now. It's done real well with the planning and things hing, but there's a lot of expense. There's a lot more recording that we've got to do to the government, to the agencies. We're getting ready for another audit. all the boards are getting ready to go through. And we don't need that right here at licensing time and it takes extra time you know to prepare all these reports, and Marilee and Connie's time.

MS. BRIGHT: In this particular case, it's a 2 week deadline.

MR. SMITH: We're just getting extremely micro managed by state government anymore.

MR. RANKIN: The only comment I would have on the fees is on page 4, the failure to respond fee of \$500.00 and it seems more like a fine than a fee, and I just wondered whether that's appropriate in the reason.

MR. SMITH: Yes, it is appropriate and the reasoning it is, that's just one way that you all do not have to bear the costs of that. It should be the individual as a group. It doesn't have to be lumped in with your license fee on how you're gonna calculate your charge back out to each licensee, what they're gonna pay. That money would go back into the complaint section under the board's fund.

MR. RANKIN: It would just seem like the board would be more

covered with a re-notification fee or something rather than... It just looks like you know it's something to do because you failed to do something. It seems more like a fine, but if you're comfortable.

MR. GREEN: Well no, we're not comfortable with it. We had the same comment. We feel like it's a fine, but as Greg has said, we've argued this before and they still consider it not to be a fine, but it is for failure to respond. So it is a fine.

MR. SMITH: Yeah, if there's no ramifications and you can ask Marilee how frustrating it is and Mark can tell you what, you know you get people that know the law or they get an attorney and they'll just set there and thumb their nose at you for, you know 3, 4, 6 months and there's not a whole lot you can do with them. Yeah, you can turn around and issue you know a reprimand or you can issue a notice for them to appear. you can subpoena them and the records or whatever you need to make you know an evaluation on a complaint, but that takes time. It takes you know a lot of board time, staff time. It takes AG's time you know reviewing the documents before they go out. And there's a lot of expense you know that goes into that. You know we tried the cooperative method first on dealing with complaints, come in and explain what's going on and tell us what it is. It's not you know.

MR. GREEN: Our position was that we felt that you could you know if someone failed to do that, failed to respond to you that's a violation in and of itself.

MR. SMITH: It is.

MR. GREEN: And you could revoke their license or whatever for that and not even, you know not even continue with...

MR. SMITH: Not without due process of law you can't. They have got to have a hearing, gotta have their day in Court

before you can jerk their license.

MR. GREEN: I thought failure to respond waived your rights to a hearing?

MR. SMITH: No. Well I...

MR. GREEN: I thought that under 30-1-something if the board when it could not locate somebody, could have a hearing or could revoke a license without a hearing.

MR. SMITH: No, you wouldn't want to get to that point. You know that's not allowing due process of law.

MR. GREEN: I think after 60 days or something that you can't locate 'em.

MR. SMITH: And you wouldn't want that so... And all right I didn't get it in the mail. We've got people won't pick up certified mail. We've had to have you know a process server went out there and serve them a notice for a hearing because they wouldn't respond. So you know, it's just all expense. It's time. You know we get together as a board and try to review cases and get you know those things done, and this is after the complaint review committee gets done with them. It's just a lot of expense for the board.

MR. GREEN: Could not these additional expenses be assessed in with the normal cost that you're allowed to assess the complainant if they don't substantially prevail, then you're allowed to assess the costs of the investigations and whatever against that individual. Could this not be recouped at that time?

MR. SMITH: You could recoup it at that time, but it's also an unethical practice, failure to respond. You're...

MR. GREEN: That's a separate violation.

MR. SMITH: That's right, but we still have to have a trial and a hearing to be able to you know make that stick. And this is just Chapter 30 Section 1 was revamped there about 3

or 4 years ago by the legislature, and it's an operational for disciplinary actions on all regulatory boards you want to operate in the state, okay? And that's what's brought about all these changes and how things used to be done, but you don't want a regulatory board to have the power to just come up and revoke a license without giving you a hearing. Just 'cause they didn't respond, and you guys are gonna respond, but you know somebody that didn't want to and you just jerk their license, then you end up in a law suit in Court, so how many thousands of dollars is that gonna run you know for your board's budget and everything? Being represented in Court, and you know it gives the board you know too much authority to do that. So you don't want that process to ever happen.

MR. HORNISH: Actually John there's a measure of truth in what you're saying as far as the wording that's in the Code, but the AG's office, you know would say yeah, you can technically do that, but if you do it without due process you are opening yourself up, and we have to prove that they were had the potential to harm the public and if we were gonna take that extreme measure. And it's interesting if you follow these complaints, I would say 95% of the surveyors are great about responding when we ask them to respond, but you get this small percentage that it's not just the one time. It's not just 2 times. Every time you ask for information, you know it's 3 and 4 times that they will not respond to you, and it is a real drain upon the whole process. Because technically we are supposed to process a complaint within 18 months of the day it's filed, and so we're on a time constraint to try to get these complaints through the process and most of the time this type of a fee is gonna be applicable to someone who is just digging their heels in and is not gonna cooperate with the board.

MR. GREEN: There's another twist to that thing too that we had a problem with as far as the Society I think in some of the discussions we had about this subject, and that was I don't have the thing here with me but I don't think there's anything in there that says that this is up to the board's discretion just like failure. You know you don't respond in 30 days there's a \$500.00 fine period. Now what if a guy was deployed overseas or had some other reason that he could not respond and did not respond. When it came to his attention, he did respond but it was too late. What happens to him?

MR. SMITH: That's under board discretion to waive.

MR. GREEN: And if you so go ahead and waive it for him then the other guy that didn't respond and you did fine him, would he not have an argument to come back legally against the board and say hey?

MR. SMITH: Uh huh, that's why it needs to be a good solid case, and we have had military instances people you know called out or overseas and that's been waived on them.

MR. SYPOLT: There was a bill this past legislative session for the tolling of professional licensors and fees and correspondence for deployed military personnel, and should be in effect as of right now probably, a couple weeks ago went into effect.

MR. SMITH: Okay.

MS. BRIGHT: We were doing that.

MR. SMITH: All right we were practicing that. We did that.

MR. SYPOLT: They've modified that more to make it consistent across all licensing boards.

MR. SMITH: Okay, and while you're on the floor Senator, you had a question there a minute ago?

MR. SYPOLT: Well I was just, no, I'll wait my turn.

MR. SMITH: All right.

MR. RANKIN: I just want to mention, the comment was made not to condone or encourage them not to reply. The comment is made in that if it's a fee and somebody would challenge it, that it's a fine, not a fee. Then it would cost the board money to defend you know the action if it's a fee. It seems like a fine, and I think that somebody could object to that and challenge the board on that, which could cost you money. So that's you know and that's where I was coming from with the comment not to condone, or not to try to get out of paying some kind of a penalty for not responding. It's just that it just seems like a fee, I'm sorry, seems like a fine. If you're not able to collect fines, then it just seems like you're asking to do something maybe you're not allowed to do or that could cause some trouble later. That was the point of my comment originally.

MR. SMITH: Okay.

MR. SYPOLT: Ready to shift gears?

MR. SMITH: Yes sir.

MR. SYPOLT: Just a few quick comments. The first one under section 2 definitions. That's incorrectly identified as series 5. It should be 4. It would be embarrassing if it actually got published that way. And I know we have already discussed this before and probably no additional discussion is necessary, but I would just like to lodge my objection to the fees associated with the certificate of authorization, and I have it in written form, and I'll turn it in at the end of the meeting. And that concludes my comments for series 4.

MR. SMITH: Okay. Any other comments on series 4?

Moving right along. Series 5 standards for practice of surveying. Open the floor, Society, individual?

MR. SYPOLT: Yes, there's a typographical error on section 4. That should be hyphenated between 5-4 but it's 5.4.

MR. SMITH: Where's that now?

MR. SYPOLT: Section 4. I think that should be 23-5-4 not 23-5.4.

MR. TETER: I had the same comment. I noticed the difference.

MR. SMITH: Just a typo.

MR. SYPOLT: Under section 4.2.b. my objection is that there is no provision to accept the existing seals which were previously accepted by the board. It does specifically state in here their standard and that is the only standard to be accepted. I have one of the older styles which doesn't have a rope around the outside. It has hashes.

MR. SMITH: That's what mine's got too.

MR. GREEN: I think we discussed that at the meeting there and you guys assured us that it was the intent of the board to have that standard apply going forward and not require the older ones to change. But like you said that's not reflected in the rules as they are written.

MR. SMITH: Right. What did we come up with on that Mark, do you remember? That's already in the comments, just one thing we were getting was just 2 circles, you know and a name and some of them, everybody, some of them were making up their own.

MS. BRIGHT: Square.

MR. SMITH: Yes, square.

MR. GREEN: I think in our discussion we were advocating that ones whose seals were in compliance with the law at the time that they were issued by the board should still be accepted, and that language and you all had agreed with us at the meeting and that language has not been reflected in that.

MR. HORNISH: No, I was trying to find it because I thought that was in there, but what did you say we agreed to do?

MR. GREEN: If the older seals that people have that were in compliance with the law at the time that they were issued, that they would still be accepted by the board.

MR. HORNISH: As long as they met the requirements in the code.

MR. TETER: Then it means nothing.

MR. GREEN: I don't remember that.

MR. SMITH: Well there's always been an approved seal and that's and it was the hash hatch marks when I came in, okay?

MR. GREEN: But that's what I mean by being in compliance with the law.

MR. SMITH: At the time they were issued.

MR. TETER: At the time they were issued.

MR. HORNISH: No, I was under the impression you know that if a person has is required to have the word professional surveyor on their seal because that is what is required by the code as of 2004, and it's just like you know if a rule changes then from that point forward that is what was going to be required.

MR. GREEN: From that point forward.

MR. HORNISH: Right and so any surveyor that's certified after the 2004 deadline should meet the requirements of the code, which includes the words professional surveyor. Right now we have made arrangements to where getting a new seal if somebody needs to do that, it's gonna cost somewhere around \$24.00, 35, less than \$30.00 to get a new seal. So it's not like it's a tremendous expense for anybody to do that, but if a surveyor has a seal prior to these rules going into effect that has the words professional surveyor on it then we're going to accept that. But if not, then they are going to be encouraged to get a current seal with those words on it.

MR. TETER: I didn't know there were seals out there that did

not say professional surveyor on it.

MR. SMITH: Earlier on...

MR. HORNISH: The licensed land surveyors.

MR. GREEN: Oh, I see. I still think those ought to be accepted if they were in compliance with the law when they were issued. I mean how long ago was that?

MR. SMITH: The whole title was changed. That's, that was the problem with it and everything had changed classifications.

MR. GREEN: If that's the only thing is licensed land surveyor versus professional surveyor I mean you guys know that, right? You know the reason is because it's an old seal and still valid, right? You have records of a person being licensed and what have you, right?

MR. SMITH: That's right if that's what they were issued or told to get at that timeframe, that's right.

MR. HORNISH: In working out some arrangements on the new seal, you know the seal design and all this, in Virginia they made a change to the seal from the PE's and 27,000 new seals had to be ordered because of that change in the code. And so in order to be compliant with the code, a surveyor needs to have on his seal the words professional surveyor. I think there's 3 things that are a minimum the code requires, the name, the number and the words professional surveyor.

MR. RANKIN: But does those now will it have to have the little stars and...

MR. HORNISH: Right let's say it this way no, no, if you had the words professional. If your seal currently meets the code, your name, your license number and the word professional surveyor you will not have to get a new seal that meets this design. It doesn't include.

MR. RANKIN: Well I had the same objection previously, but

nowhere does it tell me I'm okay by not getting it.

MR. SMITH: We can add that in.

MR. RANKIN: Around the side and around the outside it says professional surveyor and it's not a rope, the way that I read the regulations I'm not to code.

MR. SMITH: That's right. That's right and we just need to add a statement there to cover that.

MR. GREEN: Can a code and a law be retroactive like that?

MR. SMITH: Only if it stated so during its passage or written in the text. All right?

MR. GREEN: Have you guys got an opinion from your AG on that I mean even the code part of it?

MR. SMITH: On a professional part or are you talking about going back into licensed surveyor?

MR. GREEN: Yes, yes. In other words having that code say that when it was changed in 2004 do you mean to tell me that all these past 3 years that all these guys have been illegally signing and sealing documents? I know that when that was put in the code that was not our intent. I mean that was one of the things that we suggested that that be changed, and I don't think in any of our discussions did we ever intend to require people that already had perfectly legitimate legal seals at that time, to go back and change them. It was intended that from now on since the title was changed to professionals that it should be changed in the code as well. And that was one of the things that the legislature did adopt. I mean is it something we overlooked?

MR. SMITH: Probably it has been.

MR. GREEN: And that law would be retroactive then and make all those guys illegal?

MR. SMITH: No, that's never been the way we have operated from the board's point on it you know if they've got an

active license, but technically that's what under the law right there's what has to be on it; name, license number and professional surveyor. The board doesn't have time to take issue whether somebody's got licensed land surveyor on their seal or not.

MR. TETER: Then why is it is there?

MR. GREEN: What they have it in there for is for people getting new licenses.

MR. SYPOLT: And replacement seals.

MR. GREEN: Right replacement seals.

MR. SMITH: You've got to start somewhere with a standard and go forward. That's just...

MR. TETER: I thought...

MR. GREEN: But it did not say... That's what we understood, but it doesn't say that in that.

MR. HORNISH: Well...

MR. SMITH: We can make a statement in there as far as seals.

MR. GREEN: But that's what it said. It just says boom you know.

MR. HORNISH: I thought that that was in there.

MS. BRIGHT: It's on the blue piece of paper that you tender with the license. That's where it is.

MR. SMITH: It's in our memo we sent out, okay? If the text didn't get put in here, we'll see it gets put in there.

MR. HORNISH: I mean I can assure you I mean I don't know of any surveyor been pursued because their seal did not have the words professional surveyor.

MR. RANKIN: Yeah, but you can.

MR. HORNISH: That's true.

MR. RANKIN: But again you can still be reprimanded if your pen is 29 1/2 inches long, correct?

MR. TETER: The only one who's gotten a letter...

MR. RANKIN: The tool is there to be used unless you...

MS. BRIGHT: I have sent one letter in the last 6 years and it was to the guy who the square one.

MR. GREEN: And again you could be sitting on a witness stand and a hostile attorney up against you and trying to destroy you. And a jury doesn't know.

MR. RANKIN: I would just suggest to the board that a lot of people have a great fondness for their seal because they worked so hard to get it and to keep it, and to change the language on the seal and make them get new ones is an offense to them, but also if the regulation goes in effect July 31st there will be a lot of people with a seal that doesn't meet the code so now are all those surveys invalid until such time as...

MR. GREEN: Well that argument could be made now because technically they are. It's the code.

MR. RANKIN: That's why I think that the language, some kind of language that you know that the seal that you have if it was good at the time you obtained it is good now, I think that's the concern.

MR. HORNISH: If the surveyor wanted to erase any problems that might occur in a court case that would question whether or not the survey was valid, \$24.00 is a real small price to pay to get a new seal. I mean this is not a great expense, and...

MR. RANKIN: I just register the objection. The board has a right to put anything in your rules you want. I just put the concern out that you know now my surveys are invalid because I have a dash rather than a row and something that could be used...

MR. HORNISH: Well...

MR. RANKIN: If the intent is for everybody to trade in the

seal and get another one.

MR. HORNISH: No, no. That's not the intent.

MR. GREEN: If there was a mistake made when you did the code in 2004 there's no need to repeat it again.

MR. HORNISH: Yeah, we are not, you know and that I don't know why I thought that was in there, but this is gonna be effective you know for all seals after the effective date of these rules. And I thought that was in there.

MR. RANKIN: I'm just saying one of the concerns.

MR. HORNISH: Well that part of it I agree with you and that's a valid concern, but we're not expecting everybody to tear your seals up and begin again.

MR. RANKIN: And again when I make these comments I assume that you all can consider them, consider them and thrown them away, consider them and do something about it you know. It's up to you. I'm just making a comment.

MR. SMITH: Well we've got 2 goals. This is rules. You know we can't back up and change what's in the code. That's not what we're in the process of doing right now. You know we've got to make it easier to function as a profession where you can be efficient and accountability you know to the state and... You know if it's a main concern to the Society or is it your know just a small handful that just you know wants their little license land thing on it or whatever?

MR. GREEN: The Society we did get quite a few people did comment about that, and that's why we brought it up when we met with you guys in April.

MR. SYPOLT: Ready to move on?

MR. SMITH: Yes.

MR. SYPOLT: Section 4.2.c.9. this is in the same area. There was no mention of endorsement I noted and I don't have any kind of endorsement, but older seals used to have SU for

the underground endorsement. I see no mention of endorsement.

MR. SMITH: Oh, that's in here somewhere.

MR. GREEN: We had the same comment about it.

MR. RANKIN: That's in the section concerning endorsements.

MR. HORNISH: Actually the code currently requires the endorsement on the seal.

MR. SYPOLT: Okay.

MR. HORNISH: And at some point in the future there may be additional endorsers other than surface underground.

MR. SYPOLT: I understand.

MR. HORNISH: And so to you know I guess what we're saying is that's one situation where we if that part of the code is changed at some point in time in the future, we don't want these rules to be in conflict with that.

MR. SYPOLT: Okay.

MR. HORNISH: But the requirements for it are in the code, and currently they only endorsement in the code is this issue.

MR. SYPOLT: Under section 4.3.a.1. it's on the same page. There is a typographical error on that section. Considered an certified, I think that should be...

MR. SMITH: As certified?

MR. SYPOLT: As certified.

MR. GREEN: I read the comments, had the same one.

MR. SYPOLT: On the very next section 4.3.a.2. and I'll read it. It says the seal shall be affixed and the signature shall be ascribed in a manner that a copy of the certified survey document is readily identifiable, and my objection is that an embossed seal won't copy. Is that gonna be a problem because you have accepted an embossed seal as an appropriate way to seal a document?

MR. SMITH: You shade them just like they do in the Court House. Just more authenticity to the document that it is a copy and it did have a signature and seal. I mean they copy my signature and seal and put it on elevation certificates, but...

MR. SYPOLT: I don't think it's wanted by anybody.

MR. SMITH: Made my seal would accomplish it would have been all right wouldn't it?

MR. SYPOLT: I'll say one thing. If they wouldn't have glued it on there and coated it around you know it would be easier to put through.

MR. RANKIN: Now that I understand the intent of your thinking here, I think it would the other way. Is that when you copied it should be that your signature and seal should be affixed in such a manner that when it's copied it's readily identifiable as a copy. Which would mean and then the embossing is an advantage because now you can't see the seal. Or in a different color and because there are certain contracts that you sign with people where I'll give you 5 copies of this or I'll give you this or I'll give you that, and that kinda goes against something like that.

MR. SMITH: Well I'm gonna give you 2 things. It's in the code for both.

MR. RANKIN: Okay.

MR. SMITH: Either rubber stamp or embossed. Some Court Houses through the state, some only take certain seals. Some want embossed, some want stamped and I've went round and round with you know a couple of them myself, but what happens is the client gets it. He gets an embossed seal, gets a copy or the attorney copies it and he keeps the original in his file and you know they take it to the Court House for recording and then you get a clerk that doesn't want to be

cooperative or is following the letter of the law. There's not a seal evident then you know. Doesn't say that it has to be an original being presented for recordation. It can have you know signatures and seals on the plat then it complies with the recording laws under what the clerk's and everything have to run by.

MR. GREEN: But their intent was that it do copy?

MR. SMITH: Yes, mainly so it can be identified. That's the whole intent behind it.

MR. SYPOLT: And under section 6.2.c. which is the section about disseminating facts and data. My objection to that is that I think it's a dangerous requirement and the entire section should be removed or subsection. Or at the very least the word shall should be changed to should to allow more wiggle room and I feel strongly about this mainly because part of our requirements as a land surveyor is to collect information about boundaries in the vicinities and by preventing another surveyor from speaking to me about that actually limits my ability to do my job. And I understand there are situations where a surveyor has to make a choice you know not to reveal information, but I think by putting it in the rules it's a dangerous place to go.

MR. GREEN: Certainly the boundary information.

MS. BRIGHT: I've got it.

MR. SMITH: You've got it? It's been kicked around quite a bit and counsel's went through it. We've had 2 or 3 different attorneys and stuff look at it. You know it's more of an equitable obligation standard but you've got some people that's you know not scrupulous. Case in point does you know survey for the client. He doesn't want the information you know released. So the surveyor goes and gives it to the adjoiner that shows the clients has got a

building across the boundary line. He had no business giving the information to the adjoiner.

MR. SYPOLT: With that rule you're protecting the surveyor from himself. If he gives himself up to liability.

MR. SMITH: Well he should be if he acts in that type of manner.

MR. SYPOLT: I would agree but this rule protects the surveyor from himself and you know doing something he shouldn't do to really harm himself. I don't know that it would harm his clients. It might open him up to a civil suit I would think.

MR. HORNISH: I think that's a two edged sword, well and also is protecting the public by at least bringing up the issue and if a surveyor wants to deal with this in a written contract with the client then they can easily resolve this issue, but there have been several situations where the public has been harmed greatly because the surveyor disseminated information when they did not have the client's permission.

MR. SMITH: Okay let me clarify something. We beat this around and went through you know a couple different attorneys even outside the AG's office who works for us, and on the one draft 6.2.c. and you gotta follow all the context through here. Where it says shall, should. It's not binding I mean 100%, but I mean it has some weight.

MR. SYPOLT: More of a guideline than a hard rule?

MR. SMITH: Right.

MR. SYPOLT: I think that's fair.

MR. SMITH: I mean it's always questionable that way, but then you know 6.2.c.1. clarifies that, the licensee should use discretion when disseminating.

MR. SYPOLT: Right.

MR. SMITH: Okay? So it's not for the practicing professional that is a professional. It's for the unscrupulous out there. And that doesn't bind anybody.

MR. SYPOLT: I think that's a fair compromise in my mind anyway.

MR. SMITH: Comment?

MR. RANKIN: I commend you for that because then the way that I read it the owner is to make that information privileged or never to be distributed is on the client and not on the surveyor. Because you know if we have something that comes up from 15 years ago and we give that information out the way that it would be otherwise is that we're responsible for that, but I like that.

MR. TETER: Let me go ahead and add a comment there. Don Teter. Because I did have a comment in my written comments that I gave you about the same thing. I said that even though I'm still not entirely comfortable with all this language, it is considerably less troublesome than the previous version. And I would just kinda like to add that to the discussion. It is tremendously improved over the version that concerned us before.

MR. SMITH: Right.

MR. SYPOLT: Are we ready?

MR. SMITH: Yes sir.

MR. SYPOLT. Sub section 7.3.g. is on page 9. I'd like to read a sentence in here. Maybe you can tell me what it means. I get a little lost in those. It says the client may request a plat not to be supplied by the surveyor unless required by law, rule or regulation. I don't know exactly what that means. I think what they're trying to say is the client can request that you don't prepare a plat for them, just doesn't want that.

MR. GREEN: No, they say supply, not prepare.

MR. TETER: It also says not to be supplied. Request a plat that's not to be supplied by the surveyor unless it's required by law, rule or regulation. That's a little bit troublesome the way it's worded.

MR. SMITH: Where are you reading that?

MR. TETER: That's on 7.3.g. third line down.

MR. SMITH: Third paragraph up from the bottom of the page. The client may request a plat not be supplied by the surveyor unless required by law. Well it's required.

MR. HORNISH: Can I make a comment on it? The client could give an exception for the client to overrule other laws that are in the code regarding a plat being prepared for a survey. So this is written not to conflict with the code, but bring the license up. You just can't read that one little exception to minimum standards without seeing the other places in the code where plats are required.

MR. TETER: Uh huh.

MR. HORNISH: So that's this wording, although I don't know if it's doing a very good job. I mean that's up to a lawyer, but it's the intent of it is to bring to light the fact that a surveyor must supply a plat with the boundary survey according to the code, and if there's nothing stated in the code and a client does not request a plat the he doesn't have to supply it, but he can do it so at that time that one minimum standard say well I don't have to supply a plat.

MR. SYPOLT: Well let me put up a scenario for you. A client comes to me and say you know Dave, you surveyed our land a couple years ago. I need you to remark this line, somebody's tore the fence down and all the stakes are down. Now that's a survey. It's a boundary survey, but you know you've already surveyed and you've given him a plat so he's just

well I don't really need another plat or description. Just go out and put stakes in the ground for me. Now would that be a legitimate time when I wouldn't have to prepare a plat?

MR. GREEN: You've already prepared. You've already supplied the plat.

MR. SYPOLT: But I'm doing another survey.

MR. RANKIN: You're just re-monumenting the previous survey.

MR. SMITH: Yeah.

MR. TETER: What I would do in that situation, would be I'd go ahead and give them another copy of the plat, signed and sealed again saying I restaked this line this date.

MR. SMITH: Yeah, I've done that.

MR. SYPOLT: But let me add another comment too. It's kind of reiterating what Marks was saying. It's 30-13a-25 actually requires that when you do a boundary survey, you will draw a plat.

MR. SMITH: That's minimum standards.

MR. SYPOLT: That's not minimum standards, that's the code separate from minimum standards.

MR. SMITH: Separate section.

MR. GREEN: Yes, there's a whole section called delivery of plat or something like that.

MR. SMITH: Right.

MR. GREEN: Separate section.

MR. SYPOLT: In fact there's conflict in that...

MR. SMITH: There is.

MR. GREEN: I have a question about this section. Are you... Can I?

MR. TETER: Let me go ahead and just make one more statement about that. The point that I have made whenever I've done the minimum standards course to people that if it says in one place in the code you will do a plat and it says in another

place you don't have to do a plat, you better do a plat.

MR. HORNISH: Thank you Don. We appreciate you very much.

MR. SMITH: That's pretty much the whole point.

MR. GREEN: The question I have about that is that you know I think there are legitimate times like he points out when someone is doing boundary survey that they don't really need to do a plat, but in this particular instance if this... I mean if you're talking about the, the part of the code that you cited that this is to not be in conflict with, that's the minimum standards, right?

MR. SYPOLT: Yes.

MR. GREEN: That's the rule that gives the exception, right? Well this is the minimum standards, then why do you need that?

MR. SMITH: This is in a rule, the other is in the code.

MR. GREEN: Yeah, but you're moving the standards to the rules.

MR. SMITH: We have to get the rules passed first and then you can go back and delete that section from your code.

MR. GREEN: Just a question.

MR. SMITH: So there are, they will be in conflict until all that happens.

MR. HORNISH: But as far as the board is concerned there is no conflict because we recognize the other places in the code that plats are required. So if a surveyor comes to us with that by a complaint and says well the minimum standards says this, then we're gonna say yeah, but the code says that. This is just kinda reiterating as far as our position on this issue.

MR. SMITH: And what we have talked about doing just to take this a little bit further and clear some of this up, is doing like an interpretive rule with the scenario that Dave

mentioned. Just to codify that, that you know there's times that it's not needed. Or if you've got a plat on record that's you know less than 10 years old and you're gonna go reset the corner, whether you did the survey or not, it may not be required to do a plat, but provide some type of documentation that can be placed of record. You know just to remonument the corner. There are certain times you don't need to I mean as far as I'm concerned, and especially if you'll write a description. Now a plat may be more needed than what the description is.

MR. GREEN: Suppose you don't need to remonument anything? Suppose you're just marking the line between 2 existing monuments and he's gonna build a fence?

MR. SMITH: Why do one? I mean there's no need, but we need something to clarify that to kinda you know take care of these discrepancies in here. That's something you know we want to do and intend to do.

MR. GREEN: So you think at some point in time you may entertain a thought of an interpretive rule to elaborate on that?

MR. SMITH: Yeah, it needs to be. It's a waste of time and a waste of... Doesn't help the public a bit. You have to go write a description to do it, 'cause you've gotta do that too. It's not just a plat. And why write a description for one line just to...

MR. GREEN: I think the Society would probably be in favor of that, don't you?

MR. SMITH: It's just something that needs fixing, and it's needed fixed for quite a while.

MR. GREEN: Yes.

MR. RANKIN: May I suggest different language for the sentence?

MR. SMITH: Yes.

MR. RANKIN: The client may request (and insert the word "that") that a plat not be supplied (and take the word "to" out), not be supplied by the surveyor unless such plat is required by law, rule or regulation.

MR. TETER: He's saying the same thing.

MR. SMITH: Right.

MR. RANKIN: I was confused when I read that too.

MR. SMITH: It is worded wordy.

MR. HORNISH: It is within the minimum standards and that's why it was attempted to be worded that way.

MR. SMITH: As far as I'm concerned, you can pull that clients authority to regulate that, throw it out the door. It should be a professional's call.

MR. GREEN: But it does leave it open or does recognize that there may be an instance where you don't need to do that, but you know I can see where people can take that too far and use it to try to get around preparing one when it clearly does need to be done.

MR. SMITH: Well case in point you know there's a complaint and that was one thing. The complaint wasn't filed because they didn't do a plat and description, because they ended up in a boundary dispute basically is what it was, but the guy couldn't produce it. He didn't draw a plat, didn't write a description. Well the client didn't need one, but so what he does, that was his verbal contract because we showed him where he was you know in conflict with the law. So what's he do? He goes back and rewrites his contract that he gives out to his landowners. Sends us a contract for the board wanted to know if this will work so he doesn't have to draw a plat and description. Every time a client signs that thing...

MR. GREEN: He doesn't want to ever do a plat.

MR. SMITH: That's right, and he didn't. That's just you know, but still there'd be calls come up and property get transferred. That's, I thought that took pretty good, something to supply that back to the board. Okay Dave.

MR. SYPOLT: 7.3.g.6. on page 10 toward the top. I just want to make a comment about the abbreviation found. I had an objection to that whenever it was put in the law to begin with. I mean I understand found or set, but did you actually check and find what the designated abbreviation is for that?

MR. HORNISH: No, really we don't.

MR. TETER: I have made the same comment that basically it's kinda silly to have it in there.

MR. SMITH: Strike it?

MR. HORNISH: All right consider it stricken in my opinion.

MR. SYPOLT: Under 7.3.h. my objection is well I guess maybe you have already answered this. Since there is an exception for preparing a plat (which there really isn't, it's just supplying a plat). Shouldn't there be an exemption for supplying a description also?

MR. GREEN: I don't think they have the same compliance with the code issues to deal with on that.

MR. SYPOLT: There's nothing, and I'm not familiar that says you have to write a description at all.

MR. GREEN: It says you do, but it doesn't have that exception that they had to comply with.

MR. HORNISH: That's correct. That's correct, but you're also correct that there may be some need to have an exception there.

MR. SMITH: Right that's what we talked about having this interpretive rule where sometimes a plat may be just appropriate.

MR. HORNISH: Possibly.

MR. SMITH: But not need a description, is really not needed.

MR. HORNISH: Possibly we could look at putting some type of wording in here to deal with that as well?

MR. SMITH: Yes, I think so.

MR. HORNISH: I mean you know more about this than we do Dave, if you write this into the rule I mean that wouldn't necessarily be in conflict with the code.

MR. SYPOLT: No, the rule can never supersede the code.

MR. HORNISH: Right.

MR. SMITH: So the rules of boards are clarified.

MR. GREEN: And I think that the code says you gotta do a description.

MR. SMITH: Yes.

MR. GREEN: If you excused it here, I think you'd have to file it.

MR. SMITH: I think it could be dealt with when we make an interpretive rule with the plat issue. But it may take a process of time to get it all cleaned up, but at least you know the board's position how everybody should operate. That way it doesn't put them outside the law if you've got an interpretive rule setting there.

MR. GREEN: Yes.

MR. SYPOLT: All right under 7.4.d.4. it's at the bottom of page 11. It says a minimum of 2 dimensions shall be shown for each improvement unless it is irregular in shape. And just for clarification in my mind if the rule never states whether more or fewer dimensions are required if the parcel is irregular, or the item that you're tying to the dimension is irregular, if it's an irregular shape does that mean you have to have 3 dimensions on it or 5 dimensions? Or does it mean you can get by with one, or maybe you don't need any. It just signifies that there is you know exceptions for

irregularly shaped items shown on a plat as far as what needs to be dimension of, but it doesn't really clarify what you're supposed to do with them. I would ask that be either stricken or qualified or clarified.

MR. SMITH: These were taken out of the old standards.

MR. SYPOLT: This is under mortgage surveys.

MR. SMITH: Yeah, right. This really came from...

MR. HORNISH: This was out of Kentucky mortgage inspection which...

MR. GREEN: Then you guys massaged it to make it fit?

MR. SMITH: Well this really you know I think Rick Sypolt did that about 10-12 years ago.

MR. HORNISH: Back in 2000.

MR. GREEN: Okay.

MR. HORNISH: And we took his work plus Jeff supplied some stuff from Ohio, so we pretty much incorporated that into this. So I think these are some things, you got a house that's got is rectangular and all you need is a roof and the input shown on there. So it's irregular, so if you got a figure 8 shaped pool there, I mean how are you gonna dimension that really? It's not gonna happen.

MR. GREEN: Right.

MR. HORNISH: So...

MR. SMITH: I don't know. You got any wording? Just that if you read the mortgage inspection laws that comes up in stuff like that, you know they want if it's rectangular 2 dimensions fine, if not they want porched this dimension that show how it fits the structure and...

MR. SYPOLT: I know I think that a of times with mortgage inspection surveys I think that the outer rule would apply. You've got all CSM type things and it's pretty well spelled out what you have to do in there, and it's actually one of

those check marks from table A if I'm not mistaken. If they want dimensions of structures at ground level.

MR. GREEN: And optional?

MR. SYPOLT: And optional. So I'm not sure it even needs to be in here.

MR. HORNISH: Just word that sentence a minimum of 2 dimensions.

MR. SYPOLT: Right. I don't see any purpose in it. I just see it as confusing.

MR. HORNISH: Because basically the bank or the financial institutions do it.

MR. SYPOLT: Right. Well that sets their standards. They know what they want.

MR. SMITH: You all move the minimum of 2 dimensions shall be shown for each improvement. Or just take that whole sentence clear out?

MR. SYPOLT: I'd just say take it all out because sometimes we don't care what the dimensions are.

MR. GREEN: Sometimes they're just looking for encroachments and stuff.

MR. SMITH: Right.

MR. SYPOLT: No sense in making it more complicated that it already is. And one last thing that should be very simple which is 9.4.b. It's actually on the bottom of page 13, but the issue I have with that is on top of page 14 and the last sentence. I think there's a typographical error there. It says "or refuse to issue the license as is meet and proper under all the circumstances". I'm not sure what that was supposed to be.

MS. BRIGHT: That's correct.

MR. SYPOLT: Is that correct?

MS. BRIGHT: That's the term that was in the earlier rules,

but I've gone back and looked it up and I don't have that on this exactly, but the meaning of meet is correct, but...

MR. SYPOLT: Meet and proper so it's actually a proper term?

MS. BRIGHT: It's a legal term.

MR. SYPOLT: Okay.

MS. BRIGHT: But I don't remember specifically.

MR. GREEN: Would the surveyor know what that means to comply with it I mean?

MR. SMITH: Well do they need to worry about it?

MR. GREEN: I don't know, do they?

MR. SMITH: Disciplinary action. That's when those were rewritten, but I know that's...

MS. BRIGHT: So that's what led to it.

MR. SMITH: And it's probably not gonna apply I mean unless you're under a hard disciplinary review from the board that your license is not going to be reissued because you got a complaint and you're a severe harm to the public. Then you can not reissue a license if they apply for it., and that only applies like if you come right in the transition time for renewal.

MR. SYPOLT: Actually as I read that rule it doesn't apply to surveyors, but it applies to the board and how you will use the information that is supplied to you for reapplication for a license.

MR. SMITH: Uh huh.

MR. SYPOLT: That's all I have on series 5.

MR. SMITH: Okay. Just a comment on your like the improvements and stuff. We had guys they were only hired to do a boundary survey. They weren't hired to show the garage or whatever it was that was over the boundary line. The client didn't ask them to. That was his contractor agreement.

MR. TETER: It showed evidence of possession on or near the boundary line.

MR. SMITH: Yeah, but his contract you know stated otherwise so that's what he was trying to argue.

MR. GREEN: He needs to do some work on that contract, doesn't he?

MR. SMITH: Yeah, not the same one we had before but... We've got a couple ones out there.

Anyone else series 4?

MR. GREEN: Series 5.

MR. SMITH: Five excuse me.

MR. RANKIN: Yes, I do. And we don't have to make you know elaborate discussion if we don't need to, but in 2.11 ownership line means a line or series of lines supported by good marketable title. Does that now mean I have to have a title opinion before I can survey a piece of property? Just as a question.

MR. SMITH: No.

MR. RANKIN: Okay. It would make it seem like I couldn't survey something unless I had proof it was good marketable title. But sometimes you have to survey something to figure out where it is to do that title. It's just the observation I had there and who would determine that it's good marketable title? You know that was part of it, and I think I seen that comment in somebody else's. Unless you've already had it, just please consider it.

MR. SMITH: Mark, do you remember exactly where that came from? Knud?

MR. HORNISH: I don't know if that was his attorney side speaking or his surveyor side.

MR. SMITH: We did have Knud go through all these things too, as far as extra scrutiny. Because you know there's no

need to have rules developed and everything to where it is gonna put the surveying professional out there in a bind by having to comply with these things, or put them into an undue predicament, you know like when you do get in Court. There's got to be some professional judgment and stuff, and we don't want them to get pinned down to where like I say if you're not in compliance if that rebar isn't 29 1/2...

MR. GREEN: And are you qualified to make that?

MR. HORNISH: I think there's probably a better way to word that.

MR. TETER: Yeah, I'd like to go ahead and add a comment because I had a specific comment on that. The previous proposed version stated that an "ownership line" can only be established as a boundary by order of the court. And the problem that I have with the current language is, and I'm not sure since it's in definition how it even applies, if it's even used in the rules, but I don't think surveyors have any business saying there is good marketable title. And I think it should be clear somehow that a surveyor is not saying there's good marketable title. I don't think attorneys would like kindly on surveyors offering title opinions.

MR. SMITH: No, no, that's true, but I know what part of the process was and that was and you even addressed that in Morgantown at a standards thing up there, but you may have an ownership line or a title line described by deed or instrument that describes a piece of property that is a boundary or ownership line. Then you've got possession line. Well both shall be shown if you've got you know a difference.

MR. TETER: And either one can end up being an ownership line.

MR. SMITH: Could be, that's right.

MR. TETER: But I think if you put some of that clarification

that was in the previous version that the question of marketable title could really only be...

MR. SMITH: Ownership supported by, let's see, by recorded or public documents of record.

MR. TETER: Now like I say, I'm not sure where ownership lines even appears elsewhere in the rules or if the definition is applied to it.

MR. SMITH: So we can ask Knud on that, but I guess my first thought on it would be to refer to documents of public record as ownership lines.

MR. GREEN: As opposed to a claim line or something?

MR. SMITH: Well instead of saying good marketable title.

MR. TETER: Instead of saying good marketable title.

MR. SMITH: So it was supported by documents of public record.

MR. TETER: I would be more comfortable with that.

MR. RANKIN: Yeah, because it can be in the public record and still not be good marketable title.

MR. SMITH: That's right.

MR. TETER: But at least the surveyor has something to rely upon.

MR. SMITH: Yeah, because that's basically what you're going to survey. You're gonna survey that deed or whatever or the will if it's described in it.

Next?

MR. WITSCHI: 23-5-2.1. This is a comment that was given to me. Does the term right of way need to be included? I believe there may be a difference between an easement and a right of way. It is a legal question, not a survey question.

MR. GREEN: A right of way is an easement, isn't it?

MR. SMITH: Correct that's my understanding. An easement's any encumbrance on the property. A right of way would be

underneath of an easement.

MR. TETER: I'd like to offer a little bit of clarification there. As it's been explained to me, that a right of way is generally or can be an easement, but a right of way may also be used as say railroad right of way could be in fee ownership. The word right of way is used somewhat interchangeably. In other words, an easement might be a right of way, but a right of way is not necessarily only an easement.

But I think the language here is talking about the creation of a new easement or right of way. I don't see a problem with it because either way you're simply saying that whatever you're creating it should be defined.

MR. SMITH: Yes.

MR. TETER: I think that's the intent of the rule.

MR. SMITH: That's the intent, yeah.

MR. GREEN: I don't have a problem with it.

MR. WITSCHI: I think his question was, does he, obviously you have listed easement. Does the word right of way need to be in there also?

MR. TETER: I think so.

MR. WITSCHI: As a separate term?

MR. GREEN: Since none of us are lawyers I don't know if we could actually answer that.

MR. TETER: A lawyer never uses one term when he can use two, so we'd better leave it in there.

MR. GREEN: Where's A.J. when you need him?

MR. SMITH: That's right. We'll run that one back through. I think you all offered something with the right of way describing it?

MR. HORNISH: You guys talking about the boundary survey thing?

MR. SMITH: Yes.

MR. HORNISH: Knud made a comment to me about that. He said that the words surface and mineral need to be added to the boundary the definition, and he suggested partial and complete, which after our discussion today as we define partial survey the whole discussion about the plat being required if you have already done it before, I don't know who that would all play into this but...

MR. SMITH: Well I think that partial resurvey, you're going back out and even though you're not gonna do a whole tract is the context he was coming from in that one.

MR. SYPOLT: I recall it different than that definition. I mean what is a partial survey? You only did half of the requirements? I mean it's still a survey. It's just a survey part of the parcel, not a whole parcel.

MR. RANKIN: It's still a boundary survey.

MR. SYPOLT: Right.

MR. GREEN: Certainly.

MR. HORNISH: I would definitely concur with that, but I think the surface and mineral ought to be added to that definition because we just received some information here recently that was asking about that so.

MR. GREEN: How would those words be put in there? How would it read? Because that's something we haven't looked at, we haven't seen at all.

MR. HORNISH: That's correct.

MR. GREEN: So I don't know how we'd comment on something we haven't seen.

MR. SYPOLT: Well you could write up after it to say "boundary survey" means a survey of surface and/or mineral boundaries in which property or easement lines etc. etc. Do it right there at the beginning.

MR. HORNISH: Right.

MR. SYPOLT: I think in the code there's actually a definition of surveying being measurement of a point falling above or below the surface of the earth. It's almost implied right there.

MR. HORNISH: Well maybe that wording would be better surface and subsurface.

MR. SYPOLT: That's Allan's words.

MR. WITSCHI: Okay I'm done for the day. For the year.

MR. SYPOLT: And we could also have aerial maybe.

MR. HORNISH: Yes, but they are above the surface.

MR. GREEN: Above the surface.

MR. SMITH: The firmament.

MR. SYPOLT: Yes, the firmament.

MR. SMITH: We don't even have to look at aerial, it's still in effect on the surface. If they are discovering like an air writer it would have to be related to the surface.

MR. TETER: Really to me, it's a boundary is a boundary wherever it is, whether it's up there, down here or below. If it's a literal boundary it's a legal boundary, a proper boundary is a property boundary.

MR. TETER: So the consensus is it would be in compliance with the code as far as definition of survey, and it clarifies that because we have had some issues arise.

MR. GREEN: I don't think I would have a problem with it the way he just described it.

MR. TETER: Right.

MR. GREEN: I don't see any other Society members.

MR. SMITH: Do you want to relay that wording and shoot it by us again?

MR. WITSCHI: Something will be submitted as soon as Dave gets finished with it.

MR. SMITH: Marilee's got it don't you?

MS. BRIGHT: Yeah I've got it.

MR. SYPOLT: If I could just reiterate it means a surface or subsurface survey. That's all you need to say really.

MR. SMITH: Sounds good.

MR. GREEN: And this is in definition of boundary surveys?

MR. SMITH: Uh huh.

MR. GREEN: So then we're expanding the definition of boundaries so it doesn't really apply just to properties and easements and things but...

MR. TETER: Well it always has.

MR. RANKIN: It always has. We're not expanding it, it always has. It's just that Knud in his legalistic mind wants surface and mineral, and I think it's already there. That property is property whether it's on the surface or...

MR. SMITH: But if it's spelled out then, right. If they spell it out, then you know it's there.

MR. WITSCHI: It may be some other area.

MR. GREEN: So you have to comply with all minimum standards and write a description just like you would with any other boundary survey, right? Boundary survey is boundary survey.

MR. SMITH: It all runs back to the same origin. Origination of title was free at one time. It all relates to the surface and the boundary.

MR. TETER: It would not be effective in oil and gas permits plats because you're not determining boundaries there. No more so than you are in mortgage inspection.

MR. GREEN: Absolutely. You survey the boundary of it and then write a description of it.

MR. SYPOLT: That becomes a problem. As far as the permitting goes, you are required to the committee process to notify the joint owner.

MR. RANKIN: I wasn't trying to get into it too much. We're not demanding, he's just seeking to clarify what we have already discussed.

MR. SMITH: But it would go surface to surface, subsurface you don't see any problem with it as far as the coal or anything like that?

MR. SYPOLT: No, I don't see any.

MR. SMITH: Any other comments?

MR. RANKIN: On that section or other sections? On COA's in general. You know it says you got to go in and look at the application fee in part 4. A person can have an office and up to 50 employees and pay \$500.00 whereas you know let's say I'm in Town A seeking to expand over into Town B. I have a total of 10 or 15 employees and I have to pay \$500.00, and I have to hire another surveyor to try to open up an office over there. I object because there's no mechanism that I could try to expand my surveying business with you know and try to get more business and open up an office over in the next town without having another licensee when a person can have an office and supervise up to 50 employees. You know if the intent of the rule was to make sure that there's somebody supervising those employees I don't see why that I couldn't have 7 people in one office and 7 people in another office doing boundary work and could still supervise their work sufficient. Whereas somebody out of state has somebody in here and could be supervising 50, so and we've had these discussions before about opening up an office. Dave Jackson I thought he specifically said you know the views on that, but I just want to say I don't see any way to do that.

MR. GREEN: Where is it now?

MR. RANKIN: COA's in general and I don't see a way for a person to try to reach out and expand you know economically

to an adjoining town or adjoining county without having an office there with a surveyor, another licensed surveyor. I think that there are situations where that office could be sufficiently supervised without having a person in that office and I think it's no different a situation than a firm having 50 employees surveying in the state of West Virginia and they're in Columbus or Richmond or somewhere.

MR. SMITH: Okay you're talking small numbers, 7 here, 7 there. You can apply to the board for...

MR. RANKIN: Yeah, and get another big fee for it, right?

MR. SMITH: No, If you want a COA. You're gonna supervise both offices under one COA?

MR. RANKIN: Yeah.

MR. SMITH: You can apply to the board for approval of that, and it costs \$200.00.

MR. RANKIN: Under special supervision application, is that what that is?

MR. SMITH: No.

MR. GREEN: No.

MR. RANKIN: I thought before I was told there was a fee for that. So there's no fee for that?

MR. SMITH: No, thank you for bringing that to our attention.

MR. RANKIN: Then I object to the fee, and if it's clearly stated that I could do that without a fee because you know I don't see any difference between me surveying 20 employees in 2 adjacent counties or and somebody from out of state supervising 50 employees. I think...

MR. SMITH: That's why we have the exemption in there.

MR. RANKIN: Okay.

MR. SMITH: And I'm sure you can submit the information the documentation to support your position, but if we don't and we just open it wide up, then it runs helter skelter. We got

somebody working in Martinsburg and they're living down in Boone County and supervising an office over there.

MR. RANKIN: And again I just wanted to bring that up.

MR. GREEN: That was a change the board me in response to the Society's voicing the exact same concern at our April meeting.

MR. RANKIN: Okay I didn't go to that one and I apologize for taking up the time, but I did have a comment on the fees, it seems like it's been satisfied. I also had a comment on 4.2.e. on page 4 there's a misspelling in that section also. "As soon a practical" should be "As soon as practical. And that's just little stuff. On page 6, 4.3.f. I commend the board for talking about the modifications of documents already filed in the Court House. I would encourage more stringent recordation rules somehow, and I don't know how you can do that but...

MR. HORNISH: That's in the code too.

MR. RANKIN: On page 7 I did have objection to 62c which by changing from shall to should is great. On page 8 on 6.3.c. I'm a little concerned about how say the words "nor indiscriminately criticize other licensees' work or..." I'm a little concerned about how a future board may interpret that, and who determines what indiscriminately means?

MR. SMITH: We have beat that one around at council too and stuff on it like that.

MR. RANKIN: Just register my concern.

MR. SMITH: All right.

MR. RANKIN: On page 12, 7.4.g. I commend the board for putting the language in there that descriptions should not be or shall not be prepared on a mortgage inspection. I think that's great.

Any my last comment in section 5 is on page 14,

9.5.c. The board may require the person demanding the hearing to give reasonable security for costs and if the person does not substantial prevail they'll be assessed the costs. I object to a person being assumed guilty and can't go through the appeals process without having to put up what could be a large amount of money.

MR. HORNISH: Where were you?

MR. RANKIN: 9.5.c. The Board may require the person demanding the hearing to give reasonable security for costs. I don't know what you mean by that. Do you want them to post a bond? Do you want them to deposit money beforehand if you guys think it will go on for 3 weeks and you have attorney fees and all that. It's like making them pay up front when it's for something that may never happen and I have an objection to that. And that's my comments.

MR. SMITH: On the last one that wording is taken out of the 30, Chapter 30, Section 1, or Article 1 and operation of the boards through disciplinary. I think that's right where that came from.

MR. RANKIN: I still wouldn't agree with it there either. I'd just register my objection to that. You know I could see a person you know that is getting on their feet or not as successful as other people, that you guys would or a future board, could say you have to post a security of \$20,000.00 and if they don't have it, so because it's such a large fee they would just admit to anything that board would want to do to them, and I don't consider that good, a good way to do it.

MR. SMITH: That was brought up in discussion, and of course the attorneys you know comment was, you know the reasonable fee is in there. So you know about what it costs if you call a hearing. You know you're paying for your court reporter and the time and stuff so it has to be within reason. It

can't go, you know something that never happens in a trial basis or anything.

MR. RANKIN: And again a future board with malicious intent could justify anything as reasonable.

MR. SMITH: And that's something you always want to watch for. Let the laws and rules have to deal with that.

MR. RANKIN: That's why I bring it up.

MR. SMITH: You had a comment on recordation. I think it's severely needed. I'd like to see a, or one of the things I'd like to accomplish over the next few years is you know see something done with that and get a mandatory recordation statewide, and you know just need to get a task force or we could get a...

MR. SYPOLT: It's already in the code.

MR. SMITH: We could get a group together and maybe get a little funding out of the legislature need will require clerks and some of the legislative staff down there, and that way make sure we have a full sweep of the code and everything to do it during review.

MR. HORNISH: Could you elaborate on what you just said, as far as mandatory...

MR. SYPOLT: Yeah, there's a section of the code which mandates that when a property is transferred by a survey, that the survey must be recorded with the transfer.

MR. SMITH: Uh huh.

MR. SYPOLT: So most clerk and most attorneys do not provide that. I shouldn't say clerk. The clerk records what the attorneys give them. Most attorneys, several attorneys, many attorneys don't provide that. They ignore it.

MR. HORNISH: My conversation with the clerk and their representative is that they are absolutely frustrated about that, and my advice to them is don't transfer it.

MR. SYPOLT: Right, but see sometimes they don't realize there's been a survey performed. You can't necessarily tell on the face of the document.

MR. HORNISH: My comment to that is that especially when there's a partition then there has to be a new tax parcel number from the Assessor ought to be a flag.

MR. SYPOLT: Uh huh. They're valid to a surveyor.

MR. HORNISH: So you know and in talking with them they're, you know the lights are going off. Well then maybe we have a little bit of hope.

MR. SYPOLT: I think there's a lot of stuff that come back on them, especially when they have to do transfers and slips it over to the Assessor's office and the Assessor comes back to them and says, what is this? You know and it causes problems and they talk to one another and they realize that sometimes the attorneys are not supplying the requisite information.

MR. SMITH: We started the complaints about 6 years ago, and last year was the first time we finally got any action out of the auditor's office and that's why they set up a county clerk's training, and it has worked wonders. I know the board office has fielded hundreds of calls. Mon County has probably got 50% of them. Your clerk is very good up there and a few attorneys who went head to head with us up there.

MR. SYPOLT: Yeah, there were several of them I know of that absolutely refuses.

MR. SMITH: And the auditor is basically, when they're not in compliance we can let 'em know. They're gonna work on that issued. Any other comments, anything?

MR. TETER: I have some general comments and then a few more specific ones, although a lot of my specific ones have been dealt with, and I'll give a written version of this.

MR. SMITH: Okay.

MR. TETER: The entire beginning of what I have to say here does not require any specific response. It's just a general comment that I'd like in to the record. The first couple of paragraphs of my written comments talk about that we didn't get the opportunity to comment before the submission, but I believe that's really being taken care of by the process we're going through here today that this isn't yet final. To a certain extent you can kind of ignore the first two paragraphs of what I have to say.

MR. SMITH: Let me comment on that real quick. Just, you were apprised of the comments via your liaison to the board, and we were informed that there were no problems to his knowledge of what we had reprepared.

MR. TETER: Well we're taking care of that issue today.

MR. SMITH: Okay.

MR. TETER: But just in general, these are general comments that have as much to do with a difference of philosophy as anything else, but I would like to get read into the record.

What I did not adequately express to the board on April 25th was my opinion that we were not there because we thought the proposals were a good idea and merely needed to be refined and improved. We were there because we thought many of the proposals were bad ideas and we desperately felt the need to attempt to remove or revise the most onerous provisions.

It is my opinion that the board needs to carefully reexamine the concept that writing new rules will somehow solve the problems of inadequate surveys and careless surveyors. Based upon my experience during 25 years as a licensed surveyor, and 6 years as a member of the board's complaint review committee, I do not believe this to be the case. There is clearly a difference between the board's

philosophy and mine. Most of the cases I have seen of incompetence, negligence, carelessness, etc., have involved reasonably clear violations under existing rules and additional rules would not have been required for the board to take action. Too many of the proposed series 5 rules will simply create nit-picking ways to chastise or discipline perfectly good surveyors for purely technical violations which have little or nothing to do with the quality of their work. We have been assured that is not the intention of this board to do that, but can they speak for future board members? The proposed rules are so detailed and voluminous that it may be nearly impossible for many surveyors to not find themselves in technical violation of some of them unless they set aside several hours each week for reviewing the rules.

The board may be technically correct in the statement that there will no "impact on costs and revenues of state government". There may not be a direct cost in tax dollars, but some of the rules will inevitably lead to somewhat higher survey costs, and many of the rules directly entail higher cost of doing business for surveyors and those costs must be passed on to the consumers of surveys. In the board's introduction to the proposed changes they states "this has been a significant investment by this board and other interested parties to refine these rules..." There is at least an implication here that the other interested parties were willing participants in this process, cheerfully volunteering their time. In reality, any of us who took part in the process did so because we were seriously concerned about the potential harm some of the rules as originally proposed could have caused. We invested that time in "self defense". I have personally spent nearly a week of my own

time, as well as motel, mileage and meal expenses in this process, and I am sure some others have spent at least that much time or more. This is not an insignificant burden for a self-employed small businessman. It is also worth noting that we were told on April 25th after considerable waffling around and lowering of the numbers, that the board has made a minimal financial investment in the rule revision process, but they now point with pride to their "significant investment".

The board also states that "it is our belief the future returns for the public health, safety and welfare will be immeasurable". It is my opinion that this statement, is at the very least over optimistic, and at the very worst could be considered naive.

I believe it is time for the board to slow down the cycle of constant rule revisions, in order to concentrate more of its time and energy on enforcing the existing rules. It is also time to allow members of the profession to spend more time actually solving surveying problems instead of having to constantly review rule change proposals. This comment is particularly relevant to changes in the minimum standards rule.

In our discussions with the board, we were frequently told that the proposed rules did not really say what we thought they did. Surveying rules should be in simple and direct language, which clearly means what it says. Surveyors should not have to hire attorneys to advise them as to what the surveying rules actually mean.

In general, the current documentation is much less troublesome than previous versions, and I am not here to stridently oppose these proposals. Indeed the revision process cited by the board has considerably improved the

submitted documents. However, if these rules are approved I would like to clearly state to the board my opinion that this is enough! Constant rewriting of the rules makes it difficult for surveyors to keep up. In particular, making changes more often than every 4 years does not seem prudent, when there is a 4 year cycle for the required continuing education courses on standards. When substantial changes are made more often than every 4 years, it is entirely possible for extensive rewrites to have occurred twice or more before a surveyor has to retake the minimum standards course. The best way to help ensure that surveyors stay abreast of and in compliance with the rules, is to allow the rules to have some stability, rather than being subjected to frequent tweaking and revision.

Now that's just my general philosophical comments. A number of specific comments that I have, we've already dealt with. I just wanted to go over a couple of others that we didn't talk about yet.

These are all in series 5. 6.1.d. I have no problem with the statement that "licensees shall be objective and truthful in professional reports, statements or testimony". However, the rest of the rule saying "they shall include relevant and pertinent information in such reports, statements or testimony" makes me uncomfortable, and I expressed some of this before. The specific concern being the question "who decides what's relevant and pertinent" and the possibility for second guessing of a surveyor's professional judgment.

All right that's been dealt with. 5.7.3.e. reads in part "set monuments shall be durable, reasonably stable, with the name of the licensee or surveying firm identified on the monument". Does that mean that my current caps, and

those of many other surveyors, with my initial and license number will no longer be legal? Is that what is intended? The rule as it's written says it has to have the surveyor's name. The previous language states "shall have caps or some other means to identify the surveyor" and I feel that language was much better. The intent apparently being to allow other parties to identify the surveyor. I think the rule is now it's going to be too specific by requiring the name.

MR. HORNISH: What's your site on that?

MR. TETER: 5-7.3.e.

MR. GREEN: Doesn't the current code say your name, your company name and license number?

MR. SMITH: Uh huh.

MR. TETER: Would this be in noncompliance?

MR. HORNISH It may be. Of course there are different methods at arguing the rules. Just because there's a problem with the language in one place doesn't mean we should perpetuate the problem in another place, particularly when we're talking about removing those things from the code. So basically what's your issue?

MR. TETER: The issue is that the rules say that it would have the surveyor's name on the cap. My caps, and those used by many other surveyors, have the license number and the initials of the surveyor.

MR. GREEN: And I use one with the company name and license number on it.

MR. SMITH: I do too. You know we've been through this 4 times. You're now coming back with this stuff. I mean just keep reinventing the wheel here. I mean we gave it to you all to you know revamp this stuff what you wanted on that.

MR. GREEN: That's what we're here for.

MR. TETER: Well that goes to my comment too of the amount of

time that it takes to do all of this and the question of falling in love with writing rules. And I don't think it's the intent of the board to try to discipline somebody for using simply their initials and their license number rather than their name. I don't think that was the intent.

MR. SMITH: No, no, the intent to rewrite the rules was recommendations from counsel basically, because we keep getting our butts kicked in complaints, not being able to enforce what's out there. Yeah, and we know the intent and what should be done, but time after time you know... You've got guys out there that's just they have no business working whatsoever and all they've got to do is get an attorney involved and stuff with it and they set there and nit-pick it apart. Well there's not enough detail, so we add detail to cover us of what we've gotten bitten on before. Because we can enforce what they're doing out there. The whole process is you know we don't want to keep setting there and regoing through these complaints. There's no need to spend you know 2 or 3 months on one of them when they start getting involved, and then turn around and walk out and have no justification at the end. Nothing happens to the surveyor because of a technicality where you can't really do that on account of this rule. You know it's vague. You can go ahead and challenge them against it. You may end up in Court. Well if you end up in Court, you know we don't have money to go finance a big Court hearing and you know go through with that, so you try to work out a compromise or a settlement agreement. There's no need to you know keep reinventing the wheel. You either want, you say enforce and regulate. Then you turn around and say well you know don't do anything else, but you don't have the ammunition to go do it. How are you gonna do it? That's the whole purpose of all these things,

getting them prepped.

MR. TETER: I think you're responding to my general comments rather than my specific comment here.

MR. SMITH: All right yeah, that's why there's detail in the rules. That's why things need to change.

MR. TETER: Well getting back to my specific comment here on the identification on the monuments. The language that was in the previous version of the proposal saying that they shall have caps or some other means to identify the surveyor, making it clear that the intent is to identify the surveyor rather than rule specifically requiring the surveyor's name is what my concern is, and I don't think that would be a difficult change to make.

MR. SMITH: It's not, and it should be that way. I mean it's you know just been an oversight, but you know we've been through these things about 3 or 4 times now and you know it's just now coming to light. You know basically we've kind of backed off the standards and let you guys deal with .

MR. TETER: This is just now coming to light because this is the first time this language appeared in the rules. I liked the previous version that we went over.

MR. HORNISH: Well I don't see this as a problem. This is a direct comment from Knud Hermansen, as far as his suggestion so I don't have a problem with the original wording either. So that can be reinserted back in there without any problem.

MR. TETER: I have another comment on 7.3.e.1, 2, & 3 looking at them kinda in a group. Three does allow artificial markers to be "of sufficient length to maintain its position". 1 and 2 don't have any such discretion for pipes and rebars. I agree that a minimum length requirement is desirable, but I'd like to see the addition of some qualifying words such as "when feasible" because there are

times when 30 inches simply is not feasible. But I certainly would not want to see us back off of a minimum length requirement.

7.3.g.3. plat requirements. This is the same concern that I have expressed numerous times. The requirements of "name and location of any creeks, rivers or roads within the scope of the survey". Who decides just how detailed and precise such information must be? Must logging roads or 4-wheeler trails be shown? How about abandoned or overgrown roads? Does every small drain or water course have to be shown? I think the language needs to be modified to allow the surveyor to use judgment regarding which roads and streams are significant and which are not.

MR. HORNISH: Where is this again?

MR. TETER: 7.3.g.3. My concern is when it just says the name and location of any creeks, rivers or roads within the scope of the survey, it creates another of those opportunities to go after the surveyor, either on the part of attorneys or on the part of future board members because a small stream has not been shown, because an insignificant road has not been shown, and I think there needs to be some sort of language there that allows the surveyor to use some judgment regarding what roads and streams are significant. And of course it also could stand some qualification as to how precise that information needs to be.

Somebody acting in poor faith, and I'm not attributing that type of motive to this board, somebody in the future acting in poor faith could require that an actual location be made of any small stream or drain anywhere within 1000 acres tract where the surveyor would not have any control points within literally thousands of feet of that stream.

MR. SMITH: Do you have some new proposed wording for that?

MR. TETER: I don't have proposed wording, but I can work on that certainly. Really just a qualifying phrase is all we need and I'll get something to you.

7.3.h.1. The preamble shall include the type of parcel or lot being described. I do not understand the meaning of the word "type" in this context. I think I understand that you want language saying a tract of land or a parcel of land or a lot of land, but I'm not sure all of those are really clear distinctions. It's not a point that's worth spending a lot of time on. The more important point that I have with regard to the description is 7.3.h.2. It will now be required that the body of the description will include "a reference to the accompanying plat or report attaching it to and making it a part of the description". I have often found it useful to include in the preamble words such as "being designated as Parcel A on the plat attached to and made a part of this description". Now it will be against the rules for me to include that in the preamble instead of the body, and I think it's a good example of the unforeseen problems created when rule making becomes too specific in technical matters. And of course the general philosophical question that I don't think it's necessary to have this detailed a rules about description rights. Obviously not everybody feels that way.

In report requirements 7.3.i.1 they say "documentation of the research and the weight given to the significant documents". I absolutely agree with the concept of explaining the weight being given to the significant documents. I'm not entirely comfortable with the phrase "documentation of the research" because I believe it will often be interpreted as requiring a listing of all documents

examined in the course of the research. And I don't think such lists are useful since they do not explain the weight given the documents. They can be misleading regarding the depth of the analysis and there is the danger of an inadvertent omission of 1 or 2 documents from a lengthy list could be unjustly cited as evidence that a surveyor did not properly do their job.

One other comment on mortgage inspection plats, 7.4.d.5 it says "location dimensions of the major improvements as they relate to the property line shall be shown..." In discussions at the Elkins chapter it was thrown around that when it is supposedly clear that a mortgage inspection survey do not involve the actual determination of boundaries, such dimensions should only be approximate, and the rule should say so.

And my final specific comment is originally this is in mortgage inspections 7.4.g written legal descriptions for a tract or parcel of land shall not be prepared based on a mortgage inspection unless the minimum standards for a boundary survey are met, and my comment there is since I am complaining about numerous matters in the proposal, I feel that I should commend the board for adding this language at our urging. And that covers my comments.

MR. SMITH: Are those written?

MR. TETER: Yes.

MR. SMITH: Anybody else? Mr. Hornish any comment?

MR. HORNISH: Well I guess I'd like to respond to Don's general comments. Number 1 as we all know the profession of surveying is changing quickly, quicker than it ever has in the past. One of the reasons for this rule change is to position us in order to be able to accommodate those changes more quickly, or more let me say it this way, more

efficiently, okay? So that's why we have reorganized the rules.

Number 2 you know I hear a lot of words about we're adding this and we're expanding our authority and all this. A lot of these rules is the board's attempt to define the current policy of the board which has yet up to this point, has not been written. So this is an attempt to make the, everybody aware of the board's position and the current policy that we are following in regards to our responsibility. So we're not adding a lot of things. What we're really doing is defining how we are operating, and I think we have made a diligent effort to get comments from and I think the comment process has been good. I think that there are definitely some things that need to be changed, that have been changed and that the comment and even today your comments. You know we're definitely entertaining them. It's not like we're trying to ramrod this thing through. So there's a lot of reasons why we're doing this, but you know change is happening all around us and when you get with the other boards in the other states and you get the flavor of what's going on--there are changes in the wind. And if the board does not position themselves to be able to move more quickly in these areas instead of opening up the entire code or opening up the entire rule, we can specifically deal with areas that need to be changed. So this is a reorganization of what's already there plus a definition of how we are operating as a board, and then there are some changes, yes. Like field requirements and things like this, which we feel like we need to address those, and so I mean that's the motive behind this, and I mean I don't know what else to say.

MR. TETER: Well one of my comments actually that I didn't read to the board was I respect the members of the board both

personally and professionally and do not question their motives in proposing the rule changes. Perhaps I should have read that into the record in the beginning. And I do also recognize in my general comments that the process that has been gone through has tremendously improved the proposal, but I do still firmly believe that we need to reach a point where we say "this is good enough. We're gonna live with this for awhile". Rather than coming back next year or the year after next and saying we need to add this, we need to add this, we need to expand here. That we need to reach a point where we have some stability with the rules.

MR. GREEN: I'd like to say one other comment as regard to Don's general comments too that as legislative committee chairman and kind of working with this review on behalf of the Society, I have received a whole lot of comments, and by and large as far as just general comments they reflect the general comments that I have received from a lot of the membership. We've never taken a poll or a vote on that, but I think the Society concurs with his general comments with respect to enough is enough. I've received a lot of comments from members to that effect.

MR. TETER: We're prepared to live with changes certainly and that's why I also said that I'm not here to stridently oppose this proposal. We believe this proposal, hopefully with a few additional amendments is going to go through, and we're prepared to live with that.

MR. HORNISH: I'm gonna be real up front with you I mean everybody in this room. That because change is happening that's beyond the control of any of us in this room, that is gonna require us to continue to look at what we have and what do we need to modify it in order to keep up with the changes technologically and everything else. So to say that enough

is enough, well that's not enough, because things are changing in the world, and if the surveying profession is going to stand up and take their place in the current technology that we are involved with right now--then additional changes down the road are gonna have to occur. I personally believe that the way that these rules are structured is gonna give us the ability to do that without jeopardizing every other rule or the code or anything else. It's really putting us in a good position, and frankly in reading the current rules as they are now you know everything's a little bit here and a little bit there. You can tell it's like the lady that had 18 kids you know and you know every time a kids' born a room was added to the house. So I mean that's how the rules are right now, and so these now have some sense of organization and structure so we can deal with things as the need arises.

I can assure you this is not fun for anybody, okay? It's not fun for anybody, but I think the need was there and I would admit this though and sometimes when you're looking at this and you're involved with things, like complaints for example, and you see all the stuff that comes in; sometimes there is a tendency to get the swing of the pendulum a little too far to one extreme and it effects the guys that are out there and gals that are out there doing a good job. You know in my experience in the short time I've been on this board is that there's only a few names you keep seeing over and over and over again. The rest of them are just out there doing a great job at what they're doing. And so there is a tendency, and I think the balance, I think the pendulum is swinging a little closer to the center line now with the process that we've gone through. No, it's not fun but you know I do agree with you that it's better than what

was originally submitted.

MR. TETER: Well I could perhaps clarify just a little that I don't question the need to revise rules to respond to changes in technology. But revising rules with things like the requirements for showing creeks and roads and minimum standards for boundary surveys, that is not a response to any change. That is simply making more rules with regard to the same things we've been doing for years, and that is the area that I would like to see stability in. I would have no problem with additional rules coming along next year or the year after, specifically addressing changes in technology, or adding endorsements for that matter. But the minimum standards themselves I believe is an area where we need to see stability; the minimum standards for boundary surveying.

MR. HORNISH: And the intent of those minimum standards you know when we pulled the original submittal was to go back and just use them as they were in the code with some necessary, as few necessary changes as possible. Frankly you know in my opinion if that statement wasn't in the original, there's no need to expand on it, but as far as the description writing, I'm willing to show you some of the data, there is a drastic need to give some conformity within the surveyor profession about these descriptions because those descriptions are far worse than their plats. They are worth seeing, and there definitely needs to be some standards there.

MR. TETER: Actually I'm probably against the trend of many of the Society, but I don't have a problem with taking it out of the code and putting it in the rules, and then I know there's people in this room that disagree with me on that. And like I said, overall the document that we have now compared to the document we started with what a year and a half ago, is much, much improved.

MR. SMITH: If I remember right, the last rule change was 2002.

MR. TETER: Well the law was changed in 2004.

MR. SMITH: Right. The rules, is that right?

MS. BRIGHT: It was actually 2001 the major changes. Other changes have been a word here and there.

MR. SMITH: But that's the last time.

MR. TETER: The rules themselves.

MR. SMITH: And we don't set around and beat on these rules just to have something to do. It's for operation of efficiency.

MR. TETER: I think it just illustrates whether it's rules or law, and we have law that's being called the rules.

MR. SMITH: Well with what Mark said, one comment, you are gonna have to change all the time if you want to stay abreast of your profession, and it's not necessarily just in rules or whatever you know. Last year you lost a section of your operation on your profession with coal bed methane work. You know maybe a lot of you all don't deal with it, but you've got a lot of people and your Society mainly is affected by boundary surveyors for probably 60%, 70% of you or some in you know coal construction, but the majority part of it. You've gotta think the whole group what goes on in the state out there whenever you do that. There's a lot of people out that's affected by the surveying community. And it's gonna happen again, you know whether it's gonna be on the legal end what easements and right of ways; if you don't stay or top of that, somebody else is gonna be doing 'em. Land people is gonna be doing 'em, appraisers, you know. Something gonna happen. So you're gonna have to watch what's going on in you know the legislature. Maybe you don't want to be active every year and do something, but you know I would think you'd

want to at least protect your turf and what goes on.

MR. TETER: Actually I do have one technical question too. Presuming that this process goes forward now on an even keel, what is the projected or effective date of the new rules?

MR. SMITH: That would be July 1, of '08. It's a long process.

MR. HORNISH: The fees would not be effective until '09, isn't that correct?

MR. SMITH: That's correct.

MS. BRIGHT: And COH by December.

MR. TETER: December of '08.

MS. BRIGHT: For the calendar year '09.

MR. GREEN: What about with the exam application fees and that sorta thing? Do you have to file an exam would it be in effect then?

MR. SMITH: Correct. We missed one increase just where we were not apprised of it, and I guess there's gonna be another increase in the license exams coming up, but they don't give us enough notice to where we can get through our legislative process to catch up. So we're gonna have to set there and foot the bill for the exams, or a portion of it, and they're gonna continue to keep raising their fees on the national level.

MR. GREEN: Whose that?

MR. SMITH: NCSS.

MR. HORNISH: And the fees that are charged to the board is the same across the board. It is not based on the number of licensees you have or whatever. We get charged the same fee as California does.

MR. SMITH: What's the Society's standpoint on support of the rules and so forth once they are submitted or turned in for approval?

MR. GREEN: I think like Don said, we're not at this point here to stridently oppose and we have commented and we have conveyed to you, I've conveyed to you the comments that I have received from my membership and I don't see us opposing these rules as long as the concerns are addressed. Either those are incorporated into the approved rules that you submit or satisfactory explanation is given for it. Other than that I can not really comment on something that we have not seen at this time.

MR. TETER: I'm also confident if we submitted it to a vote of our membership whether or not to actively support the changes, the vote would be no.

MR. GREEN: Yeah.

MR. TETER: I don't anticipate asking for a vote of the membership on this, but I'm very confident that if it was put to a vote of the full membership the vote would be to oppose. But like I said, I don't anticipate there being a process for us to put that to a vote, and the most that we can say here, and we don't really have the authority to speak for the entire Society or even the authority to speak for the entire Board of Directors of the Society, but the most that we can say is that with our concerns being met we don't intend, at least the ones of us in this room, to actively oppose. And I just don't think it's in our capacity to give a commitment beyond that.

MR. RANKIN: I will say from things that keep coming up and you explained a little bit of it Mark in that saying the language out of the requirement from the cash came from a Knud comment. Well when there are people out there getting like John's been disseminating and now that shows up and that's new language in their eyes. To you its language that's been added after a comment, but in their eyes its new

language. So if there's things that show up in this that seems to be entirely new, I mean after today I can't guarantee that there won't be no oppose. I mean it made sense to me when you said that on why there's some additional language in there is that it's from comments. It's from other things that you've been doing, but if you have new subjects coming up that haven't been here you know the distrust is fostered and it will grow so I'm glad you explained to me where that additional language came from. And it did come from Knud. It came from a comment and you are responding to the comments, but there are other people that will look through this stuff and say I never seen this language, are they slipping something in? So you know that's where some of it comes from, but I think that if you guys are cognizant of that and can consider that into your...

MR. HORNISH: I can understand how somebody would perceive that, but at the same time I believe that the board has been very up-front with the rule changes all along. We have not tried to hide anything. We have been open to comments, so but I can understand somebody's perception, but in reality I think we have been very diligent to receive constructive criticism to make these rules better and that process is happening I believe.

MR. RANKIN: At the same time I consider as a board and administrative wise and can see how that could be perceived and just wanted to bring that observation to light.

MR. SMITH: Further comments?

MR. SYPOLT: Just a question. How many comments have you received on these? I mean do you have numbers? Is it 5 comments, 10?

MR. SMITH: None.

MR. SYPOLT: None, okay.

MR. SMITH: Last year when we submitted them there was only 3 comments filed statewide.

MR. SYPOLT: So it hasn't been a whole flood of mail coming into the office?

MS. BRIGHT: The only official comments we received was from the Society on Friday.

MR. SYPOLT: No, I have written comments I'm gonna turn in today.

MR. RANKIN: And Knud was not an official comment?

MS. BRIGHT: That was part of his comments.

MR. HORNISH: Well he commented through PDF notes. He reviewed it and he sent us a little yellow stick'em notes.

MR. SYPOLT: That was the only comment that you sought?

MR. SMITH: These were discussed in the last board meeting. You all had a representative there too.

MR. GREEN: This is the same process that we participated in at the meeting we attended at the board in April. Knud was through the same type of process before the submission ever occurred, and that's why there was the new stuff that was submitted that you referred to.

MR. SMITH: Anything else?

MR. GREEN: I have one other comment. When I was talking to Mark earlier, you had mentioned something about the series 3 would be proposed, proposed revision to series 3. I never did see that submitted and I was wondering has that been submitted or will it be submitted?

MR. HORNISH: It has not been approved by the board yet so the final ruling has not been approved by the board.

MR. GREEN: Okay. The reason I asked the question was that would this other hearings be concerning that as well? I guess the answer to that is no?

MR. HORNISH: No.

MR. SMITH: Just a point for your all's information, which I guess from several comments and so forth, I didn't participate in the rewriting of the rules. I voted on them when they were brought up in our board meetings. So...

MR. TETER: He's shucking it all on to Mark.

MR. SMITH: No, it was a board vote. They were all discussed, okay? But I don't have time you know for this you guys. Either support them or you don't, but I'm not gonna waste my time in Charleston.

MR. TETER: But at least we can still laugh.

MR. SMITH: Anything further? Hearing done? Meeting closes 12:06.

STATE OF WEST VIRGINIA

COUNTY OF GILMER, to-wit:

I, Karen Elkin, Court Reporter, in and for the
county and state last aforesaid, do hereby certify the foregoing
to be a true and correct copy of the hearing taken by me on
the 9th day of July, 2007.

DATED: July 17, 2007.



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