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GOVERNOR

## INDIANA-MICHIGAN BOUNDARY LINE COMMISSION

JOHN R. MCNAMARA, P.E., P.S., CHAIR  
DAVID W. MOSTROM, P.S., VICE CHAIR



STATE OF MICHIGAN  
RICK SNYDER  
GOVERNOR

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## MEETING MINUTES

NOVEMBER 12, 2014  
10:30 A.M.

COUNTY COMMISSIONERS MEETING ROOM  
227 WEST JEFFERSON BLVD., 7TH FLOOR COUNTY CITY BUILDING  
SOUTH BEND, IN 46601

### MEMBERS PRESENT

John McNamara, Chair, IN Commissioner  
Anthony Hendricks, IN Commissioner  
Brad Cramer, IN Commissioner  
Chris Marbach, MI Commissioner  
John Kamer, MI Commissioner  
Michael Lodzinski, MI Commissioner  
Michael Ruff, IN Commissioner

### MEMBERS ABSENT

Rex Pranger, IN Commissioner  
Edward Reed, MI Commissioner  
David Mostrom, Vice Chair, MI Commissioner

### STATE OF MICHIGAN PERSONNEL ATTENDING

Mr. Chris Beland, Director, Office of Land Survey and Remonumentation  
Mrs. Angela Sanderson, Secretary, Office of Land Survey and Remonumentation

### OTHERS IN ATTENDANCE

Mr. Rich Hudson, Indiana Professional Land Surveyor

### Indiana-Michigan Boundary Line Commission

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**1. CALL TO ORDER AND DETERMINATION OF QUORUM**

Chairperson John McNamara called the meeting to order at approximately 10:31 a.m. A quorum was determined present at that time.

**2. APPROVAL OF AGENDA**

A **MOTION** was made by Commissioner Marbach and seconded by Commissioner Lodzinski to approve the agenda. **MOTION CARRIED UNANIMOUSLY.**

**3. APPROVAL OF MINUTES**

A **MOTION** was made by Commissioner Kamer and seconded by Commissioner Ruff to approve the Minutes from the October 14, 2014 IN-MI Boundary Line Commission Meeting. **MOTION CARRIED UNANIMOUSLY.**

**4. OLD BUSINESS**

**a. Review draft request for service and estimated costs**

Chris Beland, Director, Office of Land Survey & Remonumentation, commented on the status of the draft statement of work since the last board meeting. In reworking some of the language he attempted to reduce confusion or questions regarding compliance with State standards by including cites to specific rules. He mentioned the cites where to the Indiana Administrative Code because of its specific requirements whereas Michigan does not have comparable detail in the laws and Administrative Code.

Commissioner Ruff said it had been 8 years since Indiana had updated their rules for professional surveyors, so he suggested making reference to the most current standard in case they change the rule soon.

Commissioner Marbach questioned the word "ownership" and "make all effort" in the draft request and suggested changing it to "required effort" instead.

Commissioner Marbach said that Rule 12 still requires pulling every adjoining deed, which he doesn't think is necessary. He suggested selecting only certain spots where deeds will need to be pulled, not every deed.

Commissioner Kamer suggested not being so specific about Rule 12 requirements in the request and instead just calling out certain sections of the rule.

Mr. Beland asked if a resurvey and remonumentation of the line falls under any of the defined surveys in Title 865 or if it falls outside of the scope.

Commissioner Marbach said the State line was not contemplated in that document. He said retracement can be used in different ways and the State line is a unique situation.

Chairman McNamara said he considered the State line more of a section corner perpetuation than a retracement of survey.

Commissioner Marbach said that Section 30 covers what they want to happen at each mile post.

Commissioner Lodzinski said if they don't frontload the research, they will be handicapping themselves. He said in tying it to Title 865, they would need to have language as a standard there.

Mr. Beland commented that if Commission cannot agree on what requirements within the Administrative Code they should follow to "Administer a survey and remonumentation of the Indiana-Michigan border" it may be a legal question and that they may want to seek advice from counsel.

Chairman McNamara said the problem is the terminology of the retracement survey and what's included with that.

Mr. Beland asked on section 30, regarding its reference to deeds and plats, if it would require having all of them along the border.

Commissioner Hendricks said it would be subject to professional opinion.

Commissioner Lodzinski said the Commission has oversight of reviewing corners, so they need to give some sort of standard.

Mr. Beland asked the Commissioners whether they want to request legal advice as far as compliance with title 865 or not.

Commissioner Marbach asked in reference to the first set of specs, there was no mention of compliance and if it would have been okay to leave it that way.

Mr. Beland answered saying there was no specific reference but a general reference for compliance with law, rules, etc.

Commissioner Marbach suggested adding measurement requirements and in doing so GPS requirements could be added as well.

Mr. Beland said he wasn't sure if the language was specifically limited enough to say it's a certain section.

Commissioner Lodzinski said that the Commission is just trying to give some sort of guideline in the request, and then it's up to the Commission to decide how close to those guidelines they are going to hold the surveyor to.

Mr. Beland commented that when the proposals are received the Commission would evaluate and score each one and rank them and that this would be done without knowledge of proposed costs.

Commissioner Kamer asked if the act says that they are supposed to do a "resurvey and the perpetuation of mile markers."

Mr. Beland answered saying that the Act calls it a "survey" not a "resurvey," he then read that section of the act aloud to the commission.

Commissioner Kamer asked what the requirements of a retracement survey under title 865 are.

Commissioner Hendricks commented that if a surveyor is doing a retracement survey they would walk the line, i.e. physically traverse and survey the line.

Commissioner Marbach said the definition of a "retracement survey" in Title 865 is "A survey of real property that has been previously described in documents conveying an interest in the real property". He asked the commission if they have documents conveying an interest in the real physical property.

Chairman McNamara responded saying that this is not a retracement of a piece of property; it's the retracement of the state line. He said it's the word "retracement" that is trapping them and that's not what the Indiana code intended. He said even though they are retracing the state line they are actually doing more of a corner perpetuation of the corners that were set by Kendrick than retracing according to the Indiana code, and if they zero in on the perpetuation of those corners they will be more to the intent of the law.

Mr. Beland asked the commission about a specific corner in Cass County that a volunteer group tried to find but was unable to locate and then a private local surveyor found it approximately 60 feet north or south from the position where the volunteer group had

calculated the position to be. He said he recalled that there was a substantial difference between the calculated position of where the volunteer group thought it was and where the surveyor actually found the post to be. He asked the commission without retracing the entire line does it increase the possibility of something similar to this happening and missing something that significant.

Members of the commission decided the corner Mr. Beland was referring to was the corner in Cass County that Tom Stevenson had found in the swamp.

Commissioner discussion ensued regarding whether or not this issue is covered in section 30 of the law.

Commissioner Kamer said he doesn't think this survey fits the description in section 30. He said they have to comply with Title 865 and they need to know what that means. They need legal advice to tell them whether the contract surveyor is going to have to follow that or not. They would not be excluding that from their duties, the Commission just needs to know which parts of the Administrative Code the surveyor has to follow.

Commissioner Ruff said that in general in Indiana, they would have to comply with all of Title 865. He said that currently he has consultant surveyors that have difficulty complying.

Commissioner Lodzinski asked in order for the work to be adequate, do they have to hold them to everything in the rule.

Mr. Beland answered and said that the Commission makes the decision on whether or not the work submitted complies.

Commissioner Lodzinski asked if there is a way to communicate to anyone who's submitting a proposal that even though Title 865 is in the request, the Commission isn't going to hold them to every little thing in it.

Commissioner Kamer asked if the Commission is asking for a retracement survey based on these rules.

Chairman McNamara answered and said he doesn't believe so, he thinks they are asking for a perpetuation of the corners. He said the Commission should decide the label they want to put on it; maybe "Mile Post Perpetuation Survey" instead so it's more related to section corner perpetuation.

Commissioner Hendricks said to add only the applicable parts of Title 865 to the request. He said the bottom line is that they want the surveyors to perpetuate those mile posts, and

including the entire rule seems to complicate it. They are professional land surveyors, they are going to have to do the research to perpetuate each corner, and it's their call on how they are going to do it. The Commission is only interested in the perpetuation of the corner.

Commissioner Marbach asked if the Commission has discretion to pick and choose what they follow out of that section.

Commissioners Lodzinski, Hendricks, & McNamara all answered and said they think Commission has that right.

Commissioner Kamer asked the Commission if it's clear to them and clear on a legal basis whether the retracement process is necessary.

Chairman McNamara asked if they can simply refer to only parts of section 30 in the request indicating this is what the Commission wants done, without a reference to the actual section and title.

Mr. Beland answered and said that the Commission can't write law or create rules to implement the act.

Commissioner Hendricks said to take out any reference to title 865 and replace it with "any and all" rules instead.

Chairman McNamara referred to #1 of the request and suggested that they just say that "all work must be completed in accordance with applicable rules and regulations".

Mr. Beland asked if the corners referenced in Section 30 includes the border mile posts and meander posts as public land survey corners.

Chairman McNamara said it is the senior line, but is it not part of their section corner system; it's the absolute boundary though.

Mr. Beland asked if they should reference meander posts and mile posts as public survey corners in the request.

Commissioner Hendricks answered and said yes, as equivalent to.

Chairman McNamara asked should a contracted surveyor for this project follow the standards for a retracement survey of Title 865 or not. He said he feels that it's more of a perpetuation of the corner than it is a retracement by the language in the law, so he thinks it should reference Section 30.

Mr. Beland said the tricky part is that it says "Administer a survey and remonumentation of the Indiana-Michigan border" so where does that term "survey" fall legally within the requirements of both states and is there ambiguity in law.

Commissioner Hendricks asked if they could ask counsel if using only section 30 would meet the requirements of the laws.

Mr. Beland answered indicating that the question could be asked but if counsel doesn't believe the question being asked truly addresses the legal matter at hand that they could restate or modify the question to answer what needs to be answered. He asked if the work performed could be simply to locate the posts or does the wording in the laws require the survey of everything else in-between.

Chairman McNamara said he doesn't believe in order to establish the mile posts that you have to run the line between the corners. He asked if the Commission has the right to determine the way it needs to be done, or are they under guidelines that there has to be a survey done along the line.

Mr. Beland said that they have to establish first, what a "survey" is intended to mean in this instance and how that will be applied.

Commissioner Marbach asked what the legal interpretation of the word "survey" is in this instance. He said that under Section 6, sub para A, where it reads "Administer a survey and remonumentation of the Indiana-Michigan border" needs clarification to what the term "survey" means and is it a retracement corner under Section 12, or section corner perpetuation.

Commissioner Lodzinski said the governor has appointed the Commission because they are supposed to be the experts, so he thinks the attorney general's office should be left out of it.

Chairman McNamara suggested taking #1 out completely and to just go with #8 in the request.

Mr. Beland said that questions keep being asked to him as to why the Commission is doing this survey and if there is a substantial need for it.

Commissioner Marbach answered saying they are doing the survey because the senior line is missing.

Mr. Beland asked the Commission if they want to present the scope of work to the AG's office and ask if this scope of work, as written, covers the Commission's requirements under the law. He said the AG's office wouldn't review it unless they asked, only procurement staff would.

A **MOTION** was made by Commissioner Hendricks and seconded by Commissioner Lodzinski to revise Standard Requirement No. 1 to read "all work must be completed in accordance with all applicable local, state, and federal law rules regulations and standards of practice governing the practice of surveying in the states of Indiana and Michigan". **MOTION CARRIED 6-1.** Commissioner Marbach opposed.

Commission discussion ensued.

A **MOTION** was made by Commissioner Kamer seconded by Commissioner Ruff to request legal opinion regarding whether the term "survey... ..of the... ..border" as used in the law requires compliance with the retracement section of Rule 12, Title 865. **MOTION FAILED 2-5.** **COMMISSIONERS** Kamer and Ruff in favor; **COMMISSIONERS** Cramer, Hendricks, Lodzinski, Marbach, and McNamara opposed.

Commissioner Marbach asked again if the question is asked to legal counsel if then they will be held exactly to that standard, but if they don't ask then they can decide what it means on their own.

Chairman McNamara said that the Commission has the responsibility to know what the standards are and proceed under those circumstances.

Commission discussion ensued.

Chairman McNamara read through the rest of the request for service point by point, and the Commission made the following suggested changes to the rest of document beginning with 2 (1 was addressed in prior motion):

2. Change "all effort" to "make required effort"
3. Leave as is
4. Change to "Commission will draft a standard letter to be mailed out by contractor"
5. Leave as is
6. Leave as is

7. Change to "any state line mile post, and meander post is the property of the Commission"
8. Conform with Rule 12, Section 30
9. Leave as is
10. Change positional accuracy equivalent to Rule 12 Urban Survey
11. Leave as is
12. Drawing should be at minimum in accordance with Rule 12, Section 30
13. (d) Quote based on the act. Strike the word "retracement". Address term retracement throughout entire request

5. NEW BUSINESS

None

6. ADJOURNMENT

A **MOTION** made by Commissioner Lodzinski and seconded by Commissioner Hendricks to adjourn the meeting. **MOTION CARRIED UNANIMOUSLY.**

Commission agreed that December meeting will be cancelled. The next time the Commission will meet will be February, 2015, and Chairman McNamara will not be attending that meeting.

Chairman McNamara adjourned meeting at 12:37 p.m.

APPROVED:

  
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John R. McNamara, P.E., P.S., Chairman  
Indiana-Michigan Boundary Line Commission

1-13-15  
Date