

MEETING MINUTES
TEXAS BOARD OF PROFESSIONAL LAND SURVEYING
12100 Park 35 Circle, Bldg. D, Suite 191
Austin, Texas
October 11, 2012

1. Call to Order

The Board meeting was called to order at 1:34 p.m. by Chairman Greg Smyth. Present were Jon Hodde, Vice-Chair, Board members Bill O'Hara, Paul Kwan, James Childress, Jerry Garcia, Mary Chruszczak, and Nedra Foster, Executive Director Marcelino A. Estrada, and Assistant Attorney General Nancy Fuller. Absent was member Robert Price and Board Investigator Garey Gilley.

2. Public comments

Mr. David Bell voiced a concern over the trend of nonregistered firms employing RPLS. The Chair responded that, for this segment, there would be no discussion but that the Board was aware of the trend and that they were handling it.

3. Approval of the August 9th meeting minutes

The Chairman presented to the Board the minutes of the August 9, 2012 Board meeting for approval. Board Member O'Hara moved to approve the minutes and Board Member Foster seconded. The motion carries to adopt the minutes.

4. Directors Report

a. Budget

Mr. Estrada provided an overview of the budget for Fiscal Year 2012. He detailed the bigger expenditures and explained that approximately \$54,000 would be returned to the General Revenue fund. It was explained that the online registration for the Boards ethics course generated higher revenue than normal and that the Board should not expect to see figures like those again. Board Member Chruszczak asked about the reduction of 10% from the budget that was designed to be presented to the legislature if they require it. Mr. Estrada replied that he submitted a budget including a 10% reduction for the next biennium, but not for the current fiscal year. Board Member Garcia requested that the agency, and the Executive Director, try to make use of all monies allocated by the Legislature.

b. Revision to the Act

Mr. Estrada reminded the Board that he had been charged with seeking a revision to the Professional Land Surveying Practices Act. The revision would give the Board authority to act outside of the statute in certain circumstances, such as reinstating a long-time surveyor whose license had lapsed to the Board that he was contacted by a man that asked to be reinstated after being a surveyor for many years, who would otherwise be required to start over as an SIT and obtain a bachelor's degree. The Legislative Counsel is in the process of drafting a bill regarding this matter.

c. Status of the Rule Changes

Mr. Estrada reviewed the administrative requirements in place for rule changes for the Board. He explained, with the help of Mrs. Fuller, that every changed rule, however slightly changed, required a preamble justifying the change in order to be published in the

Texas Register. Mrs. Fuller continued, in detail, to show the workings of the preambles, recognizing the Board Office staff for their work in preparing the documents for the Register. Mrs. Fuller then briefly covered what she had prepared as far as what had changed in each rule, why it changed, and which rules are being abolished due to the fact that now they are obsolete to Board authority. Mrs. Fuller said that she has written all the preambles and has approximately 10 more rules for which she still needs technical information which she could gather from someone with a technical knowledge of surveying. Conversation ensued regarding the dates available for publication in the Texas Register and the 30 days required to elapse before the rules can be adopted. Mr. Estrada referred to the register publication schedule and discussed possible public hearing dates with the Chairman. No deadline was placed.

d. Website revision update

The Board's Domestic Name Services (DNS) has been changed by the Department of Information Resources (DIR) from txls.state.tx.us to txls.texas.gov. This has allowed TCEQ to migrate our agency from Groupwise to Outlook for email. Email sent to the old DNS will be forwarded to the new address. We were also able to move our web site from the current host, AT&T, to the new host, Health Professions Council (HPC). This will allow the Board office staff to have direct control over its web site. The web site revision is progressing and we anticipate having it up shortly.

e. Renewals

Mr. Estrada presented a copy of the new notifications being sent out to renewal candidates. He remarked on the interest of the Board to align itself with the statute requiring renewal payments being received prior to December 31. Notification post cards will be sent to late individuals informing them of their late renewal options.

f. Complaints

The dismissed complaints 12-40, 13-02, 13-04, and 12-52 through 12-55, were reviewed. The Board takes the recommendation of the Investigator and the Executive Director and dismisses the complaints.

The Chairman asks if there is any action needed on the other complaints included in the meeting book. Mr. Estrada reviews a complaint that went to an Informal Settlement Conference (ISC), presided over by Mr. Paul Kwan, Mr. Jerry Garcia, Mr. Garey Gilley, Mr. Estrada, and Mrs. Nancy Fuller.

The Chairman then asks for an update of the complaints that have gone to State Office of Administrative Hearings (SOAH). Mrs. Fuller gives a brief up date of the cases 8-43 and 12-09, stating that the settlement decided upon was for the subject surveyor to place his license on inactive status for a minimum of 5 years. Mrs. Fuller then mentions a new, more aggressive, approach taken by the Attorney General's office to settling these cases and how she feels this is an improvement. She added how effective she believes the ISC to be, saving the Board time and money.

Mrs. Fuller recommended that Mr. Garcia and Mr. Kwan, that attended the ISC for complaint 12-35, substitute for the Investigator in explaining the details of the settlement. The two members explained that the mistake made by the surveyor was honest and that he was interested in making amends and corrections. Two charges were reduced to one in the settlement because of the obvious due diligence on the part of the surveyor. The penalty was eliminated and a reprimand was issued. The motion is presented by Mr. Hodde to accept the ISC recommendations and seconded by Mrs. Chruszczak. The motion carried. The surveyor in complaint 12-35 is Darrell White (Austin, TX).

The topic returned to the case at SOAH, 8-43 and 12-09. Mr. Hodde explained that the subject surveyor has been signing and sealing surveys that he himself did not perform. The subject surveyor has displayed arrogance and irreverence toward the allegations and, though many of the Board members were offended to hear this, a five year suspension was, for now, the limit of their power. Member Childress moved acceptance of the surveyor's settlement agreement to place his license on inactive status for a minimum of five years. The motion was seconded by Member O'Hara and carried. The surveyor in complaint 8-43 and 12-09 is Henry T. Weber (Alvin, TX).

The Chairman introduced a request that the Investigator compile a Complaints Policy Manual for the purpose of outlining the procedures of processing and resolving a complaint.

This concluded Mr. Estrada's report.

The Chair called for a recess at 3:15 p.m.

The Meeting was called back to order at 3:50 p.m.

5. Committees

a. Executive Committee

Chairman Smyth said there was nothing to report.

b. Rules Committee

Chairman Smyth said there was nothing to report.

c. RPLS/SIT Examination Committee

The Committee chair, Mr. Hodde, informed the Board members of the number of applicants taking the exam.

Mr. Hodde next discussed that committee members of the Item Writers, Cut-off Score and QAQC committees had not been reappointed at the end of their terms. He offered a motion to reappoint all of the committee members and assign them staggered terms, which was seconded by Board Member. The motion carried.

Mr. Hodde asked Mr. Estrada to present the next portion. Mr. Estrada presents a case where an individual wants to apply for RPLS but does not have a four year degree. This individual has been a SIT since 2006, signing up in 2001. When he applied for and his SIT the statute did not require a degree, though he didn't take the SIT Exam until 2006. The Board, with guidance from Mrs. Nancy Fuller, decided that the individual should be permitted to apply to take the RPLS exam. Board Member Garcia motions to allow the individual to apply. Board Member Foster seconds and the motion carries.

This concluded Mr. Hodde's report.

d. LSLS Examination Committee

Mr. O'Hara, Committee Chair, reported that later in the month of October, two individuals will sit for the LSLS examination.

e. Continuing Education Committee

The committee chair, Mr. Paul Kwan, addressed the recent prevalence of internet courses and his apprehension about them. He proposed that the courses be audited by the committee members more often to assure their suitability. Mr. Kwan was also concerned about the knowledge of the professors. He said he will be looking into it closely.

Mr. Kwan then called for an update of the home study course offered by the Board because the Board rules are in transition.

Mr. Kwan went through the courses applying for approval from the Board and offered his recommendations (detailed document attached). Mr. Jerry Garcia offered a motion to accept the recommendations of Mr. Kwan. The motion was seconded by Mr. O'Hara and carried.

This concluded Mr. Kwan's report.

f. Oil Well Issues Committee

Mr. Hodde stated there is nothing to report.

g. Legislative Committee

Mr. Bill O'Hara, Committee Chair, began with an overview of the four draft legislations that TSPS is proposing. The first amends 1071.256a to allow written examination by computer. The second amends 1071.452a to allow for a maximum of \$25,000 for multiple violations of a single rule in a single case. The third draft violation accepted by the TSPS Board adds section 1071.5015 to provide for the temporary suspension of a certificate or license. The fourth adds a section giving the Attorney General, or a district, or county attorney, the authority to bring an action in district court to recover a civil penalty for engaging in activity without required certificate or license, in effort to stop practicing without a license.

Mr. O'Hara noted that there is discussion about bringing Photogrammetrists under the Board licensing authority, pursuant to the NCEES Model Law. Both communities are in favor of the merge.

Mr. O'Hara adds that there has been progress made by TSPS in defining services that are taxable and nontaxable. A legislative summary of efforts made by TSPS since 1995 has also been written.

This concluded Mr. O'Hara's report.

h. Complaint Review Process Committee

Mr. Kwan presented plans for a draft of a complaints policy manual discussed specifics of the policy that the committee is working on.

This concluded Mr. Kwan's report.

i. Task Force on Registration of Photogrammetrists, Mappers, and GIS Professionals

The committee chair, Mrs. Mary Chruszczak, reports that the GIS community is not interested in being licensed with the State, while the Photogrammetrists are. The Board is called to make the underlying delineation between the products of a surveyor and the product of the GIS community. Other states have merged the societies under the model law. The conclusion is a joint effort between communities so that all educative needs are met. Other states have collaborated with their Board. Mrs. Chruszczak added that in 2004, the Board adopted a GIS product statement. She offered that a good example might be the rule adopted by the State of Rhode Island. She thanked members of the task force for their efforts in fostering the round table conversations and providing documentation.

This concluded Mrs. Chruszczak's report.

The Board revisits the Complaints Report presented by Mr. Estrada.

Complaints

Mr. Estrada reviews the situation behind the complaints 12-52 through 12-55. No violations were found by the Investigator. His recommendation was to dismiss these complaints. Mrs. Chruszczak offered a motion to dismiss, seconded by Mr. Childress and carried.

Mr. Estrada next discussed complaint 10-53 stating that the surveyor did not locate all the monuments. The Investigator found the surveyor in violation of Board rules. A request has been made for an Informal Settlement Conference.

6. Correspondence

There is nothing to report.

7. Other Business

There is nothing to report.

8. Next Meeting Date

October 27th is day of the exam. The Board discusses when the proposed rules will be ready to present for publication, with Friday, December 14th being the earliest possible meeting date. Mr. Childress offered a motion to have the next Board meeting on that date and the motion carried.

9. Questions/Comments from the public

Mr. Garcia thanks the staff of the Board Office for the organization of the meeting and the office.

10. Adjournment

The meeting was adjourned at 4:33 p.m.