

BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS

State of Florida - Department of Business and Professional Regulation
Newsletter - February 1998

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Message from the Chair

David W. Gibson, P.S.M.

CONVERSION IS OUT, MEASURE IS IN -- ARE WE BEGINNING THE SURVEYOR AND MAPPER ERA OF GIS?

Many people are questioning the coverage of Chapter 472 Florida Statutes, Surveying and Mapping. Could it be that the legislature really meant that "the improper surveying and mapping of land, water, and space presents a significant threat to the public?" Chapter 472's statutory definition clearly covers any professional service or work involving special knowledge of relevant areas of math, science, and the requirements of law for the determination of the facts of size, shape, topography, orientation, legal location or geodetic location of features on or near the earth's surface. Later in the chapter, the legislature clearly states, "No person shall practice surveying and mapping unless such person is registered pursuant to Statute 472." Is that clear, or is that clear?

The terms "professional service or work" seems perfectly clear. You make a "profession" in surveying and mapping when you declare to the world that you know the relevant specialized body of knowledge known as surveying and mapping and that you will apply it for hire to the benefit of client or employer. The public statement is usually made through the yellow pages, or may also be made by taking on contract or employment work that requires measurement science expertise resulting in a finding of

facts of size, shape, orientation or location that will be relied on by someone else.

The term professional "service" implies that the surveying and mapping expert works for a client, that will innocently trust the accuracy and completeness of the work done. Professional "work" indicates that the same innocent trust exists in employment situations such as in government, when a person holds themselves out for employment in performing surveying and mapping activities. Chapter 472 clearly states that all such "service" or "work" must be done or supervised by a licensee of the state. It seems quite clear to me. Perhaps, therefore, it is time to place the current GIS/GPS issue in the context of recent history.

CONVERSION IS FADING

Early developers of GIS employed cartographic conversion techniques to build computerized spatial models of features on or near the earth's surface. Conversion contractors and services were encountered quite frequently from 1985 to about 1995, but now, use of that term is vanishing. Why? The term "conversion" implies that a graphical map or written deed simply had to be converted to digital by some cartographic process such as digitizing, scanning or warping. GIS conversion proceeded so rapidly in the previous decade, that today, most pre-existing useable maps that had any shred of geographic truth have been digitized. Quad sheets are now DLG's. Appraisal property ownership maps are now seamless parcel base maps for counties.

Utility schematics are now in overlays over parcel maps. Soil maps are also in overlay files. Now, as we approach the end of the 1990's, could it be true that the GIS community is running out of pre-existing maps to convert?

GIS' SILENT PARTNER

Was the surveyor a partner in this first decade of GIS? Yes, quite definitely, even though the surveyor and mapper is best described as the "silent partner", because that person's contribution has never been acknowledged. However, let us make the following statement very clearly: ALL GEOGRAPHIC TRUTH IN ANY MAP CAN BE TRACED TO A SURVEYING AND MAPPING PROCESS. Someone at sometime must have directly measured features by one of our surveying and mapping technologies: tape, transit, level, theodolite, aerial camera, scanner or satellite positioning system in order for any map to have geographic truth. For example, most geographic truth in the property appraiser's "tax maps" can be traced to the accuracy by which the original federal surveyor set out and mapped townships in the 1800's, and to the degree that surveyors from then until now furnished attorneys with measured or computed information for deed calls of recorded plats, bearings, angles, distances and adjoiners. When these fragments of truth were assembled into ownership maps by the appraiser's mapping staff, the surveyor and mapper's work formed the fundamental basis of truth -- even though the surveyor and mapper's identity did not carry through the deed writing and map compilation process in most cases. The same can be said for USGS quad sheets. From 1920 to 1990, federal surveyors and mappers for the USGS compiled original

graphical overlays for quad sheets from field surveys by plane table and later by stereo plotting from aerial cameras using geodetic control structures set by federal geodetic surveyors of the NGS. The geometry of road and railroad systems were painstakingly calculated, laid out, and documented by surveyors and mappers of state, county, city road departments and the state's railroad companies. Other surveyors and mappers assisted power, water, telephone and cable utility companies in developing truth in their utility maps.

In most cases, digital conversion did nothing to increase the geographic truth in these pre-existing maps. In fact, many times, good map information was "dumbed down" by poor digitizing or by converting it to approximate control points, thereby introducing stretching and warping that gave less geographic truth after conversion than the map had before. Yes, surveyors and mappers were definitely partners in the first wave of GIS. Without their carefully produced measurements, there would be little truth at all in the converted digital product.

MEASURE IS IN

So the GIS world faces its future with a startling fact: THE ONLY WAY OF DEVELOPING GEOGRAPHIC TRUTH IN THE UPCOMING YEARS OF GIS IS BY DIRECT MEASUREMENT OF FEATURES. Direct measurement of features is called surveying and mapping. Those who perform it are called surveyors and mappers. The global position system, GPS, is the next surveying and mapping tool that just happened to come along during the time period when conversion opportunities in GIS were winding down. Those who did

GIS by conversion for ten or fifteen years, without speaking to a surveyor and mapper, presumed that they could also move into the realm of direct measurement by GPS under the guise of "GIS Mapping". However, our Board of Professional Surveyors and Mappers backed many practicing professionals in questioning this move as infringement on surveying and mapping practice as performed over thousands of years and as defined in Chapter 472. For the past three years, the GIS community has slowly seen an awakening to the pre-existing and continuing profession of surveying and mapping. It is easy to see why Chapter 472 is not popular in GIS circles. No one wants to give up freedom of action by bringing in licensed surveyors and mappers for the next phase of GIS; however, the public will be increasingly reliant on the accuracy of base GIS layers, and surveyors and mappers have a safeguard mechanism in place through the licensing process.

SUPERVISION IS THE KEY

The Board of Professional Surveyors and Mappers is currently entering negotiated rule-making with interested parties to try to find a common sense method of providing supervision of spatial data collection by a licensed person. The League of Cities, Geographic Information Board, and the Florida Surveying and Mapping Society have recently been invited to assist the Board in coming up with supervision language that is reasonable. The goal is to have a licensed person involved in GPS work, not in the field every minute, but from an overall view in writing procedures to be followed, training those doing the measuring, monitoring compliance with prescribed methods and documenting the data. Perhaps

there is a way of cooperating on the next wave of GIS after all.

Board Election

In accordance with Section 61G171.002(2) Florida Administrative Code, the Board elected a new Chair and Vice Chair at the January Board meeting. Patricia Gail Oliver was elected Chair and Eugene W. Stoner was reelected Vice Chair.

Board Activity

The Board has been very busy with hearings, committee meetings and board meetings. In order to reduce meeting and travel costs, the Board holds most committee meetings the day preceding the full board meeting. During January the following meetings were held:

Probation Committee	Jan. 14
Continuing Education	Jan. 14
Probable Cause Panel	Jan. 14
Application Committee	Jan. 15
Rule Hearing	Jan. 15
Full Board Meeting	Jan. 15

Upcoming Meetings

The next Board and Committee Meetings have been scheduled for March 31 through April 2, 1998, in Orlando at the Omni Rosen in conjunction with the Southern Zone meeting of the National Council of Examiners for Engineers and Surveyors. The Florida Board of Professional Surveyors and Mappers, along with the Florida Board of Professional Engineers, will be the host boards for this meeting.

In addition to noticing meetings in the Florida Administrative Weekly,

the Board office keeps an "interested parties list" of names and addresses of those who would like to receive mailouts regarding Board meetings and activities. If you would like to be included on this list you may submit a written request to the Board office. Please do not forget to include your current mailing address.

Probable Cause Panel Meeting

The Probable Cause Panel reviewed 16 cases at their last meeting. Ten cases were dismissed, one was closed, and five administrative complaints were filed.

Licensure Status

Active Surveyors and Mappers	2,552
Inactive Surveyors and Mappers	158
Delinquent Surveyors and Mappers	116
Active Certificates of Authorization	843
Delinquent Certificates of Authorization	246

Reminder: Licensing information can be obtained on the Internet at:

<http://www.state.fl.us/dbpr/>

If you have an LB or LS number, you can input this information and be provided with the corresponding individual's name or business entity.

Unlicensed Activity

If you are aware of unlicensed activity in your area, please contact

the Bureau of Investigative Services. The only way to stop unlicensed activity is to take an active role in reporting such activity and working with the Bureau. As a refresher on what constitutes unlicensed activity, read the definition of Surveying and Mapping in Florida Statute Chapter 472. If you see someone other than a licensed Surveyor and Mapper who appears to be practicing surveying and mapping as defined by statute, then report it. Do not stand by and allow unlicensed individuals to potentially harm the public through this activity.

REGIONAL OFFICES

Region I - Ft. Walton Beach
(904) 833-9160
Eddie James - Tom Bishop

Region II - Tallahassee
(850) 488-0736
Les Smith - Ken Morrison

Region III - Jacksonville
(904) 727-5590
Bill Carle

Region IV - Gainesville
(352) 955-2155
Richard Shumate - Tony Lopresto

Region V - Orlando
(407) 245-0750
Jim McGuirt - Juan Quiutana

Region VI - Tampa
(813) 744-6060
Henry Rivera

Region VII - Ft. Myers
(941) 338-2373
Mark Whitten

Region VIII - Palm Beach Gardens
(407) 624-6910
Sharon Thayer - Thad Clark

Region IX - Ft. Lauderdale
(954) 958-5550
Ralph Doney

Region X - Miami
(305) 377-7115
Bill Cates - Jay Wilson

For a map of each region and the addresses please contact the Board Office.

Application Committee

The Application Committee reviewed 28 applications for examination. Nine applications were denied based on various reasons which included lack of sufficient months in responsible charge or failure to demonstrate surveying experience. In addition, 63 business applications were reviewed and approved for licensure.

Continuing Education Committee

The Continuing Education Committee approved one application for provider status from the Pennsylvania Society of Land Surveyors. If you would like to obtain a list of approved continuing education providers in the state of Florida, contact the Board office at (850) 413-7480.

Examination Committee

There were 170 examinees for the October 1997 exam. Of the 170 examinees only 50 took all four

sections.

Exam Results	Passing
FI Jurisdictional Essay	37.2%
FI Multiple Choice	72.5%
NCEES Fundamentals	59.5%
NCEES Principles and Practices	31.9%
Overall Examination	29.0%

Probation Committee

No surveys were submitted for review at the January Board meeting. One probationer had met all the terms of his final order and was released from probation.

There are currently four surveyors and mappers on active probation at this time. Generally, the terms of probation are a fine, suspension, with suspension stayed, attendance at a minimum technical standards course, and review of six surveys by the Probation Committee. If the first six surveys are found to be in substantial compliance and all other terms of the final order are met, the probationer is then released. If the surveys are not in substantial compliance, another six surveys must be submitted for review.

The purpose of the survey review as part of the probation process is to bring a level of awareness to the probationer that surveys must meet minimum technical standards.

Rule Report

There is now only one rule still directly involved in the rule making process. This is an amendment to Rule 61G17-8.0011 which would remove the application fee for surveyors-in-training, set the fee for a temporary certificate as a surveyor at \$25, and set the fee for

a temporary certificate of authorization at \$50. This rule amendment is now scheduled to be adopted on March 13, 1998.

The Board also voted at the last meeting to withdraw the proposed amendments to 61G17-6.002, Definitions and to begin the negotiated rule making process. The Board has selected Dave Gibson to be its representative on the negotiating committee. A neutral mediator has been selected and a contract for his services is being processed at the Department. As soon as the contract is finalized, the first meeting of the negotiating committee will be set.

Destruction of Land During Surveying

Lealand McCharen, Board Counsel

SECTION 472.029, FLORIDA STATUTES

The Board has requested that I write an article on the right of surveyors to enter the lands of others and the potential liability for damage caused by this entry. Section 472.029, Florida Statutes, reads as follows:

472.029 Surveyors and mappers authorized to enter lands of third parties under certain conditions. Surveyors and mappers may go on, over, and upon the lands of others when necessary to make surveys and maps, and, in so doing, may carry with them their agents and employees necessary for that purpose. Entry under the right hereby granted does not constitute trespass, and surveyors and mappers and their duly authorized agents or employees so entering

are not liable to arrest or to a civil action by reason of such entry; however, this section does not give authority to registrants, agents, or employees to destroy, injure, damage, or move anything on lands of another without the written permission of the landowner. History—ss. 37, 42, ch. 79-243; ss. 2, 3, ch. 81-318; ss. 5, 7, ch. 89-137; s. 4, ch. 91-429; s. 94, ch. 94-119.

This section clearly permits a surveyor to enter someone's property without committing a trespass if this is necessary to make surveys and maps. This question must be decided before entering and the surveyor should consider whether there is any reasonable method to perform the survey without entering the property.

The next question the extent of the liability of a surveyor for any damages to the property caused by the entry and making of the survey. The leading, and nearly only, case in this area is Ragland v. Clarkson, 259 So. 2d 757 (1st DCA 1972). The surveyor in this case entered Ragland's land by removing a fence post and did cut some trees and other plants that Ragland had planted. Ragland sued for damages and attempted to introduce evidence of the "replacement value" of the trees, plants, and shrubs that were cut. Ragland had detailed records of all plantings he had made. This idea of damages, "replacement value" was denied by the trial court and this ruling was upheld by the appellate court. The correct measure of damages was:

"We next consider the question of damages. Ragland strenuously contends that he was entitled to introduce evidence as to "replacement" value of each plant,

tree or shrub damaged. We do not agree. Ragland's damages were clearly sought for deprivation of his convenience, comfort and enjoyment of the subject parcel." This is illustrated by Ragland's own testimony: "I have been trying to preserve it as open space which I feel is vitally needed in a community like this." The trial judge instructed the jury as follows:

"The Court instructs you that the owner of property has the right to enjoy it according to the owner's (taste) . . . and wishes so that the taking or injuring or damaging trees or shrubs may deprive the owner of convenience and comfort in the use of his land for which he is entitled to be compensated though the damages or destruction of trees and shrubs might not generally diminish the market value of the property."

259 So.2d 757, Ragland v. Clarkson, (Fla.App. 1 Dist. 1972)
----- Excerpt from page 259
So.2d 759

Thus, the measure of damages for a surveyor entering the lands of another is the loss of a person's enjoyment of the land.

There is, however, another case which, though distinguished from Ragland, might have implications for surveyors. This case is Fiske v. Moczik, 329 So. 2d 35 (2d DCA 1976), in which valuable palm trees were removed from an owner's land. The Court clearly distinguished Ragland by saying:

> [3] Ragland v. Clarkson, Fla.App.1st 1972, > 259 So.2d 757, on which the trial judge predicated his ruling on damages, involved a claim against a surveyor who in the course of surveying Ragland's lands, had cut plants and trees in an open field. There, the plaintiff

contended he was entitled to introduce evidence as to the "replacement" value of the plants and trees which had been destroyed. The First District disagreed with the plaintiff, but did approve that part of the trial judge's instructions allowing recovery for deprivation of the convenience and comfort in the use of the plaintiff's land, even though such destruction did not generally diminish the market value of the land. We do not quarrel with the opinion in Ragland as relates to the facts there. But, there is a significant difference between one cutting down plants in an open field and removing valuable palm trees from an owner's land. The latter will certainly cause a decrease in market value of the land, and to hold that the owner can recover only for loss of comfort and convenience, and not for the value of the trees would allow one to profit by conversion of trees with the land owner entitled to only a minimal award of damages. Hence, reliance on Ragland was error.

329 So.2d 35, Fiske v. Moczik, (Fla.App. 2 Dist. 1976)
----- Excerpt from page 329
So.2d 38

While Fiske was clearly distinguished from Ragland, it has been over twenty years since this particular statute has been reviewed by the Courts. Consequently, particularly if the value of the plants or trees removed was great, there is a possibility that a Court might adopt a "replacement value" test for damages.

The conclusion that I see here is that the decision to enter someone's land should be made only when necessary for the survey being performed and any cutting or removing of vegetation should be the minimum possible.

Address Change Form

Attached to this newsletter is an address change form. Chapter 455.275(1), F.S., states, "Each licensee of the department is solely responsible for notifying the department in writing of the licensee's current mailing address and place of practice, as defined by rule of the board or the department when there is no board. A licensee's failure to notify the department of a change of address constitutes a violation of this section, and the licensee may be disciplined by the board or the department when there is no board."

Addendum to Roster of Licensees

Attached is an alpha/numerical licensure list from the October 1997 exam.

Disciplinary Action Report

The Board at its January 15 & 16, 1998, meeting has taken disciplinary action concerning several licensees. Four cases were presented which consisted of one stipulation hearing, one informal hearing, one default hearing and one voluntary relinquishment.

Although every effort is made to ensure the information reported is correct, before making any specific

decision based upon this information, you should check with the Board office to assure accuracy. The listing below may not reflect a change occurring near or following the publication date. Further, it does not reflect pending appeals or requests for rehearings. Each order listed below contains the licensee's name, the DBPR case number, the license number, the violated section of the Florida Statute and the penalty imposed by the Board.

Mark M. Krajnik

Case #93-04804, LS 0003371

Charge: Violated Section 472.033(1)(h), F.S., by violating Rule 21HH-6, F.A.C. and Section 472.033(1)(g), F.S. (MTS violations) **Penalty:** The Board accepted the settlement stipulation for a reprimand, \$2,000 fine, probation, MTS course and survey review.

John Cullen Herring

Case #96-01118, LS 0005033

Charge: Violated Section 472.033(1)(h), F.S., by violating Rule 61G17-6, F.A.C. (MTS violations) **Penalty:** Default hearing where the Board reprimanded, \$2,000 fine, probation, MTS course and survey review and submission of proof of Continuing Education.

John W. Renner

Case #93-07659, 95-05825, 95-06429, LS 0004739

Charge: Violated Section 472.033(1)(h), F.S., by violating Rule 21HH-6.003, F.A.C. (MTS violations) **Penalty:** The Board accepted the voluntary relinquishment of the license.

Loren N. Jones

Case #97-05994, LS 0000894

Charge: Violated Section 472.033(1)(h), F.S., by violating Section 472.015(6), F.S. (Failure to pay judgment) **Penalty:** The

Board accepted the payment of charges incurred for administrative costs totaling \$444.85 and he was allowed 90 days to satisfy the terms of the civil judgement.

ADDENDUM TO ROSTER FOR LICENSEES (OCTOBER 1997 EXAM)

Pedro Gerald Battle
LS00005753

Barbara Jo Bergstrom
LS00005754

Charles Henry Blanchard
LS00005755

Willard R. Bowsky, Jr.
LS00005756

Lauren Scott Britt
LS00005757

Larry J. Broussard
LS00005758

Richard James Compitello
LS00005759

Richard Thomas Creech
LS 00005759

Michael David Crow
LS00005761

David Samuel Dagostino
LS0005762

Thomas Richard Ditman
LS0005763

James Christopher Dutton
LS0005764

Elvie Dacosta Ebanks
LS0005765

Leland Myron Empie
LS0005766

Timothy Lionel Gendreau
LS0005767

Frank J. Guiliano
LS0005768

Jack G. Haller
LS0005769

Thomas M. Halstead
LS0005770

Brian A. Harris
LS0005771

William M. Hinckley
LS0005772

David Michael Hinkle
LS0005773

Stephen W. Hoffman
LS0005774

Daniel Ray Holt
LS0005775

Norman J. Howard
LS0005776

Glenn Hrenko
LS0005777

Rowland Jackins
LS0005778

Woodrow Keith Johnson
LS0005779

Haniel Tate Jones
LS0005780

Timothy Martin Koons
LS0005781

William Edward Lucas
LS0005782

James Gordon Maurer
LS0005783

Ernest N. Metcalf
LS0005784

Mark Ray Minter
LS0005785

Allan Lee Mosher
LS0005786

Dennis B. Murphy, Sr.
LS0005787

James Walton Newberry, Jr.
LS0005788

Julio Sergio Pita
LS0005789

Robert D. Richards
LS0005790

Ronald Eugene Ruben, II
LS0005791

Lino Tama Sanft
LS0005792

Jeffrey Harold Scott
LS0005793

Jeffrey Thomas Slater
LS0005794

Thomas Allen Slater
LS0005795

Monte L. Smith
LS0005796

Ronald K. Smith
LS0005797

Ronald L. Terrell, Sr.
LS0005798

Raymond Young
LS0005799

James P. Leonhardt
LS0005800

Chapter 455.275(1), Florida Statutes require licensees, active and inactive, to keep the department informed of their current mailing address. The form below has been prepared to assist licensees in keeping us informed of address changes. If you change your address, please complete and clip out this form, and return it to the Department of Business and Professional Regulation, Board of Professional Surveyors and Mappers, 1940 North Monroe Street, Tallahassee, Florida 32399-0756.

CHANGE OF ADDRESS	
PLEASE PRINT OR TYPE ALL INFORMATION	
Date: _____	License Number: _____
Name of Licensee: _____	
Old Address: _____ (Delete)	New Address: _____ (Add)
_____	_____
_____	_____
Phone: () _____	
Board of Professional Surveyors and Mappers (KEEP THIS FORM HANDY)	

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS
1940 NORTH MONROE STREET
TALLAHASSEE, FLORIDA 32399-0756

PAID Tallahassee, Fl 32301 Permit No. 323 BULK RATE
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