

**MINUTES**  
**TEXAS BOARD OF PROFESSIONAL LAND SURVEYING**  
**12100 Park 35 Circle, Bldg. A, Suite 173**  
**March 9, 2012, 9:00 a.m.**

1. Call Board Meeting to Order:

The Board Meeting was called to order by Mr. Greg Smyth on March 9, 2012 at 9:00 a.m.

Present were all Board Members, Executive Director Frank DiTucci, Assistant Attorney General Nancy Fuller, and Board Investigator Garey Gilley.

2. Floor Open to Public Comments:

The Chair asked all persons present to stand and introduce themselves.

The meeting was attended by 38 members and associates of the Texas Land Surveying Profession.

C. B. Thomson presented the report of the TSPS Task Force. He reported to the board the members of the Task Force. He reported the goals and mission of the Task Force. He then outlined suggested amendments to the Rules of the Texas Board of Professional Land Surveying. The report was received by the Chair and referred to the TBPLS Rules Committee for consideration and report at next Board meeting.

The Chair asked for any comments from the attendees:

Mr. Jerry Goodson asked on behalf of TSPS if the Board could publish the names of surveyors who have been sanctioned by the Board. The Executive Director responded that the information will soon be available on the Board Web Site. Board Member Kwan reported the case file reports are published in the Board minutes when adopted.

Mr. Pat Smith, representing SAM, Inc asked that action on proposed Rule 661.57 be delayed for further study.

Mr. Mickey Nowell, representing ABZ, Inc and TSPS also asked that action on Rule 661.57 be delayed for further study. He also noted that no rule definition should end with, etc.

Mr. Curtis Strong expressed concern as to the roster which is available on the Board web site. The Executive Director reported that the Board is part of a larger state system and there is very little control as to the roster access. Ms. Sharpe reported she is making corrections as she becomes aware of errors or omissions.

Ms. Sasha Lockamy expressed that she might be able to help the Board with a public roster. She offered to provide her expertise to the Board if requested. Board Member Price asked the Executive Director what can be done to correct the problem. Board Member Price and Board Member Foster encouraged any affected surveyor to contact the Board and let the Board know if information has been omitted.

Comments were made by an unidentified attendee as to the roster.

Mr. Weldon Klattenhoff also expressed concerns as the non-user friendly roster and his concern that Registered Professional Land Surveyors are part of any roster which also list trades.

Board Member Garcia asked if there is any way the Board can fix the situation outside of the state combined shared site. The Executive Director agreed to look into it. The Chair asked for staff to look into this and report what options are available.

Public comments were closed.

3. Discussion possible approval and vote to approve the December 9<sup>th</sup>, 2011 Board Meeting Minutes:  
On a motion by Board Member Bill O'Hara and seconded by Board Member Mary Chruszczak the minutes of the Meeting of the Texas Board of Professional Land Surveying December 9<sup>th</sup>, 2011 were unanimous adopted.
  
4. Mr. Frank DiTucci, Executive Director, reported:  
Funds are available for travel reimbursement for attendance at the upcoming NCEES meeting.  
The on-going study as to increasing Firm renewal fees is continuing. The Executive Director is still planning on asking for a FTE and will need direction from the Board.

The disposal of complaint files older than 10 years was discussed. On a motion by Board Member Jerry Garcia and seconded by Board Member Mary Chruszczak; complaint files more than 10 years and 1 day past the date of complaint disposition to be disposed of pursuant to state requirements was unanimous adopted.

Open records requests are only responded to when the Board receives a formal request.  
There are 2471 Registered Professional Land Surveyors, 199 out-of-state, 73 Licensed State Land Surveyors, 421 inactive Registered Professional Land Surveyors, 380 SITs and 1421 Firms.

Discussion as to what is an office, a branch office, or a field office. The consensus of the Board is that if land surveying services are offered at any office, the office must operate within the Board rules. The overall concern is direct supervision.

Executive Director Report completed.

5. Complaints- Garey Gilley, Investigator:  
**11-27**  
The subject surveyor prepared a survey showing what the County alleged was a public road. The survey report showed an existing 12 feet wide road. The complainant alleged the existing road was a private road. The County suited the complainant in district court. The court ruled that the County has fee simple interest in the road as shown on the survey introduced into evidence at the trial. Prior to the final judgment of the court being entered into, the county asked the subject surveyor to prepare a plat to be filed in order for the plat to be referred to in the judgment. The subject surveyor prepared an exhibit as instructed by the County Engineer, which indicated the middle of the 12 feet wide road to be the centerline of a 60 foot wide County Road. Without court approval, the subject surveyor filed the exhibit

in the County Deed Records. The complainant's attorney objected because the exhibit had not been entered into evidence at the trial.

The subject surveyor offered in his response he was only following the instructions of his client, the County. He admits that he was not knowledgeable with court procedures as this was his first time to serve as an expert witness. Mr. Gilley pointed out, and he acknowledges, he understood his role of an expert witness to was present the facts to the court and follow the court's instruction and not that of either party to the litigation. However, once the exhibit was filed in the public record the result is casting a cloud on the title of the adjacent land owner's.

The subject surveyor has since been elected to serve as a County Commissioner. He has agreed to petition the Commission's Court to vacate, quit-claim or whatever the proper legal term is, any interest in the ROW shown on the exhibit except for the existing 12 foot road shown thereon.

Mr. Gilley did not find any rule violations; however, the subject surveyor should be warned as to not offer to perform, nor perform, services for which he/she is not qualified in any of the technical fields involved, by education or experience, without retaining the services of another who is so qualified.

Mr. Gilley reported the subject surveyor had asked the County Commissioner's to vacate any interest the county had to any portion of the road as shown on the plat except to the 12 foot wide road as awarded in the court judgment. The County Commissioner Court approved the request.

**Complaint is closed with the issuance of an Affidavit of Voluntary Compliance.**

#### **12-02**

Mr. Gilley reported that this complaint was filed by the apparent next door neighbor to a Lot which the subject surveyor had been asked to prepare a survey. The complainant was apparently upset that the property was being surveyed. The complainant confronted the subject surveyor and asked what he was doing and why was he doing it. Even though the subject surveyor was in a public street the complainant believed he was trespassing onto her property.

The investigation results in a finding that there are no violations of the Board rules.

The subject surveyor has asked this complaint be dismissed as frivolous. Mr. Gilley feels this complaint was filed for the purpose of harassment and recommends Complaint 12-02 be dismissed as frivolous.

**On motion by Board Member Jerry Garcia and seconded by Board Member Bill O'Hara, this complaint was dismissed as frivolous by unanimous vote of the Board.**

#### **12-05**

Mr. Gilley reported that the subject surveyor prepared a survey of a Lot, with no improvements in July 2011. The survey was relied on in a closing. The buyer retained another local survey firm to prepare a topographic survey of the Lot for use in the design of a proposed structure. The local survey firm did a verification of the previous survey report which had been supplied by their client, the purchaser, who had relied on the survey report of July 2011. The local firm found the iron rods reportedly set by the subject surveyor to mark the Lot corners were not in place. Also a pool deck and landscaping features which appear to encroach onto the subject Lot were not shown on the survey report.

The local firm contacted the subject surveyor and expressed their concern as to the discrepancies. At first, the subject surveyor did not respond. After, what the complainant says was several attempts, the subject surveyor did send a field crew back to the site and set the missing monuments. The monuments set by the subject surveyor were incorrectly located. Upon their return, the subject surveyor did agree there were discrepancies and attempted to take steps to correct them. A revised survey was issued September 2011 with the Lot corners correctly marked and the visible conditions as to a possible encroachment were noted. The subject surveyor responded that the Firm had issued a corrected survey and had refunded their fee. Mr. Gilley asked the subject surveyor for verification as to whom the fee had been refunded to since the subject surveyor had earlier stated their client was the title company. The subject surveyor determined that a corrected survey report was not issued and the fee had not been returned as that responsibility had been assigned to other firm employees.

In his response, the subject surveyor stated in reference to the rear Lot corners "I fully admit we used a rotation that was out by 4 degrees." However, if that had been the only problem the northwest Lot corner (a rear Lot corner) would have been misplaced by about 8-5/10 feet. The discrepancy between where the Lot corner was incorrectly marked and the true corner location was about 3-5/10 feet. When asked about this, the subject surveyor's explanation was the crew must have used an incorrect back sight. However, the subject surveyor is unable to confirm the surveying equipment used.

Mr. Gilley interviewed the neighbor who lives next to the Lot being surveyed. He sent the following letter (names redacted);

*"My name is \_\_\_\_\_ and I live in the Longmire on Lake Conroe subdivision in Conroe, Texas. I am a retired land surveyor with 30 years of experience in Land Surveying in the state of California. I am also on the Property Owners Association Committee for Architectural Control of our subdivision. I was informed that lot 39 of section 3, block 1 of our subdivision had been sold. Later that week I observed a small car parked in front of lot 39 and two men measuring across the lot as if they were attempting to do a lot survey for the finance agency involved in the purchase of the lot. I asked one of the men who he represented and was told they were working for \_\_\_\_\_ Land Surveying Inc. As I observed their process, I noticed that they did not use a survey instrument or GPS unit at any time for the survey work. They were using a metal locator, a 100 foot cloth tape, and a shovel. They appeared to only be looking for property corners for lot 39. After they found one or two points and had attempted to find others, they left and did not return that day. Later that month I got a request through the Architectural Control Committee from the owner of lot 39 stating that he wanted to relocate the storm drain and easement. I recommended \_\_\_\_\_, LTD for the survey work and informed the lot owner that \_\_\_\_\_ is the co-owner of \_\_\_\_\_ and a resident of our subdivision. \_\_\_\_\_ did a proper survey with a total station instrument and GPS to include tying in monuments found on adjoining lots. They did a topographic survey for design of the proposed storm drain and easement relocation. They did a very professional survey of the caliber I am accustomed to when I was still working as a surveyor. A few weeks after \_\_\_\_\_ did their survey, I noticed another survey crew with a pickup parked in front of lot 39. The truck had the name \_\_\_\_\_ Land Surveying on the door. I watched as they seem to be putting steel rods in the ground at the approximate lot corners at the rear of the lot. I notified \_\_\_\_\_ to what they were doing so he would be aware of the second visit from \_\_\_\_\_ Surveying. Please feel free to contact me with any other questions you may have in this matter."*

The subject surveyor has violated the following Board rules:

**§663.15. Precision.**

- (a) The actual relative location of corner monuments found or set within the corporate limits of any cities in Texas shall be reported within a positional tolerance of 1:10,000 + 0.10 feet.  
**The subject surveyor violated this rule when he failed to be able to demonstrate the positional tolerance of the field work.**
- (e) Survey measurement shall be made with equipment and methods of practice capable of attaining the tolerances specified by these standards.  
**The subject surveyor violated this rule when he failed to be able to verify the type of survey equipment used by the field crew.**

#### **§663.10. Disciplinary Rules.**

The land surveyor shall not:

- (4) fail to exercise reasonable care or diligence to prevent his/her partners, associates, or employees from engaging in conduct which, if done by him, would violate any of the provisions of the Act or rules;  
**The subject surveyor violated this rule when he failed to exercise reasonable care or diligence to prevent his/her employees from engaging in conduct, (the field procedures,) which, if done by him, would violate any of the provisions of the Act or rules;**
- (7) perform any acts, allow any omission, or make any assertions or representation which may be fraudulent, deceitful, or misleading, or which in any manner whatsoever, tend to create a misleading impression;  
**The subject surveyor violated this rule when he failed denote the encroachment of the pool deck and landscaping features on the survey report of July 2011. The subject surveyor certification states, "There are no visible conflicts or protrusions, except as shown."**

#### **§663.16. Boundary Construction.**

- (c) A land surveyor assuming the responsibility of performing a land survey also assumes the responsibility for such research of adequate thoroughness to support the determination of the location of intended boundaries of the land parcel surveyed. The land surveyor may rely on record data related to the determination of boundaries furnished for the registrants' use by a qualified provider, provided the registrant reasonably believes such data to be sufficient and notes, references, or credits the documentation by which it is furnished.  
**The subject surveyor violated this rule when he failed to perform adequate field research, which if properly performed would have recovered Lot corners marked by monuments of record dignity.**

The subject surveyor is in violation of five (5) Board rules as stated above. The matrix adopted by the Board indicates a reprimand to be issued and \$ 7500.00 in civil penalties to be assessed to the subject surveyor.

In addition the firm is in violation of the above referenced rules and as with the subject surveyor, the matrix adopted by the Board indicates a reprimand to be issued and \$ 7500.00 in civil penalties to be assessed the firm.

**Subject surveyor signed order and paid \$ 7500.00 fine.**

Complaint 12-05 (FIRM) opened against the firm which employed the subject surveyor. The firm originally paid \$2,000.00 of \$10,500.00 fine, but has since asked for Informal Settlement Conference.

**12-09**

Mr. Gilley reported that the subject surveyor prepared a survey of a 1-5491/10000 acres tract in June 2007. The tract was triangle in shape with the west line being the base of the triangle. The tract is located south of and adjoins Highway 6 in Marvel, Texas. The survey drawing indicates the three corners of the tract and shows topographic information on a 50 feet grid beginning at the east corner and extending to the west. The topographic information is shown on assumed datum. The subject surveyor certified the tract is not in a flood hazard zone according to HUD/FHA. The subject surveyor indicates a number which appears to be a FEMA Flood Panel reference. This subject tract was surveyed by another surveyor, employed by the subject surveyor in 1999. The complainant relied upon the June 2007 survey along with the flood zone certification at the time of the acquisition of the property.

This complaint was filed alleging the statement as to the property not lying within the flood zone is incorrect, so therefore creating a representation which may be misleading. The complainant allegedly relied on that statement when purchasing the property. The flood plain shown on the FEMA panel is not defined and is shown by depiction only. It is not possible for me to determine the exact limits of the flood zone. There is pending litigation against the subject surveyor as to the determination of the limits of the flood zone.

A review of the survey prepared by the subject surveyor in June 2007 reveals that it is an exact copy of the previous survey prepared in 1999. The 2007 survey drawing was prepared by Auto-Cad (attached names redacted) and the 1999 survey (attached names redacted) drawing was hand drawn. The only difference is the 1999 survey drawing shows the northwest corner to be marked by a 1/2" iron rod set and the 2007 survey drawing shows the northwest corner to be marked by a 1/2" iron rod found. All other information is the exactly the same. The elevations shown on the 2007 drawing are the same to the 100th of a foot (in almost all readings ending in 2 digits) as the 1999 drawing. The elevations were taken on natural ground except for the readings along the concrete surface of Highway 6. Mr. Gilley interviewed the subject surveyor and asked about the similarity of the topographic information taken on natural ground some eight (8) years apart. The subject surveyor stated he had accompanied this field crew to the ground in 2007 and after taking complete new topographic information, he determined there was not enough vertical difference between the readings to make any changes in his report. Mr. Gilley then asked what he considers a vertical difference which would cause him to make a change. He said 1/2 inch (04/100 of a foot).

Mr. Gilley saw the topographic information was the very same from the 1999 survey report as to the 2007 survey report. After reviewing the subject surveyor's deposition given in the above reference litigation, Mr. Gilley wrote the following letter to the subject surveyor;

*"We received you response to the complaint referenced above. However, your response has raised some questions.*

*Your stated "The board has stated, along with F.E.M.A, that flood lines drawn on any plat cannot be physically located upon the ground.". Please provide any information you relied on when making that statement. You questioned as to why the complainant did not provide you complete disposition. Any portions which you feel will aid in this investigation, please provide.*

*Page 42, line 17 of your disposition, you were asked " **Prior to doing your work in Exhibit No. 1, did you review Mr. name redacted survey?**" Your reply, line 21, "No, sir, I did not." Page 43, line 9 of your disposition, you were asked " **Okay. So do you have a copy of the senior survey that you relied on in producing Exhibit No. 1**". Your answer, line 11, "No."*

*Your survey report dated 26 June 2007 indicates the same grid layout and the same spot elevations as the above referred to survey report by name redacted. Please provide any work notes taken in the field, either paper or electronic, which you relied on when preparing your report of June 2007*

*You are required to respond and provide any requested information within twenty (20) days.*

*Respectfully;*

*Garey W. Gilley  
Complaint Investigator"*

The subject surveyor did respond to Mr. Gilley's inquiry; however, he did not respond to the questions asked of him. Mr. Gilley did speak to the subject surveyor on February 02, 2012, by phone. He stated he did have a copy of the 1999 survey report, but as is his custom, he did not look at or refer to it until after he had completed his new survey of 2007. Upon comparison he determined there were no changes between the conditions as of 1999 and 2007. Mr. Gilley again asked him to send the notes he would have made in the field to support his claim he made a complete new survey and topographic readings in 2007. His response was that he had sold his company and the new owner had them and he did not have access to them. Mr. Gilley then spoke to the new owner, who advised all he bought from the subject surveyor was a phone number and did not have any files or want any files from the subject surveyor. The new owner said he thought the files of the subject surveyor had been destroyed in flooding from Hurricane Ike. As to what the Board had published as to the determination of flood zones, he said that was from a conversion he had with former Board Chairman James Noble Johnson.

When the subject tract was first surveyed in 1999 it was vacant and not developed. The property to the west was vacant and not developed.

At the time of the 2007 survey, the subject tract was still vacant; however the property to the west had been platted and developed as a Sonic Drive-in. As part of the Sonic drive-in development, a detention pond was built near the west line of the subject tract. Mr. Gilley interviewed the engineer for Sonic Drive-in, and he assured Mr. Gilley the detention pond was built in 2006. A review of the historic maps on Google earth confirms the detention pond was built after 1999 and before 2007.

The question as to the subject tract being within or partially in a flood zone was apparently raised when the complainant had another survey prepared by a different surveyor. The later survey was performed in March 2008. The surveyor recovered the monuments reported to mark each corner. The surveyor also prepared a topographic survey using USGS vertical height datum and reported the tract is partially encumbered by a flood zone. The survey prepared March 2008 indicates the above mentioned detention pond to be in place.

Made a part of this report is a depiction of the survey and topographic report prepared by the subject surveyor in 2007 and the later survey and topographic report prepared by the different surveyor in 2008. Mr. Gilley adjusted the reported heights to be on the same vertical datum as the assumed height use by the subject surveyor. A review of the depiction showing the topographic readings of both survey reports clearly shows vertical differential of more than 04/100 of a foot and substantial difference along the west line where the detention pond had been built and in place at the time of the 2007 survey prepared by the subject surveyor.

Without any information provided by the subject surveyor to substantiate otherwise it is Mr. Gilley's conclusion that the survey information provided by the subject surveyor on his survey report of June 2007 was copied from the previous survey report prepared in 1999. The survey report of June 2007 does not indicate a basis of bearing. Mr. Gilley concluded the subject surveyor is in violation of the following rules;

663.9(c)

"The public shall be provided every reason for relying upon the surveyor's seals, signatures, or professional identification on all documents, plats or maps, surveyor's reports, plans, or other surveying data on which they appear as a representation that the surveyors whose seals, signatures, or professional identification appear thereon, have personal knowledge thereof and that they are professionally responsible therefor."

663.10(7)

"perform any acts, allow any omission, or make any assertions or representation which may be fraudulent, deceitful, or misleading, or which in any manner whatsoever, tend to create a misleading impression"

663.18(d)

"A land surveyor shall certify only to factual information that the land surveyor has personal knowledge of or to information within his professional expertise as a land surveyor unless otherwise qualified."

663.19(4)

"Courses shall be referenced to an existing physically monumented line for directional control or oriented to a valid published reference datum and shall be clearly noted upon any report, survey plat or other written instrument."

## **12-18**

Mr. Gilley reported that the subject surveyor prepared a survey at the request of a realtor acting on behalf of the complainant. The agent and the subject surveyor agreed to a base fee with any additional services to be billed at the normal fee for billable time. The subject surveyor completed the survey and reported the findings of his survey as requested to the appropriate Title Company. Upon review, the title company asked that the subject surveyor provide a certificate as to FEMA Flood plain. The subject surveyor did so and submitted an amended invoice for the additional work.

The complainant feels there should not have been an additional fee for the flood plain certificate. The complainant states he was told by a title company person that first; the fee was too high and second; the subject surveyor was the only surveyor which they did business with that does not provide a flood certificate as a standard part of any survey. Mr. Gilley spoke with the person at the title company and she did confirm she made those statements as to the additional fee for the flood certificate.

At the time the subject surveyor prepared the amended survey report to reflect the flood plain certificate, he was also asked to make some minor changes as to the spelling of a road name, name of buyer, etc. There was no addition fee for those changes. The additional fee was only for the additional time required for the flood plain certificate.



The Texas Board of Professional Land Surveying does not have any rules as to the business arrangements between the surveyor and the party or parties requesting the professional services of a Registered Professional Land Surveyor. There are no violations of any Board rules.

The subject surveyor requested this complaint be dismissed as frivolous. The Texas Land Surveying Practices Act defines a frivolous as:

“In this section, "frivolous complaint" means a complaint that the executive director and investigator, with board approval, determine:

- (1) was made for the purpose of harassment; and
- (2) does not demonstrate harm to any person.

The Rules promulgated by the Texas Board of Professional Land Surveying further defines frivolous as:

(d) A complaint may be considered to have been made for the purpose of harassment: if, among other things:

- (1) the complaint is filed as a threatening, abusive, or retaliatory tactic;
- (2) the complaint is filed as a litigation tactic;
- (3) the complaint is politically motivated; or
- (4) the complaint is based on allegations that are beyond the scope of the board’s jurisdiction under the Act.

The allegations made by the complainant are outside the scope of the board's jurisdiction as the complaint is based on a fee dispute. Mr. Gilley recommends this complaint be dismissed as frivolous.

The subject surveyor asked for the complaint to be dismissed as frivolous. The complaint is within the definition as frivolous as defined by the Board rule.

**On motion by Board Member Nedra Foster and second by Board Member Bill O’Hara the complaint was dismissed as frivolous by unanimous vote of eligible Board Members, with Board Member Jon Hodde abstaining.**

Investigator explained the process as to frivolous complaints.

#### **12-14**

Reported by Board Member Mary Chruszczak

The subject surveyor prepared a May 5, 2005 survey while employed by a firm offering Land Surveying services. The monumentation was not completed until 3 weeks after the issue of the survey. When the monumentation was performed it became apparent there was an error in the placement of the roadway as shown on the survey report.

The Surveyor responded to the board and requested an informal hearing.

An Informal Settlement hearing was held on March 8, 2012. The subject surveyor was aware of the complaint filed against his former employer/firm for the same survey, and was aware of the violations of Board rules that were found by the investigator. The subject surveyor also stated that he was fully aware of his former employer’s business procedures and that they conflicted with the Board rules. The subject surveyor stated that even though he needed a job, he did not agree with the company’s procedures and decided it was in his best interest to resign and look for other employment.

The Informal Settlement Committee informed him that he was in violation of Board Rule 663.5 (1) “The surveyor shall not allow a person who is not registered or licensed to exert control over professional work.”

The Penalty Matrix adopted by the Texas Board of Professional Land Surveying is a reprimand/\$1,500 for each occurrence. He was informed that he could be subject to anything, from another reprimand to losing his license if this happened again. The subject surveyor was aware of the penalties, and remorseful.

Because the subject surveyor was aware of the seriousness of the violations and was sincerely remorseful, the Informal Settlement Committee offered to recommend to the Texas Board of Professional Land Surveying that the required administrative penalty of \$1500 be waived, and a reprimand would be issued, including an “Assurance of Voluntary Compliance” to be signed by the Surveyor and returned to the Board.

#### **12-15**

Reported by Board Member Mary Chruszczak

The subject of the complaint was the quality of survey product and level of professionalism of the Surveyor while revising a land title survey of a 3.759 acre tract, located in the J. Rendon Survey, Abstract No. 1263, Tarrant County, Texas. The survey was prepared on 5/5/2011. The transfer of ownership of the property was on 5/18/2011. There was an error in the placement of the roadway on the survey and corrected after closing, but the survey had the original date of 5/5/2011. The monumentation was completed 3 weeks after the issue of the survey date on the plat.

The subject surveyor responded to the board and requested an informal hearing.

The informal hearing was held on March 8, 2012. The subject surveyor was aware of the complaint filed against his former employer/firm for the same survey, and was aware of the violations of Board rules that were found by the investigator. The subject surveyor also stated that he was fully aware of his former employer’s business procedures and that they conflicted with the Board rules. He stated that even though he needed a job, he did not agree with the company’s procedures and it was in his best interest to resign and look for other employment.

The Surveyor stated that he was very aware of the errors he made in judgment to allow his former employer to control the survey product without the proper review, monumentation and allowing his registration seal be electronically applied by another employee. He was regretful of the situation and frustrated, because he knew this complaint would be on public record against him.

The Complaints Committee informed him that he was in violation of Board Rule 663.5 (1) “The surveyor shall not allow a person who is not registered or licensed to exert control over professional work.”

The Penalty Matrix for this is a reprimand/\$1,500. He was informed that he could be subject to anything, from another reprimand to losing his license if this happened again. The Surveyor was aware of the penalties, and remorseful.

The Informal Settlement Committee met separately for a few minutes and agreed that the Surveyor understood the situation and regrets the decision of working for the company. The Informal Settlement

Committee then informed the Surveyor that they would recommend to the Board that the required administrative penalty of \$1500 be waived and a reprimand would be issued, including an “Assurance of Voluntary Compliance” to be signed by the Surveyor and returned to the Board. The “Assurance of Voluntary Compliance” would remain in his file at the Texas Board of Professional Land Surveyors.

**On a motion by Board Member Robert Price and seconded by Board Member Jerry Garcia the \$1,500.00 administration fee was waived for Complaint 12-14 and 12-15 by unanimous vote of eligible Board Members, with Board Member Mary Chruszczak and Board Member Jim Childress abstaining.**

Complaint Report concluded.

Board Chairman Smyth announced the public meeting is now in recess and the Board will meet in closed session at this time, pursuant to the Texas Open Meetings Act, to seek advice from their attorneys as to the pending complaint cases before SOAH.

Board Chairman Smyth announced the public Board meeting is now reconvened in open session at 1:06 PM.

Board Chairman Smyth stated no actions were taken in the Closed Meeting.

On motion by Board Member Jerry Garcia and seconded by Board Member Mary Chruszczak, the Board voted unanimously to request the Office of the Attorney General to proceed vigorously with the prosecution of cases pending before SOAH.

6. Committee Reports:

A) Executive Committee- Greg Smyth; Chair:  
No report.

B) Rules Committee- Greg Smyth; Chair:  
Chairman Smyth referred the report of the TSPS Task Force as to Board Rules to the Rules committee, Chairman Smyth, Board Member Jon Hodde and Board Member Bill O'Hara. The rules committee as appointed asked for input from all Board Members and will report at the next Board Meeting.

C) RPLS/SIT Examination Committee- Jon Hodde:  
Board Member Jon Hodde reported that 61 applicants had been approved to sit for the Fundamental examination, 32 for the Legal examination and 55 for the Analytical examination. Mr. Hodde further reported 16 persons had been approved to sit for the reciprocal examination. Mr. Hodde report the reciprocal examination had been revised to more closely meet the statutory requirements of a four hour examination.

Ms. Fuller discussed the need for the Board to develop and publish guidelines stating the reasons a particular crime is considered by the Board to be related to the duties and responsibilities of a practicing Land Surveyor or Surveyor in Training.

On a motion by Board Member Paul Kwan and seconded by Board Member Bill O'Hara, the examination to be administered April 2012 was adopted by unanimous vote.

D) LSLS Examination Committee- Bill O’Hara; Chair:

Board Member Bill O'Hara reported the Licensed State Land Surveyor examination has been reviewed by the committee and selected. Six persons have been approved to sit for the examination. On motion by Board Member Paul Kwan and seconded by Board Member Robert Price the examination as selected by the committee was adopted by unanimous vote.

Committee Chairman Board Member Bill O'Hara reported that the items being used in the examination have been used multiple times and asked for Board approval to form a committee of Licensed State Land Surveyors to suggest and prepare items to be presented in the examination. Board Chairman Smyth indicated that this was within the duty of committee and can proceed without additional Board approval.

Committee Chairman Board Member Bill O'Hara reported that there was a 100% pass rate for the last Licensed State Land Surveyor examination. Chairman O'Hara presented the Licensed State Land Surveyor License to Jeremy “J.D.” Davis.

E) Continuing Education Committee- Paul Kwan; Chair:

Continuing Education Committee Chairman Board Member Paul Kwan presented the following courses for approval.

All requests were approved/denied with motion by Board Member Bill O’Hara and Seconded by Board Member Mary Chruszczak. All Members were in favor of motion.

**APPLICATION FOR COURSE APPROVAL**

	<b>Appd</b>	<b>Rejd</b>
<b>1. Half Moon LLC</b>		
<i>Best Practices in GPS Surveying</i>	_X_	____
<u>Instructors:</u> Todd W. Horton PE PLS 8 hours		
<b>Assigned Course #1028</b>		
<i>State Plane Coordinate System Workshop</i>	_X_	____
<u>Instructors:</u> Todd W. Horton PE PLS 8 hours		
<b>Assigned Course #1029</b>		
<i>Flood Maps and Flood Insurance for Building Professionals</i>	_X_	____

Instructors: John P. Ivey, P.E. CFM and Ray D. Windsor, CFM  
6 hours

**Assigned Course #1030**

**2. Lorman Education Services**

*Current Issues in Storm Water Management* \_\_\_\_\_ X\_\_\_\_\_

Instructors: Lawrence Dunbar, Brad Flack, Daniella Landers, John Moss, Ceil Price  
4 hours

They have requested approval for this course on several occasions in the past, the board has always denied approval.

Denied, does not meet 664.4 (4) no land surveying content.

**CHAPTER MEETING APPROVAL**

**Appd Rejd**

**1. TSPS Alamo Chapter 11**

*TSPS State Level Activities and the Texas Legislature (Jan. 19, 2012)* \_\_\_\_\_ X\_\_\_\_\_

Taught By: Davey Edwards – TSPS President  
1 hour

*San Antonio River Authority-Enterprise Geographic Information Systems (Feb. 16, 2012)* \_\_\_\_\_ X\_\_\_\_\_

Subject Matter: San Antonio River Authority – Enterprise Geographic Information Systems

Objectives Taught: Mr. Molina discussed the various services and programs offered to the public by the San Antonio River Authority.

Taught By: Emilio R. Molina, Jr. (RPLS)  
1 hour

**2. TSPS Chapter 16**

*History of Chapter 16 – January 19, 2012* \_\_\_\_\_ X\_\_\_\_\_

Taught By: Ray Kelley  
1 hour

**INDIVIDUAL COURSE APPROVAL**

**1. Walter P. Sass, RPLS 4410**

*Ethics and the Right of Way Profession*

X \_\_\_\_\_

Taught By: Rebecca J. Thompson – Given by the International Right of Way Assoc.

8 hours

Approved by the Real Estate Commission for 8 hours.

Mr. Sass has not attended course yet, wants to make sure he can count the hours before registering.

**2. Daniel E. Kersten, RPLS 4925**

*Civil 3D Essentials*

X \_\_\_\_\_

Taught By: Doreen Cook. A.E./P.S.E.

32 hours

**BOARD APPROVAL FOR 8 HOURS ONLY**

**3. Todd Blenden, RPLS 6186**

*Principals of Real Estate (RELE 1406)*

X \_\_\_\_\_

60 hours

Austin Community College course.

**BOARD APPROVAL FOR 12 HOURS ONLY**

Committee Chair Board Member Paul Kwan then reported on the CE Audit.

125 audit letters sent, including one to the committee chair.

5 were exempt due to first year of license.

1 surveyor is off-shore.

6 no response. Letters have been sent requiring them to get the CEU within 90 days.

3 have received their required CEU and paid a late fee, and are required to notify the Board if they prepared surveys while their license was expired. Any surveys performed will cause a fine of \$1500.00 each or they may furnish re-certified surveys to their clients and pay a \$100.00 administration fee.

One surveyor sent a letter to the Board asking for an exception and to not require his recertification on the 18 surveys which he had prepared while his license had expired. The discussion of the Board was that no exceptions will be made. Those surveyors who do not comply with the requirements will have a complaint opened against them and be prosecuted for offering and providing land surveying services with an expired license. The surveyors will also be cited for signing a false affidavit to the Board.

Motioned by Board Member Jon Hodde and seconded by Board Member Bill O'Hara the exception as requested by the surveyor be rejected was adopted by unanimous vote.

Mr. Gilley reported he will open a complaint in the name of the Board for processing.

**Handled separately from other CE requests.**

**Appd    Rejd**

**4. Steve Adams, RPLS 3666**

*Investigation of Complaint 12-09*

  X            

Garey Gilley, board investigator, has requested 4 hours of continuing education hours for Mr. Adams' assistance in the investigation of complaint 12-09. These hours are requested to count toward Act/Rules/Ethics requirement.

**Motion: Nedra Foster    Second: Mary Chruszczak    motion adopted by unanimous vote**

Chairman Smyth opened discussion of propose **Board Rule 661.31.(7)**

**(7) Offer of Surveying Services--** Any form of advertisement, hard copy, electronic web site, telephone listing, written proposal for services, etc.

The proposed rule was amended to read:

“(7) **Offer of Surveying Services--** Any form of advertisement, hard copy, electronic web site, telephone listing, written proposal for services.”

**§661.57. Surveying Firms Compliance.**

- (a) Any firm or other business entity shall not offer or perform surveying services to the public unless registered with the board pursuant to the requirements of §661.55 of this title (relating to Survey Firm Registration).
- (b) A firm shall provide that at least one full-time active license holder is employed with the entity and that the active license holder performs or directly supervises all surveying work and activities that require a license that is performed in the primary or branch office(s). A full-time active license holder who is employed with the entity shall affix his/her seal and signature to any land survey product produced by the entity.

No public comment objected to (b)

Mr. Gilley explained the intent of (c) is to cause a company to indentify the surveyor employed by the firm, and not to indentify an individual surveyor who will supervise or sign the survey product produced.

- (c) Any firm or other business entity shall not offer surveying services to the public unless one full-time active license holder is indentified in the offer as employed with the entity who will perform or directly supervise all surveying work.
- (d) An active license holder who is a sole practitioner shall satisfy the requirement of the regular, full-time employee.

- (e) No surveying services are to be offered to or performed for the public in Texas by a firm while that firm does not have a current certificate of registration.
- (f) Each firm offering surveying services to the public shall notify consumers and service recipients of the Texas Board of Professional Land Surveying Firm Registration Number by placing the Firm Registration number upon any drawing depicting land surveying services.
- (g) A business entity that offers or is engaged in the practice of surveying in Texas and is not registered with the board or has previously been registered with the board and whose registration has expired shall be considered to be in violation of the Act and board rules and will be subject to administrative penalties as set forth in §1071.451 and §1071.452 of the Act and §661.99 of this title (relating to Sanctions and Penalty Matrix).
- (h) The board may revoke a certificate of registration that was obtained in violation of the Act and/or board rules including, but not limited to, fraudulent or misleading information submitted in the application or lack of employee relationship with the designated professional surveyor for the firm.
- (i) If a firm has notified the board that it is no longer offering or performing surveying services to the public, including the absence of a regular, full-time employee who is an active professional surveyor licensed in Texas, the certificate of registration will expire.
- (j) In addition to any other penalty provided in this section, the Board shall have the power to fine, refuse to issue or renew and/or revoke the registration of a business entity where one or more of its officers, directors, partners, members, or managers have been found guilty of any conduct which would constitute a violation of the Board's Act or Rules.

Discussion was held and concerns were raised as to possible unattended consequences. Motioned by Board Member Jerry Garcia seconded by Board Member Mary Chruszczak to delay action until a later time was adopted by unanimous vote.

**Board Member James Childress left the meeting, a quorum of remaining Board Members continued the meeting.**

F) Oil Well Issues Committee- Jon Hodde; Chair:

Chairman Hodde reported no new actions except to note that most of the applicants for reciprocal registration are to be able to work within the oil and gas industry in Texas. Board Chairman Smyth asked the committee chair to work with the Board Investigator to develop a statement to be placed upon plats prepared for submittal to the Texas Railroad Commission as to limit the purpose for which the plat should be used.

G) Legislative Needs Committee- Bill O'Hara; Chair:

Chairman O'Hara reported that TSPS has formed a committee to study the need for para-professional Land Surveyors.

H) Complaint Review Process Committee- Paul Kwan; Chair:

Chairman Kwan reported Board Member James Childress is developing a standard form requiring surveyors responding to a complaint be required to swear to the truthfulness and sign before a



notary. On a motion by Board Member Jon Hodde and seconded by Board Member Jerry Garcia the Board adopted the motion to prepare a standard form as discussed by unanimous vote of the remaining quorum.

- I) Task Force on registration of Photogrammetrists, Mappers and GIS professionals- Nedra Foster; Chair:  
Chairwoman Foster reported due to family health issues she had asked Board Member Mary Chruszczak to assume the duties of the chair and Board Member Mary Chruszczak accepted. Board Member Mary Chruszczak reported she is preparing a report for the next Board Meeting

5. Correspondence:

Executive Director DiTucci reviewed the correspondence which requires the Board attention and or reply.

Mr. Gilley reported a letter had not been sent concerning the County Clerk's responsibility as to the recordation of various documents. However, he had made an inquiry and learned any document which has been properly acknowledged and presented to a County Clerk for recording must be recorded. Board Member Bill O'Hara discussed the problem that Licensed State Land Surveyor are having in recording field notes in County records.

Reviewed letter from Mark Meador, along with the Executive Director's reply, as to opening a field office.

Surveyor Raymond Williams presented his letter of inquiry as to the proper date of his registration. Mr. Williams was registered as a Registered Professional Land Surveyor, by examination, on February 18, 1970. His license expired December 31, 1992. Mr. Williams was again registered as a Registered Professional Land Surveyor, by examination, April 2001. Mr. Williams was assigned his original number of 1666. He asked for the date of license to be posted as February 1970 and not April 2001 as it is now posted on the Board roster. On a motion by Board Member Jerry Garcia and seconded by Board Member Nedra Foster, Mr. Williams' date will be posted on the roster as 1970, however, any specific inquiry will be replied by the factual dates of license by unanimous vote of the remaining quorum.

6. Other Business- Schedule next Board meeting:

Next meeting of the Texas Board of Professional Land Surveying was scheduled for June 8, 2012.

7. Floor open to public comments:

Surveyor Pat Smith with SAM, Inc stated to consider that a surveyor/firm owner to be held responsible for all land surveying performed by the firm is ludicrous.

Surveyor Henry Kuehelm, a member of the TSPS committee to study para-professional land surveyors, reported they had completed their work and a report was filed with the TSPS board of directors and a copy will be forwarded to the Texas Board of Professional Land Surveying.

Surveyor Don King, County Surveyor of Brown County, asked that as complaint files are reviewed to be disposed of, be reviewed as to records which might have historical value. Mr. Gilley stated the records will be reviewed as they are disposed of.

Surveyor King also asked about the process of plat recordation. Discussion followed. Surveyor King also stated his support of the proposed Rule 663.57(c).

Surveyor Curtis Strong, TSPS President-elect, reported on an up-coming TSPS strategic planning meeting to be held August 17, 2012 to discuss legislative process. He invited all Board members to the TSPS Annual meeting to be held October 10-14, 2012 in San Marcos.

Surveyor Jerry Goodson reported his support as to the concept of para-professional land surveyor. Mr. Gilley explained the concept as discussed by the TSPS rules Task Force.

Board Member Bill O'Hara reported the week of March 18 is Texas Surveyors week

8. Discuss the evaluation, duties, possible reassignment, appointment, employment, or dismissal of any of its employees:

Board Chairman Smyth announced the public meeting is now in recess and the Board will meet in closed session at this time, pursuant to the Texas Open Meetings Act to deliberate on personnel matters.

Chairman Smyth reconvened the public meeting at 4:31 PM, announced that a quorum of the Board was present and stated no votes were taken in the executive session.

Chairman Smyth announced Executive Director Frank DiTucci had tendered his resignation.

On a motion by Board Member Robert Price and seconded by Board Member Jon Hodde to accept the resignation and place former Executive Director on paid administrative leave until April 31, 2012 the motion was adopted by unanimous vote of the remaining quorum.

On a motion by Board Member Jerry Garcia and seconded by Board Member Mary Chruszczak Gary W. Gilley was appointed Acting Executive Director. Mr. Gilley will serve with no additional compensation and a search committee be formed, the motion carried by unanimous vote of the remaining quorum.

On a motion by Board Member Jerry Garcia and seconded by Board Member Mary Chruszczak, Board Member Robert Price was appointed as chairman of the search committee with Board Member Jon Hodde and Board Member Bill O'Hara serving as committee members was adopted by unanimous vote of the remaining quorum

Mr. Gilley accepted the appointment.

9. Adjournment:  
There being no further business, the meeting was adjourned.

ATTEST: \_\_\_\_\_  
Greg Smyth, Presiding Officer

\_\_\_\_\_  
Garey Gilley, Acting Executive Director