HOW VIRGINIA’S UNIQUE LAND SURVEYING DEFINITIONS CAME ABOUT
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If the definition that existed in 1938 for “Land Surveying” still remained in full force and effect, by preventing the scope of the practice from maturing and advancing in coordination with advancing local regulatory requirements, today’s practice of land surveying in Virginia would amount to not much more than the performance of boundary surveys, topographic surveys, construction stakeout, and computation of subdivision lots. That limitation is what a group of opposing professionals has regularly sought for the land surveying discipline. Without the expansion of the scope of practice over the 46 year period subsequent to the 1938 definition status, land surveying in Virginia could not have grown into the highly regarded profession it is today.

In 1938, the definition in the Virginia Code for land surveying, as we review it today, was quite basic, very obsolete and left much to be desired. The 1938 definition may date back as far as 1924, but I haven’t researched that. In the mid-1950’s, the then-practice of land surveying over the many years had been maturing and naturally expanding in general coordination with the growth and expansion of local subdivision and zoning regulations. By the time of the post-WWII period, even more basic and ill-defined, the 1938 Virginia definitions for architect and professional engineer also left much to be desired. Section §54-17 of the Virginia Code in 1938 defined “Architect”, “Professional Engineer” and “Land Surveying” (note that “Land Surveyor” was not then defined, only the practice was), as follows:

(1) “Architect” shall be deemed to cover an architect or an architectural engineer.
(2) “Professional Engineer” shall be deemed to cover a civil engineer, mechanical engineer, electrical engineer, mining engineer, metallurgical engineer or a chemical engineer”.
(3) “Land Surveying” refers only to surveys for the reestablishment of land boundaries and the subdivision of land and such topographic work as may be incident thereto, the making of plats and maps and the preparing of descriptions of the land so surveyed or investigated.

In preparing this historical treatise of the evolution of the land surveying definitions in Virginia, it became much lengthier than I had originally anticipated. But as I reviewed my rather voluminous file material, I came to realize that I had forgotten some key elements of the lengthy process, and thus came to the conclusion that a true history required that most of the details should be included. To leave them out, or to summarize in order to streamline the text, would not reflect the magnitude of the accomplishments.

In the mid-1950’s, major problems arose for the Virginia land surveyor. In the post-WWII era, like many other metropolitan areas, Fairfax County (and all of northern Virginia) was experiencing very considerable new housing development. A zoning ordinance had been first enacted by Fairfax County in 1941, and that one became replaced by a new zoning ordinance in 1956. The first subdivision ordinance was enacted in 1947. In the early or mid-1950’s, Fairfax County, in some county governmental reorganization, created a new Department of Public Works; and it also developed its first master plan.

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While the County already had staff for a planning and subdivision department, it engaged an Edward L. Kipp, a professional engineer from the Tidewater area, to be the Director of the new Department of Public Works.

The Virginia Association of Surveyors (VAS) not long before (in 1948) had been organized, and was still in its early youth. In the mid-1950’s, the Northern Virginia Chapter (NVC) and the Central Chapter were then the only two chapters of VAS. The Northern Virginia Chapter consisted of what today constitutes the Mt Vernon Chapter, the Bull Run Chapter, and some of the Shenandoah and Fredericksburg Chapter areas as well. In the early and mid-1950’s, VAS had not yet become actively involved in legislative matters, nor had it yet become actively involved about who became appointed to the Land Surveyor Section of the APELS Board (Board of Architects, Professional Engineers and Land Surveyors, also called the State Board), even though the Virginia land surveyor statutes date back to the early 1920’s. But northern Virginia was home to many active, competent and skilled land surveyors, many of whom were active in leadership roles in the young VAS.

In that time period, the Fairfax County Subdivision Ordinance, Section 5-16, in part provided “… the Plans and Specifications for all of the required physical improvements to be installed in a Subdivision, as prepared by a Land Surveyor or Engineer, duly certified by the Virginia State Board for the Examination and Certification of Architects, Professional Engineers and Land Surveyors, to perform such work, or exempt from such certification, shall be submitted to the Director for approval. …”

The new Director of Public Works decided to make changes

Ed Kipp really didn’t like that the rather large land surveyor community in northern Virginia had long been preparing and processing street plans, sanitary sewer extensions & storm sewer plans. There had been no complaint whatsoever about the quality of the land surveyors’ work – rather, Kipp’s objection simply was based on whose exclusive turf he felt this work belonged. By letter of December 14, 1955, Kipp took this issue to Turner N. Burton, Director of the Department of Professional and Occupational Registration (DPOR), who promptly (by reply dated December 15, the very next day) advised him that land surveyors may not prepare such plans. It was obvious that Mr. Burton knew Kipp’s letter would be coming, and had been already prepped by the Board how to reply. This led to further communications and to the formality of a hearing by the full APELS Board, which was held on June 19, 1956. It quickly became quite clear that there was much more organized and coordinated opposition than Mr. Kipp and the APELS Board.

Meanwhile, VAS, led by the Northern Virginia Chapter (which was the on-the-scene target), obviously was acutely aware of and concerned about the issue. In early 1956 VAS engaged the Fairfax law firm of Wood, Bauknight & Testerman for its investigation, advice and direction. That law firm prepared an excellent, well researched 12-page brief, and on behalf of the surveyors presented it before the aforesaid APELS Board meeting of June 19, 1956. Among its many excellent points, that brief observed that it was difficult to determine if the then-current practice of land surveyors in preparing the necessary plans incident to subdivisions actually overlapped into engineering, since engineering was not defined in the Virginia statutes.

At that June 19 hearing a four-person committee was appointed to investigate and recommend a resolution. The two surveyor board members on that committee were G. Hubard Massey, PE/LS, whose Fairfax firm was Massey Engineers (almost exclusively involved in sanitary engineering) and Samuel W. Dobyns, LS, a VMI professor. The other land surveyor member of the State Board at that time was Robert F. Pyle, PE/LS from the Tidewater area. It certainly appeared that the Land Surveyor Section of the Board, as it was then structured, just did not have an appreciation for – and likely had a bias against – the needs of the practicing land surveyor. That Land Surveyor Section clearly had no member that, as a principal, was then engaged in the long-time practice of land surveying. Massey had practiced land surveying for a relatively short period of time in the Tidewater area during the great depression before WWII, but became a
victim of the depression and moved to Fairfax County where he was able to obtain significant sanitary engineering contracts from the County.

The said Board committee met on September 22, 1956 but decided to leave matters unchanged -- it issued a report recommending “...no further action be taken on the matter…” Based upon all of the foregoing, Ed Kipp then caused the County subdivision ordinance to be amended effective October 17, 1956 to preclude surveyors from preparing such plans, and issued an administrative order to his staff that no longer would plans for street grades and storm sewer construction be accepted from land surveyors. It had become increasingly apparent to VAS during 1956 that a court battle would become necessary in the search for an acceptable remedy. Subsequent to the June 19 APELS hearing, in late summer 1956, VAS engaged the prominent Alexandria law firm of Clarke, Richard, Moncure & Whitehead to represent the land surveyor community in probable litigation.

Pursuant to the continuing chain of events, on January 2, 1957, Turner Burton, the Director of DPOR, dropped the bomb – he sent a “cease and desist” letter to all Virginia land surveyors. On January 4, 1957, an article appeared on page B-2 of Washington’s The Evening Star entitled “Side Jobs Are Out, Virginia Aides Told”. The article stated:

“Virginia’s 450 registered land surveyors have been warned they must stop practicing civil or highway engineering or face prosecution.

“A letter from Turner N. Burton, director of the State Department of Professional and Occupational Registration, to the land surveyors noted it had been discovered recently that land surveyors were submitting subdivision plans to local building inspectors for approval.

“The Virginia State Board for Examination and Certification of Architects, Professional Engineers and Land Surveyors said this work – which included the design of road and street grades and storm water drainage systems – was beyond the scope of land surveyors”.

Not surprisingly, the land surveyor community, particularly in northern Virginia but also over much of Virginia, realized it had a serious problem on its hands if its long standing practice was to survive. There had been no claim that the work performed by land surveyors was of poor quality. There had been no claim that the surveyors’ work was harming the public. The fact is that said subdivision work was a major part of the business practice of a large number of firms, not just in northern Virginia, but also elsewhere throughout the State. The further fact was that the various local governments had specified design criteria and structures for all subdivision related plans. There was a large sentiment among the land surveyor community that two licenses should not be necessary for an individual to be involved in the practice of land surveying as said profession had evolved and matured over the years.

By the way, it is interesting to note that in the mid-1950’s the State Board also offered examinations and license certificates for “Highway Engineer”, even though the then-statutes did not provide for that specific category of license. Many of the land surveyors who also possessed a PE license in that time frame had obtained such license by virtue of qualifying to sit for and passing a Highway Engineer examination.

Raymond A. Koenig vs Board of County Supervisors of Fairfax County, Virginia, et al

Ray Koenig, LS, a resident of Arlington and a principal in the Bethesda, Maryland firm of Allen & Koenig, was nearing the completion of a set of such plans for a client’s Fairfax County development, and would be soon ready to submit such plans for review. Upon their submittal, Ed Kipp, as had been expected, by letter dated January 8, 1957 rejected Koenig’s plans, in part citing a ruling by the State Registration Board which stated: “A land surveyor cannot practice engineering in any manner or respect, such as preparing street designs and storm water drainage”. Koenig, by his reply to Kipp dated later on
the same day, January 8, 1957, noted that in order to not penalize his client for delays due to litigating, that he had engaged a PE to “check and certify the plans and specifications for West Grass Ridge, Section One”. He further stated that he had been practicing in Virginia for 10 years, “and this is the first time that I have been led to this course of action”.

Following the rejection of Koenig’s plans, Koenig, with the full and coordinated support of VAS representing the land surveying community, thereupon immediately filed suit. The Defendants included all 7 individual County Supervisors, Edward L. Kipp, the APELS Board, and all 9 individual members of the APELS Board.

Andrew “Andy” Clarke, a former State Senator, and James Thomson, then a freshman member of the Virginia House of Delegates, were the attorneys from that firm that handled the plaintiff’s side of the suit, and Robert Fitzgerald, Commonwealth Attorney, and Thomas Miller, Assistant Attorney General, handled the defendants’ side.

But yet more was to be heard from Turner Burton, Director of DPOR, and the APELS Board. By a lengthy 3-page letter dated January 18, 1957, Mr. Burton, in considerable detail, advised Koenig (the same letter was also directed and sent to every individual Virginia licensed land surveyor) that in the opinion of the Board Koenig was not permitted to engage a licensed engineer as though an employee of the land surveyor to review and certify his plans. The threat of license revocation was made if that practice were attempted.

Ray Koenig first sought to temporarily enjoin the County from enforcing the State Board’s ruling. At a hearing in March 1957, the court denied the temporary injunction, ruling that while it was found that Koenig was capable of doing the work in question, and that irreparable damage was being done him by the denial of accepting his plans, it was not proven that the State Board did not have the right to make the ruling it made. The full case was thereupon scheduled for hearing on its merits in the Fairfax County Circuit Court, trial set for September 24, 1957.

The president of VAS during 1957 was Dan Maher, LS, whose office was in Arlington. I had the privilege of being the president of the Northern Virginia Chapter of VAS in 1957, so I also was very much in the middle of the action. Due to the extent of opposition that had developed against the surveying community in support of Ed Kipp, Fairfax County Director of Public Works, it had become quite evident that VAS hereafter needed to get very active in State legislative affairs, and in appointments to the State Board, in addition to all other matters deemed of importance to the profession. Thus, VAS in the Spring of 1957 endorsed Frank D. Tarral, Jr., LS (of Virginia Beach) to replace Robert Pyle, PE/LS (of the Tidewater area), whose term on the Board was expiring. Governor Stanley accepted that VAS recommendation and appointed Frank Tarrell to the APELS Board for a 5-year term commencing July 1, 1957. This was the first appointment in many years of a practicing land surveyor to the Land Surveyor Section of the APELS Board. The newly formed Tidewater Chapter was also welcomed into the fold in early 1957 as the 3rd VAS chapter to be organized.

Circuit Judge Art Sinclair presided over the court case. In late 1957, the Judge ruled from the bench against Koenig (and the surveyors). Notwithstanding all of the testimony providing strong evidence in support of the suit, the fate of the lawsuit rose and fell on the grammatical structure of the then-definition for land surveying. As I recall the judge’s discussion prefacing his ruling, the suit failed due to the absence of a comma — if a strategic comma had been present, the definition would have had an entirely different grammatical meaning, one that may have satisfied the judge as being consistent with the prior long standing practice of land surveying.

Legislative remedy is sought via House Bill 402, then Substitute House Bill 666

Following the adverse Circuit Court decision, pursuant to advice of attorney Andy Clarke, it was decided by VAS to seek legislative remedy rather than to pursue an appeal to the Virginia Supreme Court.
In that era, Virginia’s General Assembly only met every other year for 60 day sessions, and its biennial session was then imminent. Jim Thomson (D, Alexandria) and Russell Carneal (D, Williamsburg) agreed to sponsor corrective legislation to be introduced in the House of Delegates, and House Bill 402 was crafted. Our HB402, as introduced, provided that there would be only one class of surveyor, with updated language that clearly would allow the surveyor to do the subdivision work that the court case had disallowed.

The legislative wheels were necessarily started in motion several days prior to convening of the 1958 VAS Annual Meeting, which was held January 24-25 at the Ingleisde Hotel near Staunton. That VAS Annual Meeting was lively, there were a few within VAS that spoke in opposition to HB402, particularly a few Tidewater holders of dual (PE/LS) licenses, as well as a couple land surveyors whose practice did not include such work, but who depended upon existing relationships with engineering firms. Notwithstanding, after lengthy discussion and debate, the text of HB402 and the decision to aggressively seek legislative remedy was unanimously endorsed by that annual meeting assembly.

Victor Ghent, PE/LS was the 1958 VAS Legislative Chairman. I also became a member of the VAS Legislative Committee, and worked very closely with Vic in managing communications throughout Virginia during the legislative process. Although Vic’s office was in Alexandria, Vic lived in Annandale, so my office in Annandale became the communications center for VAS for that legislative effort. Others very actively involved with us on the legislative scene in Richmond were Dan Maher, LS (of Arlington, who was the 1957 VAS President of VAS), Bob Bartenstein, PE/LS (of Warrenton, who followed Dan in 1958 as VAS President), John Foster, PE/LS (of Richmond), and many, many others.

It’s accurate to state that land surveyors all over the state were very active with their local legislators in promoting this bill and providing meaningful status feedback. Cliff Thorpe, an affiliate member, also was actively supportive. VAS had a significant advantage over the opposition in one important way – land surveyors’ offices were located in communities throughout all of Virginia, while the engineers were predominately located in the larger metropolitan areas. The land surveyors throughout the State typically knew and had a working relationship with both the rural and urban members of the General Assembly, while the engineers’ direct relationship with many of the legislators was more limited.

The opposition to House Bill 402 quickly became very visible and was quite enormous. Our Bill was vigorously opposed by the Virginia Society of Professional Engineers (VSPE), by the Virginia Section of American Society of Civil Engineers (ASCE), by a number of other groups within VSPE or with overlapping membership with VSPE, by representatives of the Counties, Cities and Towns lobbies, and by huge numbers of individuals. Of course, the Board of Architects, Professional Engineers and Land Surveyors (the APELS Board) also was opposed. It was a hot issue. As a side note, in 1958 the ASCE considered land surveying to be a part of civil engineering, and its membership included licensed land surveyors who were not licensed engineers. There have been court rulings in other states that land surveying is a part of engineering, but a specialization thereof that requires a separate license for the protection of the public.

At that time, in this kind of turf conflict between licensed professions, the General Assembly expected DPOR (the APELS Board) to endeavor to seek a compromise resolution. Pursuant to such expectation, Turner Burton arranged a meeting in his offices that was held on February 8, 1958. At that meeting Bob Bartenstein, Vic Ghent and I represented the surveyors, and about two dozen people represented the engineers. A compromise substitute bill was crafted, primarily by the opposition, however with our input – but upon adjournment of that meeting, the language of the proposed substitute bill was very unsatisfactory for the surveyors’ needs.

Vic Ghent, Bob Bartenstein and I met again the following day at Bob’s home in Warrenton to try to further develop possible compromise language. We came up with some language that we hoped might be agreed upon. Bob Bartenstein then arranged a meeting that was held in Richmond the following day, February 10, to be attended only by 5 individuals, to wit: John Foster, PE/LS (Central Chapter of VAS, who happened also to be President of the Richmond Chapter of VSPE), E. B. Boynton, President of VSPE,
Austin Brokenbrough, VSPE Legislative Chairman, Stanley Navas, Legislative Chairman of the Virginia Section of ASCE, and himself, as President of VAS. This group did agree on the outline of draft definitions for a substitute bill, rather than the draft that had been put together at the offices of DPOR two days earlier. Each of the represented organizations then were asked to give its official endorsement to this revised draft language. The VAS legislative leadership endorsed, the Virginia Section of ASCE endorsed, but VSPE waffled. The 6-man executive committee of VSPE voted 3 to 3, which amounted to a failed vote since their required majority vote was not obtained. This compromise language called for and defined an additional category of surveyor called “surveyor/subdivider”.

END OF PART 1 PUBLISHED IN JULY 15 EDITION

DPOR agreed to publish this latest language in a draft substitute bill, which became filed as House Bill 666. In HB666, the 3(a) definition was essentially a continuation of the same 1938 definition for land surveying, however tweaked to now define a “land surveyor” instead of the practice of “land surveying” (the prior-existing words in the brackets were deleted, and the underlined words were added), as follows: 3(a) “Land Surveying” refers only to “Land surveyor” shall be deemed to cover only surveys for the reestablishment of land boundaries and the subdivision of land and such topographic work as may be incident thereto, the making of plats and maps and the preparing of descriptions of the land so surveyed or investigated. This proposed 3(a) definition in HB666 was very unsatisfactory to us, even though HB666 now had a 3(b) version to which VAS leadership had agreed.

Subsection 3(b) of this substitute bill, as was crafted and agreed to on February 10 by the group of 5 identified above, and then endorsed by VAS and the Virginia Section of ASCE, at that stage stated as follows: 3(b) “Land surveyor-subdivider” shall be authorized to do such work as may be done by a land surveyor, and, in addition thereto for subdivisions, he may prepare plans and profiles for roads, storm drainage, and sanitary sewer extensions, where such work involves the use and application of engineered standards prescribed by local or state authorities. Nothing herein shall be construed to include engineering design work or the preparation of specifications for construction.

It had been intended that HB402 would be allowed to die in committee, but in reviewing my files, it appears that HB402 continued to be the legislative vehicle, however with the House General Laws Committee substituting into HB402 the language that was within HB666. The House version now provided for the §54-17(3) land surveyor definition to be divided into two categories of land surveyor, §54-17-3(a) and 3(b), with Subsection 3(a), as herein above stated, largely mirroring the old outdated definition as it existed in 1938, all as stated herein above.

The engineers continued their very aggressive opposition among the members of the General Assembly. One group of engineers would indicate a further concession would get its endorsement, then when that concession was made, another group would step forward and follow the same pattern to get another concession. I mentioned earlier that VSPE had a number of subgroups, and additionally there were other independent groups that had members common to VSPE (e.g. Consulting Engineers Council {CEC}, and Professional Engineers in Private Practice {PEPP}). This sort of negotiation continued to the point that the greatly amended bill, as it passed the House, was seriously crippled and was a quite unsatisfactory piece of legislation insofar as resolving the surveyors’ needs.

The obsolete land surveyor definition dies; Virginia land surveyors obtain entirely new definitions

But our bill’s Patrons had been taking note of what had been going on (as had the Senate), and they had been doing yeoman work in our behalf behind the scenes. When the bill was taken up by the Senate General Laws Committee, our opposition forces, in spite of all of its negotiating success on the House side, now redoubled their efforts, with the intent of now totally killing the bill. The Senate General Laws

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Committee was greatly angered by these non-compromising tactics of the opposition, and that committee thereupon deleted much of the earlier compromised text and reinserted most of the thrust of the intent of the language proposed by VAS in its originally introduced HB402. Our originally crafted updated definition for land surveyor thus was essentially revived, however the Senate committee did retain the concept of the two categories of land surveyor and the additional examination requirement. The Senate General Laws Committee also reinserted the one-year grandfather clause.

As stated, when our seriously crippled bill came before the Senate General Laws Committee, it was clear the Senators on that Committee were disgusted and very desirous of restoring some of the provisions that had been lost during the process in the House, and they did so. I recall a few of those Committee members were young Senator Harry Byrd, Jr., Senator Hagood (from the Martinsville or South Boston area), and other very influential and supportive Senators. A Senator would ask one of our Patrons a question like “Shouldn’t such and such provision that was removed by the House be put back into this Bill?” This went on for a few amendments approved by that Committee in our favor, and thus our bill, now for the most part satisfactorily restored to embody that which VAS had originally proposed, then proceeded to win approval by the full Senate.

The opposition certainly did not quit, though -- it seemed to become even more vocal back in the House of Delegates when the House had to vote on the Senate amendments. Notwithstanding, the House did handily approve the Bill in the form as amended by the Senate. Our bill’s patrons had been very diligent and effective in representing our needs, and their efforts went far beyond the normal call of duty. Further, the cumulative efforts of a very large number of land surveyors from all over the State clearly were a huge factor in the final outcome.

Of course, that didn’t conclude the work of the opposition. At that point, the opposition induced the Presidents of the several universities in Virginia to intercede with the Governor, asking him to veto the bill. But our bill was among the first of the bills that were signed into law by the Governor, and it became effective as of June 27, 1958.

The text of the new (1958) definitions of the VAS bill, as enacted and signed by the Governor, was as follows:

3(a) “Land surveying” includes surveying of areas for their correction, determination and description, and for the conveyancing, or for the establishment and reestablishment of internal and external land boundaries, and the plotting of land and subdivisions thereof. The plotting of land and subdivisions thereof may include the laying out and plotting of roads, streets and sidewalks, topography and contours setting forth road grades and determining drainage on the surface.

(b) In addition to the work described above, a land surveyor may, for subdivisions only, prepare plats, plans and profiles for roads, storm drainage and sanitary sewer extensions where such work involves the use and application of standards prescribed by local or State authorities, provided the land surveyor passes an examination given by the board in addition to that provided for the certification of land surveyor under paragraph (a) above; provided, however, that any land surveyor who shall, within one year from June twenty-seven, nineteen hundred fifty-eight, submit satisfactory proof to the Board that he has satisfactorily engaged in such work in the past may continue to do such work without further examination. Nothing contained in subsections (a) and (b) shall be construed to include engineering design and the preparation of plans and specifications for construction.

Initial issuance of licenses for 3(b) surveyors

In the Spring of 1958, VAS recommended to Governor J. Lindsay Almond, Jr. three land surveyors for the State Board’s Land Surveyor Section vacancy arising due to the expiration of G. Hubard Massey’s term. VAS determined that all three were to have the experience qualifications to become licensed under the grandfather clause as a 3(b) land surveyor as soon as the APELS Section of the Board would be prepared to commence such licensing. The three recommended, in the order of preference, were James D.
Payne, Daniel M. Maher and Carson V. Carlisle, all three having offices in Arlington. The Governor did thereupon commission Jim Payne for this post for a 5-year term beginning July 1, 1958.

Upon the new law’s becoming effective, the Land Surveyor Section of the State Board first commenced the process of promulgating new rules and regulations. Grandfather applications for the new 3(b) land surveyor license were commenced in September 1958, and those that were approved were given an appointment with the Land Surveyor Section to provide it with satisfactory evidence of having performed such work in the past. A little more than 5 months after our new law became effective, the date for the first class of grandfather applicants to meet with, to provide satisfactory evidence to, and to be interviewed by the Land Surveyor Section of the APELS Board was December 1, 1958 at the Williamsburg Lodge. This author, along with many others, did comply with that process – and on that date I became licensed as 3(b) Land Surveyor #17.

James D. Payne, the newest land surveyor member of the APELS Board, on that day thus technically became the first 3(b) surveyor to serve on our State Board by receiving license #21. State Board LS member Frank D. Tarral, Jr. also became a 3(b) licensee perhaps two hours later that same day, receiving license #30. The appointments had been arranged on that day to be handled in alphabetical order – however, John Foster (of Richmond) and a couple others were able to wangle their appointment to be the first considered that day. John Foster, PE/LS, was able to obtain 3(b) license #1. Cecil J. Cross, PE/LS, obtained 3(b) license #2 and Victor H. Ghent, PE/LS, obtained 3(b) license #3. Other dual license holders (PE/LS) also obtained a 3(b) license that day and over subsequent years, obtained at least initially for the reason that there was not then a statutory definition for engineer, while now there was such definition for 3(b) land surveying. A specific definition for professional engineer (PE) and the practice of engineering was not to be placed into the code of Virginia until 1970, discussed later in this article.

Del. Jim Thomson was later to serve many additional terms in the House, and to become a very influential member of the House of Delegates, eventually elected by his peers as the Majority Leader of the House. It should be noted that Jim Thomson, although not a greatly seasoned Delegate when co-sponsoring our Bill, just happened to have considerable muscle – as he was the brother-in-law of young Senator Harry Byrd, Jr. and the son-in-law of the legendary former Governor Harry Byrd. Delegate Russell Carneal, after many more years in the General Assembly, upon his retirement therefrom, became a Circuit Judge in the Williamsburg area.

The strong opposition by VSPE to the 3(b) surveyor was to continue to fester. In northern Virginia, in about the 1966 time frame, the continuing very vocal opposition by some engineers resulted in each side appointing 3 members to a committee to attempt to smooth over the bitter feelings. Wes Harris, Bill Matthews and Sam Caulfield were PE’s designated on this committee by the Northern Virginia Chapter of VSPE, and Vic Ghent, Jim Nealon and yours truly were designated by the Northern Virginia Chapter of VAS. This committee had many meetings over a period of many months, the meetings were reasonably congenial, but other than reestablishing some harmony the constructive results were nil. The position of the surveyors was that the engineers needed to provide examples of poor design or incompetence on the part of the 3(b) surveyors in general, but never was any such example provided. The opposition, then, before and since, has always appeared to be turf or pocket-book motivated.

End of Part II PUBLISHED IN NOV 15 EDITION

The 1958 3(a) and 3(b) definitions become amended in 1970

Cecil Cross, PE/LS, of Alexandria, who had succeeded Jim Payne as a land surveyor member of the APELS Board, died suddenly of a heart attack on Christmas day 1967. Subsequently, the Northern Virginia Chapter of VAS recommended 3 persons, Jim Nealon, Herman Courson and this author, to VAS for its consideration as Cecil’s replacement. Governor Mills Godwin, on March 27, 1968, commissioned
me to complete the remaining 3 months of Cecil’s term on the said Board. Almost immediately, I became designated as the land surveyor member of the APELS Board’s legislative committee, which had been busy crafting proposed new definitions for “architect”, “practice of architecture”, “professional engineer”, and “practice of engineering”. This committee’s work had already progressed quite substantially, including work also on a proposal to authorize the formation of professional corporations. It quickly occurred to me that if there were to be a new definition for the practice of engineering with no change to the definition for land surveying, that any future legal conflict might weigh in favor of the definition most recently updated by the General Assembly.

I expressed to the committee my desire for wanting to insure a retention of a “status quo” for the land surveying profession, and I made a point to also discuss this with Delegate Jim Thomson (who, by then, had become one of the prominent members of the House of Delegates). The sentence at the end of the 3(a) and 3(b) definitions that were enacted in 1958 had always been a concern to the land surveying community, as it seemed that sentence was in conflict with the definitions preceding. The sentence of concern was “Nothing contained in subsections (a) and (b) shall be construed to include engineering design and the preparation of plans and specifications for construction”. The preparation of plans and profiles for subdivisions were specifically for construction, and now we were about to have a new definition for “engineering” that could entirely change the meaning of this sentence.

It was my thought to seek to delete this sentence in the land surveying definitions, but Jim Thomson suggested that it’s always less likely to be controversial when words are added to a statute rather than when words are deleted. He suggested that four words be added to that old bothersome sentence that would tend to have the same desired effect as deletion, to wit: “… except as therein provided...”. That is exactly what I proposed to the APELS Board’s legislative committee, providing the rationale that I didn’t know what effect or impact the new proposed definition for engineering would have on our land surveying definition, but that it was essential to the surveying profession that this amendment would insure retention of a status quo position. The APELS Legislative Committee concurred, and later the full Board, without debate, accepted the committee’s recommendation as to this proposed land surveying amendment.

A new definition for “Architect” and “Professional Engineer” become enacted in 1970

Thus, via HB 504, which the administration caused to be introduced in the 1970 General Assembly, very importantly the 3(a) and 3(b) definitions were modified by the addition of the above stated four words in the same bill offered by the State Board that obtained new definitions for the architects and professional engineers. Thus, upon approval of HB504, and its ratification by the Governor, that previously bothersome sentence now stated, “Nothing contained in subsections (a) and (b) except as therein provided shall be construed to include engineering design and the preparation of plans and specifications for construction”. The then new definitions that were enacted in 1970 for the architects and engineers still remain in effect today, however since only modified during a recodification of the Statutes by some minor word-smithing. (In 1974, the General Assembly enacted SB126, which established 5 levels of regulation, the most stringent being licensure. Accordingly, the architects and engineers definitions in 1974 became correspondingly updated by changing the term “registration” to “licensing”).

I served on the APELS Board until June 30, 1978, having been reappointed twice, each being for a 5-year term. About 19 years after the enactment of the definition for 3(b) surveyors, perhaps less than a year before the end of my second full term (I didn’t keep a record of the date), James Patton, PE/LS, now a member of and speaking for the Engineer Section of the APELS Board, made a formal proposal to the Land Surveyor Section of the Board that all then-licensed 3(b) surveyors be grandfathered in as PE’s, provided that concurrently the 3(b) land surveyor definition be deleted from the statutes.

That proposal was discussed briefly by the two Sections of the Board, but was then rejected by the Land Surveyor Section. The rationale for rejection was that the original reason for successfully obtaining our scope of practice definition back in 1958 would likely again arise. I don’t believe that proposal and its
disposition ever was publicized to the land surveyor community, and it was never further discussed by the full APELS Board during my remaining time of service on the Board. In retrospect, I also don’t believe this proposal would have received support from VSPE, as that group is fractured on this issue (as later it became very evident during subsequent 1982-84 activity). Even if VSPE would have officially endorsed, there would likely have been large maverick groups that would effectively negate such endorsement.

END OF PART III Published in April 2016 Edition

Henrico County prohibits 3(b) surveyors from preparing plans of development (site plans)

The strong opposition to the land surveyor that was very visible in 1958 had continued, not becoming significantly diminished as of the mid- to late-1970’s when concern arose about a policy and ordinances established by Henrico County. That opposition had continued to show up over the years in various ways, typically by some restrictive action taken by a State or local government official who also happened to be a professional engineer (PE) or closely related to a PE. Some of that strong opposition became manifested in the 1970’s in Henrico County when the County Manager of Henrico simply promulgated changes to its policies calling for site plans (plans of development, or POD) to be prepared only by licensed engineers. The County simply thereafter declined to accept plans of development from 3(b) surveyors. We later learned that an Attorney General ruling dated August 13, 1973 indicated Henrico County was within its statutory authority to enact such an ordinance or policy, although subsequent changes in the Virginia Code in 1975 having to do with subdivisions and site plans may have negated that letter ruling (see further discussion later in this article).

The then statutory 3(b) definition did not directly say anything about site plans by name. But the local governmental process for reviewing and approving a site plan is quite identical to that for subdivision plans, both of which in their design involve the use and application of the same manual prescribing specific standards. Accordingly, throughout the State, 3(b) land surveyors had long been designing and obtaining approval of site plans. An inquiry about site plans in 1966 was made of the APELS Board, and by letter dated December 29, 1966 the Board responded by stating in part, “... the Board has indicated that while the law is silent as to site plans, it is the consensus of the Board that it is permissible if they are prepared in accordance with the limitations as set forth in the 3(b) definition, that is, where such work involves the use and application of standards prescribed by local or State authorities”. That letter further stated, “It is standard practice for 3(b) Surveyors to prepare site plans and it is considered to be quite ethical”.

By letter dated November 14, 1980, Henrico County’s Chief Design Engineer advised Melvin Spain, Jr. (of the firm Holly and Spain) “this is to confirm that a Professional Engineer registered in Virginia will have to stamp and sign the construction plans for the above referenced project prior to approval by …”. He went on to state, “The requirement of a Professional Engineer’s signature and stamp on POD construction plans is a policy of the Department of Public Works”, and made reference to the opinion made by the Attorney General on August 13, 1973.

A number of 3(b) surveyors, representing the Central Virginia Chapter, then arranged a meeting (on a date that I was to be out of town) with Senator Cross to discuss this concern. By my memo of November 21, 1980 I pointed out statutory definition provisions dealing with “subdivision”, “development” and “site plan” that were added to §15.1-430 in 1975, after the Attorney General’s 1973 opinion letter. I also pointed out that many site plans involve a division of land (thus, a subdivision) in which land is dedicated for widening a street, and that even the creation of private streets in rights-of-way, such as apartment projects, would probably be considered a subdivision. Moreover, a condominium site plan clearly involves a subdivision of the buildings (horizontal and vertical), as well as the creation of new streets. This Virginia Code provision called site plans as a “proposal for a development or a subdivision”, and that each such plan shall contain certain information “as required by the subdivision ordinance to which the proposed
development or subdivision is subject”. I suggested the 1973 Attorney General’s opinion thus may now be out of date due to these newer revisions to the Code.

Having obtained no progress in its discussions with Henrico County, in March 1981, the Central Chapter brought the issue to the attention of the State Board. By letter dated September 21, 1981, The APELSCLA Board (certified landscape architects had now been added) advised the Central Chapter that the consensus of the Board is as follows: “The practice by a Land Surveyor licensed under Section §54-17.1 (3)(b), related to subdivision and land development site plans, only, in the preparation of plats, site grading plans, plans and profiles for roads, storm drainage, sanitary sewer and waterline extensions when such work is limited to the use and application of standards prescribed by local and/or State Authorities.”

But Henrico County still refused to budge. Meanwhile, another front arose: The State Water Works Regulations were modified to provide that only PE’s could prepare plans for water line extensions. It was noted that Eric Bartsch, a PE in a position of authority with the State Health Department, in discussing that provision by letter, also copied VSPE (reflecting that VSPE was involved in orchestrating this limitation, and that it’s long continuing objections to the 3(b) land surveyor indeed had not abated).

In 1982, in an attempt to resolve the conflict, VAS causes House Bill 895 to be introduced

All efforts for resolving this Henrico conflict having failed, VAS determined there again was a compelling need to seek legislative relief. Because of the challenge of promised strong opposition re our planned legislation, we determined the desirability, for the first time in VAS history, of engaging a lobbyist. Prior to Ruth Herrink’s resignation in late 1978 as Director of the Department of Commerce (formerly the Dept of Professional & Occupational Registration), Mrs. Herrink had commented about a lobbyist named Mark Singer that seemed to be everywhere she went when visiting in the General Assembly Building or the Capitol. I looked up Mark Singer, who was employed by the Virginia electricians’ association – but he was not available to us at that time. He did indicate interest and we agreed we would further talk at a future time. I then engaged Paul Shuford, an attorney and lobbyist that I had become acquainted with during earlier legislative sessions.

Delegate Ralph L. (Bill) Axselle, Jr. (representing Hanover and Henrico Counties) agreed to sponsor our proposed bill (entered as House Bill 895) to amend the 3(b) definition to appropriately include the words “site plans, plans of development and water line extensions”. VSPE immediately jumped on this bill “with both feet”, which led our Patron to explore with Eric Bartsch, of the State Health Department, and Bob Nebiker, of the Department of Commerce, the possibility of compromise. Those two agreed upon compromise language that would likely have been found as satisfactory by VAS – but VSPE would have no part of it. Accordingly, with the consent of VAS, Del. Bill Axselle took the bill off the docket for this 1982 session, and referred the matter to the APELSCLA Board for it to seek a resolution of the conflict. VSPE promised Del. Axselle its intention to diligently try to resolve the conflict. The APELSCLA Board designated its members Herman Courson, LS (of the Land Surveyor Section), and James (Ding) Patton, PE/LS (of the Engineer Section) to tackle this issue, and VAS and VSPE agreed to the appointment of a joint task committee to work with the Board committee. VAS designated George Sutton, Mel Corso, Dick Allison and this author to serve on this task committee, and VSPE designated J. V. Powell, Jr. (Legislative Chairman), Bob Roop (Treasurer), John DeBell (President-elect), and Ray E. Martin (President) as its members.

The comprehensive regulatory overhaul that had been accomplished in 1974 by the passage of Senate Bill 126 (referenced above herein) renamed the Department of Professional & Occupational Registration to become the Department of Commerce. That legislation also created a new board, the Board of Commerce (sometimes called the “super board”), a body specifically established to seek resolution in areas of conflict between professions and occupations, or where an unregulated group may be proposed to be newly regulated, and to provide its recommended legislation to the General Assembly in these regards.
The study commission that recommended that 1974 legislation had determined this would be a much better way for the General Assembly to deal with such conflicts, rather than the General Assembly trying to resolve them in haste during the pressures and time constraints of a legislative session. But, at this time, at Delegate Axselle’s request, the two-man committee of the APESCLA Board “had the ball in its court”.

Our joint task committee commenced the first of a number of meetings with the Board committee on April 22, 1982. At this meeting, the engineers proposed that (a) all 3(b) surveyors be allowed to practice engineering, however subject to first passing a written engineering examination, (b) terminate further licensure of new 3(b)’s, and (c) allow PE’s to take the surveying examination, waiving experience requirement. Of course, that didn’t “fly”, as that simply amounts to eliminating the 3(b) profession. At our second meeting, on May 27, 1982, we proposed to amend the 3(a) definition to include the following sentence: “The term shall include the practice of engineering by a licensed land surveyor to the extent that such practice is incidental to and essential to that which may properly be considered a land surveying undertaking”. A companion proviso would be that the 3(b) definition would be deleted effective as of 5 years hence, provided all the then-existing 3(b) surveyors, and those in the pipeline to licensure, would be issued a license as a professional engineer. The engineers weren’t receptive to that, either.

In an article appearing in an early 1982 issue of The Virginia Professional Engineer VSPE President Ray E. Martin stated “VSPE’s position at this time is that 3B should be eliminated, not expanded, and that surveyors wishing to perform such work should be allowed to do so only if they can demonstrate their qualifications by successfully passing an appropriate test ...”. At our third meeting, held on June 21, 1982, the engineers proposal was (i) that the 3(b) definition would not be expanded, but remain as-is, (ii) no further licensing of 3(b) surveyors would occur after the bill becomes enacted, (iii) existing 3(b) surveyors may continue to renew their license, (iv) any licensed 3(b) surveyor is authorized to sit for the exam for licensure as a PE, and (v) any PE may take the written exam for licensure as an LS. This did not reflect any improvement in the engineers’ position – the engineers were really not interested in compromise, they were telling us that they only wanted to effectively eliminate 3(b) surveying. It became rather clear that this was not constructive negotiation at all, for what reason would VAS have to discuss such resolution?

Because our bill quickly became mired down during the legislative session in early 1982, then referred to the APESCLA Board, our lobbyist Paul Shuford really didn’t have occasion to do a lot for us during that session. Later, during the following summer I learned that Mark Singer now was amenable to become our lobbyist in this developing major legislative concern, so with VAS authorization, after interview and discussion of our needs, I did engage him. Over the ensuing time while we worked on this new legislation it became quite evident that Mark Singer’s engagement turned out to be a great move, for he was energetic, capable, had great communication skills, and was fearless. While technically our very short term engagement of Paul Shuford in early 1982 was our first employment of a lobbyist, notwithstanding, in real terms of benefitting from the full services of a lobbyist, I really consider that Mark Singer was our first.

Meanwhile, State Board members Ding Patton and Herman Courson, continued their work seeking a resolution. Ding Patton resurrected a version of the proposal he made about 5 years earlier to the Land Surveyor Section of the Board, and in July 1982 that APESCLA committee released their draft proposal for comment. That proposal was described in an August VSPE newsletter, which stated “As of this writing, a bill to repeal the 3b Land Surveyor section of the State Registration Law is being drafted by the Department of Commerce”. It went on to state that a companion provision would be added to §54-26 of the Code that would provide that any 3(b) license holder as of July 1, 1985 that applied prior to December 31, 1985 for a PE license would be issued a PE license forthwith; and no 3(b) license would be valid after December 31, 1985. The newsletter article went on to state “The bill will then be introduced in January, providing, however, that it received approval from the Board of Commerce, from Secretary of Commerce and Resources, Betty Diener, as well as the Governor’s office”. However, a big caveat at the end of the article stated “Be advised that VSPE has not taken a position on this issue. It will be on the agenda for the August 20, 1982 Executive Committee meeting and the September 24, 1982 Board of Directors meeting..."
Delegate “Bill” Axselle was kept tuned in to the developments taking place at the APELSCLA Board level, and was advising us that he felt the developing proposal was a good resolution. He urged that VAS and VSPE approve it. By an August 5, 1982 letter to Ding Patton, Engineer Member of the State Board, Delegate Axselle directed attention to concerns arisen about the 3(a) definition, i.e. there was rumor that this 3(a) definition was also being changed. Patton replied that there would be no change to the 3(a) definition, and his statement later was ratified by the full Board -- but, by Delegate Axselle’s letter dated September 22, 1982 to me, George Sutton, Mel Corso and Bill Holly, he stated “It appears the engineers are very divided on this proposal”. He went on to state they had reversed position twice, further stating “The bottom line is that their position is questionable at this point”. I learned later that on September 24, 1982, the VSPE Board of Directors did in fact take a formal position in opposition to the APELSCLA Board’s proposed resolution. The VAS Board of Directors did also consider the draft proposal and disapproved it. The rationale for the VAS position was that it was evident to the land surveyors that what would be left of the land surveying discipline after elimination of the 3(b) definition would be a rather emasculated, third-rate profession.

Still, on November 8, 1982 another ad-hoc joint meeting was held in Richmond by 3 VSPE members (Bob Branch, Charlie Warren & Lee Phillips) and 3 VAS members (Buford Lumsden, Ron Carrouth and Dick Smith). The supposed purpose of the meeting was to be another attempt to resolve the two association’s differences. But that was someone’s fantasy. In particular Charlie Warren and W. Lee Phillips were very outspoken and strongly opposed to the pending APELSCLA proposal and the 3(b) definition in general. The conclusion at that meeting was that the engineers are going to oppose the APELSCLA Board proposal, and they will reluctantly live with the present law only provided it is left unchanged.

Based upon the APELSCLA Board’s earlier expectations, it had been intended that the Board’s proposed resolution would be submitted to the Board of Commerce. Both our lobbyist Mark Singer and Joanne Walters, Executive Director of VSPE, had been in recent touch with G. Timothy Oksman, Chairman of the Board of Commerce and Liaison to the APELSCLA Board. Mark had arranged that he and I would speak at the impending meeting of the Board of Commerce, set for November 19, 1982. Tim Oksman advised Mark that he understood that both VSPE and VAS were opposed to the APELSCLA’s proposed resolution, so he saw no reason for the Board of Commerce to get involved with two groups, neither of which would budge.

In VSPE’s December 1982 newsletter, VSPE President John DeBell wrote a lengthy message about the status. Curiously, John stated that the VSPE Board had neither approved nor disapproved the APELSCLA Board’s proposal. He also stated the VSPE Board felt “negotiations” should continue, rather than the two groups fight it out in the General Assembly at this time. The problem was that only one side had been trying to negotiate, the other side had been demanding only that the 3(b) land surveyor be terminated. As it later became crystal clear, VSPE’s desire for “continuing negotiation” was code for stalling and delaying.

VAS asks the Board of Commerce to become involved with our legislative needs

As VAS Legislative Chairman, I addressed the 9-member Board of Commerce at its meeting of November 19, 1982. Mark Singer also spoke eloquently and effectively. Our presentation included a background of the 3(b) land surveyor, the history of how the surveying community arrived at this point of need, and also discussed VAS’ opposition to the APELSCLA Board’s proposal. We asked that the APELSCLA Board’s proposal be withdrawn, and we indicated favor for continuing dialogue between VSPE and VAS during the coming year, but that such continuing dialogue should be under the auspices of the Board of Commerce – accordingly we urged the Board of Commerce to step in on this matter.

But it appeared the Board of Commerce would be declining to get involved. By a 2-page letter dated December 31, 1982, Tim Oksman, Board of Commerce chairman, very emphatically advised Mark
Singer why it would not become involved. Reasons given were (1) the APELSCLA Board is familiar with the issue and has already expended considerable time, without success; (2) the APELSCLA Board has the necessary technical expertise, the Board of Commerce does not; (3) the APELSCLA Board is a neutral third party, there’s no reason to shift the problem to another neutral third party; (4) the real problem is that the two groups have not been willing to compromise, and thus the Board of Commerce can have no ability to effect resolution; (5) the APELSCLA Board’s door is open to further negotiation, so there is no reason for the Board of Commerce to open its door; and (6) the Board of Commerce is extremely busy with Governor Robb’s regulatory reform initiative, thus doesn’t have the time to get bogged down with this problem.

However, the Board of Commerce, at its February 25 meeting did take an interest in the controversy. Mark Singer had gotten a last minute call to rush over to that meeting, in that three VSPE members were in attendance. Mark later advised us the presence of those three had no effect on the action of the Board, however. Mark had earlier established some rapport with several members of the Board, giving them an understanding of the practice of 3(b) surveyors and the problems the 3(b) surveyors had been experiencing in several jurisdictions. So, on February 25, Board Member George Rimler, in particular, made a strong case for the Board proceeding with this matter, and the Board then voted to do so according to certain limitations, over the strenuous objections of Tim Oksman, the Chairman, and the non-support of one other member. The Board of Commerce thus agreed it would oversee continuing work by the APELSCLA Board’s two-man committee of Courson and Patton.

By letter dated March 9, 1983, Tim Oksman stated the Board of Commerce at its recent meeting “voted on the approach we will take to resolving the 3(b) Surveyor controversy. While our Board is quite desirous of seeing this dispute resolved, we are not willing to serve as a referee or mediator for this purpose”. Mark Singer had been doing some great missionary work with the Board. Tim Oksman went on to say “There are three specific public interest concerns which should be properly addressed by any proposed resolution, and we ask that you consider them in your deliberations:

1. The resolution should not unduly restrict entry to the practice of what is now done by 3(b) surveyors.
2. The resolution should not increase the cost of performing the services currently performed by 3(b) surveyors.
3. The resolution should ensure that, in the future, those who perform the work currently performed by 3(b) surveyors are qualified to do so”.

We felt the Board’s stated three public interest concerns put VAS in a favorable position, as there would be no discernible benefit to the public to eliminate all of the 3(b) practitioners, as has been repeatedly insisted upon by VSPE.

On March 11, 1983, the full APELSCLA Board requested its committee of two continue giving study and consideration to the matter, keeping the door open for constructive suggestions. The two-man committee subsequently proposed to add some language to the 3(a) definition, such as including site plans to the extent that only surface and culvert drainage, and also siltation and erosion controls were involved. The prior-existing definition clearly already embraced this, however, the said two-man committee proposed other additional text that gave us some “heartburn”, and we thereafter detailed our concerns to the full APELSCLA Board.

In June 1983, by an exchange of correspondence between Dick Allison, PE/LS, VAS President and Bob Miller, PE, Vice President of PEPP, it was agreed that the two sides should continue to meet. Allison reminded Miller that the APELSCLA Board committee has asked that future meetings should address the stated concerns of the Board of Commerce, with results reported to the Board of Commerce prior to the next APELSCLA Board meeting set for September 9, 1983. On July 25 the two sides met, with Allison,
Singer and this author representing VAS, and Bob Miller (only) representing VSPE. We presented three options, and the group particularly discussed Options “A” and “C” (each of these two options would later be incorporated within two separate bills introduced by VAS in the 1984 General Assembly, and are later herein discussed). Miller simply opposed both options, as well as reiterating his side’s rejection of the APELSCLA proposal.

The next task committee meeting was held 3 weeks later, on August 15, 1983, with the same attendees as the last meeting. VAS discussed another possible option, which was subsequently put on paper, submitted to the impending VSPE Executive Committee Meeting, which rejected it. At the August 15 meeting, a VSPE counterproposal also was mentioned, but the counterproposal was simply more of the same, i.e. abolish 3(b), and narrow the definition for 3(a). We concluded these continuing meetings were a farce, as VSPE’s position primarily was that 3(b) land surveying must be discontinued, and at best it “might” consider leaving the 3(b) definition as it has been, with no expansion (but even that possibility was never reduced to writing). Another meeting was held 2-1/2 weeks later, on September 2, however this one was attended only by Mark Singer and Bob Miller. That meeting also reflected no movement on the part of VSPE, so no further meeting was scheduled.

On October 3, 1983 Mark Singer met with George Rimler, who had become Chairman of the Board of Commerce as of this past July 1. Tim Oksman, the preceding chairman, had resigned from the super board some months before. Mark conveyed our request that, in view of the non-movement of VSPE toward any resolution within the guidelines earlier set by the Board of Commerce, that said Board now step in and take a position on this matter. Mr. Rimler advised that he would respond shortly. Mark followed this request with a letter to each member of the Board of Commerce, asking for time for us to speak at the Board’s November 29 meeting.

Meanwhile Bob Miller requested Mark Singer to provide him with a copy of what will be presented at the November meeting. Singer advised Miller he saw no reason to do that, pointing out that VSPE has not made any move forward and has not been negotiating, by the definition of the word. Singer stated there is no reason to continue to meet if the only thing being done is VAS provide proposals, and VSPE disapproves. Miller replied on November 16, still requesting an advance copy – but he freely admitted that VSPE had not intended to negotiate anything.

Mark Singer and I attended the November 29 Board of Commerce meeting, and Mark presented to the Board our formal request that it now take an active position on this matter. We presented our Option “A”, draft, which had been released to the engineers last July 25 and also provided to the 2-man APELSCLA Board committee several days later. The engineers also were in attendance at this meeting. Singer’s presentation was well received. In particular, Suzanne Paciulli, a real estate broker and citizen member of the Board, spoke very favorably of the work of 3(b) surveyors. Suzanne had been married to Orlo Paciulli, a PE and long-time principal in an engineering/surveying firm in Fairfax County. She stated that Orlo had expressed to her that he had seen and worked with many plans prepared by 3(b) surveyors, thought they were well prepared, and that he just did not understand why many PE’s opposed the 3(b) surveyor.

The Board of Commerce approved a motion at the November 29 meeting, requesting that Singer make the same presentation to the APELSCLA Board as its meeting 3 days later, on December 2, 1983. The motion also requested a response from VSPE, VAS and the APELSCLA Board re the proposed offered solution. Singer met with the full APELSCLA Board on December 2, and on December 5 followed up with a more comprehensive written presentation. On December 6, George Rimler, Board of Commerce Chairman, wrote to Herman Courson of the APELSCLA Board, advising him of the motion passed at his Board’s recent meeting, in which feedback is sought, advising that his Board has this matter on its January 27, 1984
agenda, and further advising that “The Board of Commerce hopes to conclude its deliberations of this matter at that time”. Mr. Rimler sent copies of that letter to all members of the Board of Commerce and of the APELSCLA Board, Mark Singer, and Joanne Walters, Executive Director of VSPE.

Meanwhile, the Central Chapter of VAS had been continuing to discuss the matter with officials of Henrico County, including the County Supervisors. On January 10, 1984, the task committee of the Central Chapter (Ron Carrouth, Melvin Corso, Bill Johnson, Otto Schulz and Melvin Spain, Jr.) arranged a dinner meeting in Richmond with two Supervisors from Henrico County to discuss that County’s stance re 3(b) surveyors. At their request, VAS President Dick Allison and I also attended. The meeting was cordial, it appeared those two Supervisors were in agreement with our position re 3(b) surveyors in Henrico. However, they indicated their County Manager form of government gave considerable authority to the County Manager, and they doubted they could overcome his position on this. Interestingly, and maybe just a coincidence, it was noted that the Henrico County Manager, Frank Faison, was said to be a close relative of one of the PE’s (with the same last name) that had been prominent in the opposition in the 1958 General Assembly to the then-enactment of our 3(a) and 3(b) land surveying definitions.

After mid-January 1984, at the request of Bob Miller for a further meeting of the VAS-VSPE task committee, Dick Allison, PE/LS, VAS President, and I (as VAS Legislative Chairman) met with J. V. Powell, Jr., PE, VSPE Legislative Chairman (of Williamsburg) and Bob Miller, PE (of Virginia Beach). At this meeting, Messrs Miller and Powell unabashedly boasted that VSPE has had no intention of agreeing to any compromise resolution, they were just diverting our attention from going forward. They emphatically informed us that VSPE had tremendous muscle with the General Assembly, that VAS should not dare to seek any legislative remedy, and that if VAS were to introduce any bill, VSPE would enter a bill to eliminate the 3(b) surveyor, and we should be fully aware that their repeal effort would be successful. Needless to say, without further discussion, that meeting was concluded.

Thereupon VAS, on January 24, 1984, caused not one, but two bills (HB540 and HB541) to be promptly introduced. This was the last day on which bills could be introduced, so we had to do this in advance of the impending Board of Commerce hearing. Essentially, HB540 incorporated our Option “A” and HB541 incorporated our Option “C”, both as had been publicized in July of last summer. If for some reason either of these raised undue concern with the Board of Commerce, if advisable we could always withdraw or cause appropriate amendments. Our Patrons on both were Delegates Richard (Dickie) Cranwell, Clifton (Chip) Woodrum and Ralph (Bill) Axselle. Over the course of the many months during which we had been discussing various alternatives with VSPE, we had long had satisfactory language crafted and ready to go.

As stated, HB540 primarily used language that had been publicized last summer to VSPE and to the APELSCLA Board as Option “A”. This bill provided for expanded definitions in §54-17 for both 3(a) and 3(b) land surveying, and also added a new subsection 3(c) to, for the first time, define “Land surveyor”.

House Bill 541, using the language of Option “C”, as publicized last summer, proposed to add a new exemption in §54-37, to wit:

Practice of professional engineering by a licensed 3b surveyor when such practice is incidental to what may be properly considered a land surveying undertaking.

Our thinking, in introducing HB541, was that if HB540 should be defeated, HB541 would also provide the necessary relief – for that matter, either bill would provide the necessary relief for the land surveyor.

Two days later, on January 26, 1984 the Board of Commerce, after considerable discussion, acted upon our request favorably. It asked for some reasonable changes to be made to HB540, which we agreed to, and then it unanimously endorsed the language, as amended. The engineer members in attendance did direct
the attention of the Board to our proposal to delete the sentence following the land surveying definitions, and one of the Board’s requested amendments was to reinsert that sentence back as it was previously stated.

The Board of Commerce, however, did not endorse HB541 and with our concurrence it was subsequently stricken from the docket. The engineer members present, having strongly opposed VAS in previous meetings of the Board by repeatedly stating its opposition to the various proposals of VAS and the APELSCLA Board’s task committee, said very little in this meeting. However there was some interplay between the engineers and me in our discussion about the amendments – all the Board’s requested amendments were acceptable to VAS. Undoubtedly the engineers were now planning to devote their energies to defeating our bill in the General Assembly, as Messrs Miller and Powell had promised to Dick Allison and me in our recent meeting.

This Board of Commerce recommendation in support of HB540 was really all that the General Assembly wanted to hear. Notwithstanding that the opposition appeared in huge numbers before the committees of both houses, the House General Laws Committee made the amendments requested by the Board of Commerce, reported the bill out unanimously and the House of Delegates also passed it unanimously (98 to 0). The Senate General Laws Committee also passed it unanimously (15 to 0), and the Senate also either passed it unanimously or nearly so (I don’t seem to find a note about the vote count in my files). In general, the General Assembly does not like turf issues, or what some refer to as “pocketbook” issues.

The final text of the surveying definitions of HB540, as approved by the 1984 General Assembly and signed by the Governor, was as follows:

“(3)(a) The “practice of land surveying” includes surveying of areas for their determination or correction, for their description, for the establishment or reestablishment of internal and external land boundaries, or for the determination of topography, contours or location of physical improvements, and also includes the planning of land and subdivisions thereof. The term planning of land and subdivisions thereof shall include, but not be limited to the preparation of incidental plans and profiles for roads, streets and sidewalks, grading, drainage on the surface, culverts and erosion control measures, with reference to existing state or local standards.

“(b) In addition to the work described above, a land surveyor may, for subdivisions, site plans and plans of development only, prepare plats, plans and profiles for roads, storm drainage systems, sanitary sewer extensions, and water line extensions, and may perform other engineering incidental to such work, but excluding the design of pressure hydraulic, structural, mechanical, and electrical systems. It is further provided that the work included in this paragraph shall involve the use and application of standards prescribed by local or state authorities, and also provided the land surveyor passes an examination given by the Board in addition to that provided for the licensing of land surveyor under paragraph (a) above; however, any land surveyor previously licensed pursuant to this paragraph may continue to do the work herein described without further examination.

“Nothing contained in subsections (a) and (b) except as therein provided shall be construed to include engineering design and the preparation of plans and specifications for construction.

“(c) “Land surveyor shall mean a person who, by reason of his knowledge of the several sciences and of the principles of land surveying, and of the planning and design of land developments acquired by practical experience and formal education, is qualified to engage in the practice of land surveying, as attested by the issuance to said person of a license as land surveyor”.

Note that our (b) definition now identifies that certain limited engineering (by name) is clearly embraced as part of the surveying practice. For many years the opposition to our practice had declared that surveyors were practicing engineering. So we determined to pointedly concur by providing in the statute that surveyors may practice, in addition to the (engineering) work described, “other engineering incidental to
such work” if not embraced within the stated exclusions. This should allow future surveying practice to expand according to future evolving local or state requirements for subdivision or site development, in practice areas other than the specific stated exclusions.

The statutes of the Virginia Code become recodified

Several years later, the General Assembly recodified much (or all) of the Code of Virginia – it shifted and rearranged the Code with respect to Professions and Occupations. Our former 3(b) definition is now no longer a definition, but is found in §54-408. In taking it out of the definitions, some wording was necessarily revised appropriately, but I don’t see that any meaning has changed – certainly, none was intended by the recodification process. Pursuant to such recodification, the text today of §54-408 is as follows:

In addition to the work defined in §54.1-400, a land surveyor may, for subdivisions, site plans and plans of development only, prepare plats, plans and profiles for roads, storm drainage systems, sanitary sewer extensions, and water line extensions, and may perform other engineering incidental to such work, but excluding the design of pressure hydraulic, structural, mechanical, and electrical systems. The work included in this section shall involve the use and application of standards prescribed by local or state authorities. The land surveyor shall pass an examination given by the Board in addition to that required for the licensing of land surveyors as defined in §54.1-400. Any land surveyor previously licensed pursuant to subdivision (3) (b) of former §54-17.1 may continue to do the work herein described without further examination.

Except as provided, nothing contained herein or in the definition of "practice of land surveying" in §54.1-400 shall be construed to include engineering design and the preparation of plans and specifications for construction.

Some Final Comments

Much of VAS’ legislative activity dealing with our licensing laws, as identified herein, was accomplished in the days before current technology. We didn’t have the internet, or the fax machine, or Xerox for copying (had to mimeograph for multiple copies, carbon paper for a few copies). We did get computer capability in the early 1970’s to take the place of the typewriter. Prior to the internet, to stay abreast of the large volume of bills introduced, as Legislative Chairman, I subscribed to a service that provided that information by mail. However, during those earlier days, legislative bills were not pre-filed. On the first day of the session, the volume of bills introduced was so great, the mail service often took 3 days to get all their “short titles” published – so sometimes legislative committee action started before I got the word. And when requesting a copy of any bill of concern, we still had to live with the mail system for receiving a full copy of any such bill. Today, all of that information is timely available on-line. Today, most (but not all) of each session’s bills are required to be pre-filed.

To the best of this author’s knowledge, over the 56 years since the birth of the 3(b) land surveyor, there has never been a sustained complaint (I’m not aware of any even being alleged) made to the State Board claiming incompetence on the part of any 3(b) land surveyor. I know that there was not any such allegation made to the State Board during my 10+ years of service on that Board. This is an important fact, for the conflict issues between the professions have not been about incompetence, only that one group feels that the other group is practicing in professional territory that it would like to reserve exclusively to itself. Over the many years, the Virginia public has been well served by the prior §54-17 (3)(a) and (3)(b) statutes, now the statutes of §54.1-400 and §54.1-408.
Incidentally, the name of our licensing regulation department did not remain as the Department of Commerce. The General Assembly later again changed this department’s name back to a name very similar to its earlier name, to wit: The Department of Professional and Occupational Regulation.

Even after these many years, there still are those who strongly object to the existence of the 3(b) surveyor. Land surveying is and has always been a very close relative to civil engineering. Where it is taught among the universities, even in the most elementary level, it is part of the civil engineering curriculum. But we all know that formal education is but one way for gaining an education – a good way also is in actual practice. I recall a professor of mine told our class that we shouldn’t think that receiving our diploma means that we know everything. He said in fact our engineering education really only teaches us how to go about finding the answers, that it doesn’t mean we already know the answers. So the real world of actual practice is a great source for an excellent education. Whether a 3(b) surveyor or professional engineer, if he does not stay abreast of developing needs and new requirements, and if he does not perform competently, he won’t be in business very long – not in this time.

The provisions in §54.1-408 that establishes an additional class of land surveyor, and in fact the definition for the basic class of land surveyor found in §54.1-400, are both very unique among land surveying laws in the United States. All of the Virginia land surveying statutes, as they exist today, did not just happen by chance – they came about over the years as a result of much very hard work and the expending of considerable energy by a lot of dedicated professionals. Today’s Virginia land surveyor has a solemn duty to respect these statutes and the public he/she serves, by diligent adherence to high professional standards and ethics.

Importantly, the bottom line is that the Virginia public has indeed been well served over the last 56 years by the definitions for land surveying that were first established and expanded in 1958 and further expanded and updated in 1984. We must ever be mindful that the sole purpose of licensure is for the benefit and protection of public health, safety and welfare.

Some information about the author

Merlin F. McLaughlin is a Virginia land surveyor, his licenses still being in active status. He became licensed as a land surveyor in June 1951 at a time when one had to pass the entire 3-day exam in one sitting. In December 1958 he became further licensed as a “3(b)” land surveyor, which practice is now described in §54.1-408 of the Virginia Code. McLaughlin graduated, cum laude, from the University of Maryland in June 1951 with a BSEE degree, with heavy emphasis also on civil engineering studies. He is a life member of Tau Beta Pi, a national engineering honor society. He also became licensed in 1971 as a Professional Land Surveyor in Maryland. He served in all the offices of the former Northern Virginia Chapter of VAS (was president in 1957) and in all the offices of the Virginia Association of Surveyors (was president in 1961). In March 1968 McLaughlin was appointed to the State Board of Architects, Professional Engineers and Land Surveyors by Governor Mills Godwin to complete the unexpired term of the late Cecil Cross, then reappointed for a full 5-year term commencing July 1, 1968; he was subsequently reappointed for a second full 5-year term by Governor Linwood Holton. While on the State Board, he served one year as its President, and served 7 years as Chairman of the Land Surveyor Section. He served as Legislative Chairman of VAS for about 25 years, but even after stepping down from this post in 1987 he continued for a few years as Legislative Chairman for his chapter. He is a U. S. Army veteran, having served honorably from August 1945 to February 1948.