

**Nevada State Board of Professional Engineers & Land Surveyors  
1755 E. Plumb Lane, Suite 130  
Reno, Nevada 89502**

**Advisory Committee Meeting – Raymond R. Hebert, PLS #6830  
March 10, 2017**

**Advisory Committee Members**

Mark H. Beauchamp, PLS #18610 – Chairman	Paul A. Burn, PLS #11174
Jason C. Fackrell, PLS #17833	Jason P. Higgins, PLS #13601
Mark S. Cormier, PLS #13861	James L. Marlett, PLS #13386

Chairman Beauchamp called the meeting to order at 9:05 a.m. All committee members were present, along with Mr. Hebert and Nathan Aman, his legal counsel. Also present were Patty Mamola, PE, Board Executive Director; Christopher MacKenzie, Board Legal Counsel; and Kay Smith, Board Administrative Assistant.

Chairman Beauchamp said the meeting was called to provide peer review assistance to the Board in the evaluation and disposition of the complaint filed against Mr. Hebert. He said the committee would take no formal action regarding the complaint. He said the hearing would be recorded as it is a public meeting.

**1. Public Comment Period**

There were no public comments.

**2. Advisory Committee Meeting**

Mr. MacKenzie said a complaint was filed against Mr. Hebert in 2014, concerning a boundary survey he prepared. Mr. Hebert's former employer, Tri-State Surveying, was contracted with Associated Laundry Management (ALM) to do the survey. The purpose of the survey was to determine the boundaries and topographical data for design purposes for the expansion of ALM's laundry services.

The complaint alleged that Mr. Hebert failed to sign and seal the survey. It also alleged incompetency by Mr. Hebert in that he incorrectly indicated a Union Pacific Railroad right-of-way on his mapping. The right-of-way was indicated at 100 feet when it should have been 200 feet. As a result of the survey, the complainant constructed a building addition that impeached upon Union Pacific's property. The complainant was required to enter into a lease agreement with Union Pacific.

Mr. MacKenzie said there was pending litigation involving Tri-State Surveying so the Board withheld taking any action on the complaint per a tolling agreement until the litigation was resolved. He said that pursuant to the resolution of the litigation there was a settlement agreement that contained a confidentiality provision as to the terms of the resolution.

Mr. MacKenzie said the complainant, Greg Anderson of Associated Laundry Management, was not present at the meeting to present the complaint against Mr. Hebert. Even so, Mr. MacKenzie said it was still up to the Board to determine if a violation by Mr. Hebert occurred.

The advisory committee members questioned Mr. Hebert about the allegations of the complaint. Mr. Hebert said that Tri-State was hired by ALM to do a topographical survey and a boundary survey. He said that Miles Construction was

also a client regarding the construction of the parking lot and building. When asked if he looked for monuments on any of the adjacent properties that followed the railroad right-of-way, Mr. Hebert replied that Parcel Map 736 had a monument that was right on the 100-foot right-of-way. He said the subject area was actually fenced to the north and partially fenced to the south. He said it had actively been used as a parking lot that extended all the way out to a 50-foot area. As such, Mr. Hebert said there was no inclination that there was ever a 200-foot right-of-way that ever existed.

Mr. Hebert said that he did not set the monumentation for the survey until construction of the parking lot and building addition by Miles Construction was complete. He explained he did this so the monumentation would not be destroyed by the construction. He said that monumentation was set in November 2012.

It was noted there was a large gap in the timeline from when the proposal was signed in July 2010 to when an email from a Union Pacific representative to Mr. Anderson was sent in July 2012 regarding the encroachment. Mr. Hebert was asked if there was any correspondence regarding the width of the right-of-way in the boundary survey in preparation of the map. Mr. Hebert said there was no discovery and no idea there was ever a 200-foot right-of-way.

Mr. Hebert said there is long-standing mapping that is consistent with the assessor's parcel mapping and square footage areas that agree that since 1969 indicate a 100-foot right-of-way. He said the area has been occupied and used during the time from 1969.

Mr. Hebert said the record of survey was prepared and then held since he was waiting for a call from Miles Construction so the monuments could be set. He said during the time construction was taking place Western Pacific Railroad contacted ALM and advised that the construction was over the 200-foot easement line. Mr. Hebert said that ALM contacted him about the easement and he said he would research the situation.

Mr. Hebert was asked if he thought it was unusual when during his research he came across the 200-foot callout. Mr. Hebert replied that he thought it was an error. He said he contacted the railroad after this discovery. He also contacted the Bureau of Land Management and the recorder's office. He said there is cause to believe there is real confusion about what has been filed since the late 1800's.

Mr. Hebert said there was also a 1917 plat map prepared by Perry Wickham at BLM that shows no 200-foot right-of-way on the subject property. He presented the map to the committee members for review. Mr. Hebert said the boundary is fine but there is a question about the easement. He said the railroad ended up giving the easement to the client because there is question on its part.

Mr. Hebert said had he remained employed by Tri-State he would probably have filed a record of survey with a narrative cautioning about the different positions concerning the encroachment.

Mr. Aman asked to give the committee background and history of the railroad right-of-way. He explained that he was a witness concerning the litigation. Mr. MacKenzie said that typically counsel for the respondent is asked not to speak. However, he said that Mr. Aman had information pertinent to the case and the complainant was not present to speak.

Mr. Aman said the Union Pacific Railroad became involved in the litigation as an involuntary plaintiff. He said the railroad first offered the complainant a 99-year lease on its property and later entered into a reverse easement in order to get out of the litigation. He said there are serious concerns over whether Union Pacific even has the right-of-way that they were claiming in the litigation.

Mr. Aman said that the Tri-State survey was never recorded since there was inconclusive evidence over the years in terms of what was found. He said that E. P. Osgood's original survey was found that shows the property was

subdivided into four parcels for Parr Industrial Corporation. He questioned why Mr. Osgood set the boundary where he did and said Mr. Hebert relied upon those surveys. He said that Mr. Osgood's survey notes are inconclusive. Mr. Aman said that Mr. Osgood might have reviewed the 1917 map, which is one of the only recorded maps that was created when Western Pacific bought the railroad line from the NCO line.

Mr. Higgins said a concern by ALM was not being advised by Mr. Hebert on the width of the right-of-way. He noted there are numerous documents that proved there is a big question about the easement. He expressed concern that the client was not advised and told it was time to take a closer look. Mr. Hebert said that as far as he was concerned the initial survey showed the width of the easement was 100 feet.

Mr. Fackrell noted that the map provided to the committee was not stamped. He questioned whether the map provided to ALM was a preliminary map. Mr. Hebert replied it was preliminary and that he did the record of survey.

Mr. Hebert was asked whether he had done any other records of survey that had not been stamped and/or had points in the ground that had not been recorded. Mr. Hebert replied that he was licensed as a surveyor in 1984. He said he had served as president of the Lahontan Chapter of the Nevada Association of Land Surveyors (NALS) in 2008, and as state president of NALS in 2012. He said he has practiced surveying in Nevada for 32 years, and has been responsible for countless subdivision maps and records of survey without any problems.

Sincere there were no other questions by the committee members, Mr. MacKenzie said the members could begin deliberation and determine what action to take. He explained the options the committee members could choose based upon their findings.

Mr. MacKenzie referred to NRS 625.410, which states (2) the Board may take disciplinary action against a licensee for any gross negligence, incompetency or misconduct in the practice of engineering by a professional engineer or in the practice of land surveying by a professional land surveyor; and (5) for a violation of any provision of NRS 625 or regulation adopted by the Board. He said the committee could decide whether or not the standard of care was satisfied by Mr. Hebert relating to subsection 2, and could decide what disciplinary action was appropriate according to the Board's disciplinary matrix.

The committee members took a ten-minute break at this time. Mr. MacKenzie reconvened the meeting after the break and noted that all parties were present.

Mr. Burn said he thought Mr. Hebert had committed only a minor infraction. However, he said there was a deviation from the standard of care for not raising a flag when Mr. Hebert came across the 200-foot call on the boundary line adjustment. He said there was not gross negligence on Mr. Hebert's part, but it was a shame that he missed the call and thought it was an error without questioning it and without notifying the client that there may have been a problem.

Mr. Higgins said he agreed with Mr. Burn and did not see a violation of NRS 625.410(2). He said he did see subsection 5 as being applicable for an infraction. He said he would like to have seen additional research and client advisement by Mr. Herbert.

Mr. Higgins referred to NAC 625.670, which states that in conducting a land boundary survey, a land surveyor shall (1) search pertinent documents, including, but not limited to, maps, deeds, title reports, title opinions and the records of the U.S. Public Land Survey System; and (2) thoroughly examine the information and data acquired.

Mr. Higgins also referred NAC 625.700, which states that the professional land surveyor shall (1) advise his or her client of discrepancies which raise doubts concerning the boundary lines of the property being surveyed; and (2) provide a written report to the client concerning the discrepancies.

Mr. Beauchamp said he agreed with Mr. Burn's and Mr. Higgins's comments. He said that upon reviewing the documents provided to the committee, the boundary line adjustment caught his attention because it pointed to a right-of-way. He said the statement did not agree with the title report so it raised a question. Mr. Beauchamp said Mr. Hebert's client should have been notified there was an issue.

Mr. MacKenzie suggested the committee make two separate motions relating to the referenced regulations.

17-1 Motion was made by Mr. Burn, seconded by Mr. Higgins, that there is a violation by Mr. Hebert of NAC 625.670(1)(2). The motion passed unanimously.

17-2 Motion was made by Mr. Higgins, seconded by Mr. Burn, that there is a violation by Mr. Hebert of NAC 625.700(1)(2). The motion passed unanimously.

The committee members discussed what disciplinary action to take.

17-3 Motion was made by Mr. Higgins, seconded by Mr. Marlett, to issue Mr. Hebert a letter of concern and to require him to reimburse the Board's investigative costs in this matter.

Mr. Higgins noted Mr. Hebert's 30 plus years of continuous practice in Nevada and in California and his service to the survey community over the years. He said it was unfortunate that this issue occurred and said it was more than a lesson learned for someone with Mr. Hebert's amount of experience and integrity. Mr. Higgins said his motion was based on NAC 625.670 and NAC 625.700.

There being no further discussion, the motion passed unanimously.

Mr. MacKenzie thanked the committee members for their time and participation in the meeting.

### **Public Comment**

There were no public comments.

### **Adjournment**

There being no further discussion, the meeting was adjourned at 10:40 a.m. on Friday, March 10, 2017.

Respectfully,

Patty Mamola, PE  
Executive Director