

**STATE OF FLORIDA
DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS**

**IN RE: PETITION FOR DECLARATORY
 STATEMENT**

JARED ROGERS

Agency Clerk No.: B47654

DECLARATORY STATEMENT

On February 23, 2024, Jared Rogers (“Petitioner”) filed a Petition for Declaratory Statement pursuant to section 120.565, Florida Statutes, with the Board of Professional Surveyors and Mappers (the “Board”). This matter came before the Board at a meeting held on May 7, 2024, in Deerfield Beach, Florida. Petitioner was not present at the meeting.

Upon consideration of the Petition for Declaratory Statement, and being otherwise fully advised of the premises, the Board makes the following findings:

Findings of Fact

1. Petitioner is a professional surveyor and mapper licensed under chapter 472, Florida Statutes.
2. Petitioner filed a Petition for Declaratory Statement (“Petition”) on February 23, 2024. The Petition is attached herein as “Exhibit A.”
3. Petitioner stated that he was acting as the reviewing surveyor under contract with Alachua County pursuant to section 177.081(1), Florida Statutes. A plat prepared by another surveyor had been submitted to him for review, and a dispute arose as to the applicability of certain provisions in chapter 177, Florida Statutes.
4. Petitioner described the following circumstances:

In the course of preparing a subdivision plat monuments have been found and held to as the boundary of the lands. These monuments include:

1. Found 5/8" Iron Rod & Cap stamped "CHW LB 5075" presumably set as a Permanent Control (PCP) on an adjoining subdivision plat.

2. Found 5/8" Iron Rod – No ID presumably held as a PRM on an adjoining subdivision plat.

5. Petitioner stated, "I would set PRMs identified with my registration (LS) or certificate of authorization (LB) number and the letters 'PRM'. If the original monument is specifically called for in legal descriptions or is deemed to be significant (such as the formerly held PRM) then the original monument is not removed, but offset PRMs are set instead."

6. According to the Petition, "The Professional Surveyor and Mapper submitting the plat for review identifies the existing monuments on the new subdivision plat and calls them as being PRMs." The Petition states that the surveyor who submitted the plat believes that removing and replacing the existing monuments would be molestation of the monuments.

Applicable Law

7. The Petition identifies sections 177.031(15)(b), 177.091(7), and 177.121, Florida Statutes, as applicable to Petitioner's circumstances.

8. Section 177.031(15)(b), Florida Statutes, states:

"P.R.M." means a permanent reference monument which must . . . [b]e identified with a durable marker or cap with the point of reference marked thereon bearing either the Florida registration number of the professional surveyor and mapper in responsible charge or the certificate of authorization number of the legal entity, which number shall be preceded by LS or LB as applicable and the letters "P.R.M."

9. Section 177.091(7), Florida Statutes, states:

Permanent reference monuments must be placed at each corner or change in direction on the boundary of the lands being platted and may not be more than 1,400 feet apart. Where such corners are in an inaccessible place, "P.R.M.s" shall be set on a nearby offset within the boundary of the plat and

such offset shall be so noted on the plat. Where corners are found to coincide with a previously set "P.R.M.," the Florida registration number of the professional surveyor and mapper in responsible charge or the certificate of authorization number of the legal entity on the previously set "P.R.M." shall be shown on the new plat or, if unnumbered, shall so state. Permanent reference monuments shall be set before the recording of the plat. The "P.R.M.s" shall be shown on the plat by an appropriate symbol or designation.

10. Section 177.121, Florida Statutes, states, "It is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, for any person to molest any monuments established according to this part or to deface or destroy any map or plat placed on public record."

Conclusions of Law

11. The Board is the state agency responsible for regulating surveyors and mappers and administering chapter 472, Florida Statutes.

12. When a professional surveyor and mapper prepares a plat of the subdivision of lands, it must be approved by the appropriate governing body before it is offered for recording. § 177.071(1), Fla. Stat. Depending on the location of the plat, exclusive jurisdiction for approving it is held by the governing body of the municipality or the governing body of the county. *Id.* Before the plat is approved by the appropriate governing body, it is reviewed by a professional surveyor and mapper either employed by or under contract to the local governing body. § 177.081(1), Fla. Stat.

13. Section 472.005(4)(b), Florida Statutes, defines the term "practice of surveying and mapping" to include "the preparation of subdivision planning maps and record plats, as provided for in chapter 177."

14. The Board may impose discipline on surveyors and mappers for violating chapter 177, Florida Statutes. *See* Fla. Admin. Code R. 5J-17.010(6).

15. The Board finds that the central question posed by the Petition, and which is within the Board's authority to answer, is whether removal and replacement of the existing monuments would be a molestation of the monuments and therefore subject the surveyor to disciplinary action.

16. The Board finds that under the circumstances presented in the Petition, replacement of the existing monuments would not be a molestation of monuments under section 177.121, Florida Statutes.

17. Any other matters related to the approval of the plat by the reviewing surveyor or local governing body are outside the scope of the Board's jurisdiction. *See* § 177.071(1), Fla. Stat. Accordingly, the Board declines to address those issues. *See* Fla. Admin. Code. R. 28-105.001.

Wherefore, the Board hereby issues a Declaratory Statement as follows:

A. The Board does not consider the replacement of the monuments as described in the Petition to be molestation of a monument under section 177.121, Florida Statutes. Such action would not subject the surveyor to discipline by the Board.

B. Because chapter 177, Florida Statutes, vests authority to review and approve plats in the local governing body, the Board takes no position on whether the reviewing surveyor or local governing body should approve the submitted plat.

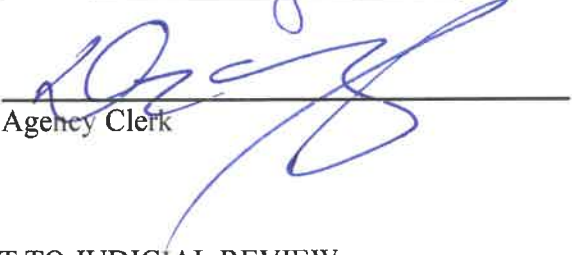
C. The applicability of this Declaratory Statement is limited to the specific set of facts described in the Petition.

DONE AND ORDERED this 16 day of May, 2024.

patricia compton

Patricia Compton, Executive Director
Florida Board of Professional Surveyors and Mappers
For Christopher McLaughlin, Chair

Filed with the Clerk, this 17th day of May, 2024.



Agency Clerk

NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order has the right to seek judicial review pursuant to section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing one copy of a notice of appeal with the Agency Clerk of the Department of Agriculture and Consumer Services and a second copy, accompanied by any filing fees prescribed by law, with Florida's First District Court of Appeal or with the District Court of Appeal in the appellate district where the party resides. The notice of appeal must be filed within thirty (30) days of rendition of the order to be reviewed.

Copies to:

Jared Rogers
720 SW 2nd Avenue
South Tower, Suite 300
Gainesville, Florida 32601

Exhibit A



Petition for Declaratory Statement Before the Board of Professional Surveyors and Mappers

Jared Rogers, PSM
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South Tower, Suite 300
Gainesville, Florida 32601
(352) 373-3541
jrogers@edafl.com

February 23, 2024

Board of Professional Surveyors and Mappers
Department of Agriculture and Consumer Services
2005 Apalachee Parkway
Tallahassee, Florida 32399

Re: Petition for Declaratory Statement concerning Chapter 177, Part I (Platting)

To Board Members,

Pursuant to Section 120.565, F.S. (Florida Statutes) and Chapter 28-105, F.A.C. (Florida Administrative Code) I am petitioning a declaratory statement from the Board of Professional Surveyors and Mappers regarding the below particular set of circumstances encountered while acting as the reviewing Professional Surveyor and Mapper under contract to Alachua County tasked with carrying out the duties & requirements of Section 177.081(1), F.S.

Applicable Portions of Chapter 177, Part I (Platting)

177.091(7), F.S. requires that Permanent Reference Monuments (PRMs) must be placed at each corner or change in direction on the boundary of the lands being platted.

177.031(15)(b), F.S. requires that PRMs must be identified with a marker or cap bearing either the LS or LB number (as applicable) and the letters "PRM".

177.091(7), F.S. states that where corners are in an inaccessible place, PRMs shall be set on a nearby offset.

177.091(7), F.S. states that where corners are found to coincide with a previously set PRM the LS or LB number of the previously set PRM shall be shown on the new plat or, if unnumbered, shall so state.

177.121, F.S. makes it a misdemeanor to molest any monuments established according to this part.

Particular Set of Circumstances

In the course of preparing a subdivision plat monuments have been found and held to as the boundary of the lands. These monuments include:

1. Found 5/8" Iron Rod & Cap stamped "CHW LB 5075" presumably set as a Permanent Control (PCP) on an adjoining subdivision plat.
2. Found 5/8" Iron Rod – No ID presumably held as a PRM on an adjoining subdivision plat.

As the reviewing Professional Surveyor and Mapper I interpret the applicable portions of Chapter 177, Part I (Platting) in the following way:

I would set PRMs identified with my registration (LS) or certificate of authorization (LB) number and the letters "PRM". If the original monument is specifically called for in legal descriptions or is deemed to be significant (such as the formerly held PRM) then the original monument is not removed, but offset PRMs are set instead. I present the following rationale:

- The existing monuments do not qualify as a PRM as they do not bear an LS or LB number and the letters "PRM".
- PRMs must be set either at the corner or on an offset.

The Professional Surveyor and Mapper submitting the plat for review interprets the applicable portions of Chapter 177, Part I (Platting) in the following way:

The Professional Surveyor and Mapper submitting the plat for review identifies the existing monuments on the new subdivision plat and calls them as being PRMs, and presents the following rationale:

- The clause in 177.091(7), F.S. "...or, if unnumbered, shall so state." allows this.
- Offsets are not appropriate as the corners are not inaccessible.
- Removing the existing monuments and replacing with PRMs would entail molestation of a monument.

The disagreement on the interpretation of the Statutes recited above has stalled this particular subdivision plat's approval process. This disagreement further threatens to undermine the intent of Section 177.081(1), F.S. which gives the authority of reviewing a plat for conformity to Chapter 177, Part I to the reviewing surveyor. Given the above circumstances and the applicable portions of Chapter 177, Part I (Platting) which seem to contradict themselves I am requesting a declaratory statement or guidance regarding this particular situation and Chapter 177, Part I (Platting).

Please contact me at your convenience should you have any questions.

Sincerely,



Jacob Morris, PSM
Director of Surveying

State of Florida License No. LS6687