

MEETING MINUTES
TEXAS BOARD OF PROFESSIONAL LAND SURVEYING
12100 Park 35 Circle, Bldg. A, Suite 172
Austin, Texas
December 14, 2012

1. Call to Order

The Board meeting was called to order at 9:03 am by Chairman Greg Smyth. Present were Jon Hodde, Vice-Chair, Board members Bill O'Hara, Paul Kwan, Mary Chruszczak, Nedra Foster, Robert Price Executive Director Marcelino A. Estrada, and Assistant Attorney General Nancy Fuller. Absent were members James Childress and Jerry Garcia.

2. Introduction of the public and public comments.

The Board recognized the absence of surveyor Jerry Goodson who passed away in October.

Curtis Strong, TSPS president, thanked the Board for its work over the year and introduced the new liaison to the Board, Jerry Lehew.

3. Approval of the October 11th meeting minutes

The Chairman presented to the Board the minutes of the October 11, 2012 Board meeting for approval. Revisions were recommended and noted. Board Member O'Hara moved to approve the minutes with revisions and Board Member Hodde seconded. The motion carries to adopt the minutes. Board Member Bob Price abstained because he was not at the October 11, 2012 meeting.

4. Directors Report

a. Budget

Mr. Estrada provided an overview of the budget for Fiscal Year 2012 to date. He notes that the Board has no unforeseen expenses in the immediate future. Board Member Chruszczak asked if there was a different format for delineating the fiscal data and Mr. Estrada said that that format was unavailable.

b. Demonstration of the new website

Mr. Estrada and staff provided a live-demonstration of the revised website. The site is now under the complete control of the staff so updating information can happen in real time. The office intends to go live within the coming weeks. Mr. Estrada mentioned two aspirations for the website: a video about surveying and a campaign to collect pictures from the field submitted by the surveying community to post on the separate pages of the site.

c. Status of the Rule Changes

Mr. Estrada stated that the goal of the office was to have the proposed rule changes published in the register by the time of the December meeting. However, the Secretary of State's Texas Register informed our office that the preambles needed to be reformatted. He described some of the changes that Nancy Fuller had to make to the documents in order to publish the rules. Mrs. Fuller then updated the Board on which rules have

finished preambles and which are still being worked on. She also explained the rule numbering format requirements. Mentioned as well was the sorting through the rules as proposed amendments versus proposed repeals. Mrs. Fuller thanked Mr. Gilley, Mr. Estrada, and the Board staff for their help. Board Member Price, speaking for the Board, also thanked the staff for their work and Ms. Fuller.

d. Draft of Section 1070.2541

Mr. Estrada brings to the Board, pursuant to the Board's charge, new legislation being proposed providing surveyors with medical issues whose license has lapsed the opportunity to be reinstated if they meet certain requirements. He described the situation of a surveyor whose license had expired due to illness and had written the Board requesting reinstatement. The license had been expired two years and in order to be reinstated as a registered land surveyor, he would have to reapply as a SIT and restart the entire process. Board members discussed possible stipulations placed on the ability to be reinstated as a professional surveyor and decided that the medical issues be the surveyor's exclusively, that they have at least 15 years' experience being an RPLS, that there be a maximum of two additional years after a lapse. Investigator Gilley then brought to the Board a case of a surveyor asking for an extension, due to family illness, to get his CEUs in order to renew his license. He and the Executive Director found no authority under the statute. Mrs. Fuller added that there was a possibility to add that authority to this proposed legislation. The members expressed a need to evaluate each case because there are many devastating scenarios possible to affect a person's professional life. Mr. Estrada clarified the language being added to the proposed bill. He added that the next step will be to get a legislator to sponsor the bill.

e. Request for Open Record Decision

Mr. Estrada informed the Board members that a Public Information Act request had been submitted to the Board for a complaint file that was still in process and not yet concluded. Mrs. Fuller explained that the statute provides a confidentiality clause to the Board in the case of an open complaint. The clause states that if a complaint is deemed frivolous it is no longer public record. She explained that because a complaint is deemed frivolous only after it has been reported to the Board for final decision, an open complaint falls within the bounds of the clause. The requester of the information, however, was of the opinion that if the Executive Director and the Board Investigator found merit in the complaint, even during its investigation or processing, that there would be no way for the complaint to be found as frivolous. Mrs. Fuller explained that the final word on the merit of a complaint does not lie with the Director or Investigator; it lies with the Board. Mr. Estrada said that he sent an open records request to the office of the Attorney General seeking an opinion on whether the information within the open complaint file is public record. The Office of the Attorney General is required to respond to the letter with a ruling within 45 days. Mrs. Fuller added that the pending ruling will grant further clarification on the Board's authority in dealing with future Public Information Act requests.

f. Audit from the Department of Public Safety

The audit was held in order to evaluate the agency's handling of documents relating to background checks. The office passed the audit in good standing. Mr. Estrada stressed that the auditor was satisfied with the agency's background check document handling.

This concludes Executive Director Estrada's report.

The Chair called for a recess at 10:02.

The Meeting was called back to order at 10:18.

g. Complaints

Before Mr. Gilley presented the recently closed complaints listed included in the Board meeting work book, he addressed the matter of confidentiality in open complaints. He explained that, while waiting for the opinion to return from the office of the Attorney General, all he has left to report to the Board are the complaints that have been dismissed. He also addressed the question of what information the agency is permitted to share with complainants. Mr. Gilley then proceeded to present a brief description of the list of recently closed complaints.

- Complaint 11-16:
Surveyor alleged to mislocate an easement. Investigation showed that the surveyor was doing a survey for a proposed easement. The complainant took the position that the surveyor was trying to create the easement. The Investigator found instead that he was just “doing his job”. No rule violations were found.
- Complaint 11-19:
The complaint was dismissed because the file has been lost.
- Complaint 11-25:
Complaint was opened in the name of the Board. The subject surveyor met with the Complaint Review Panel and agreed to place license on inactive status. Because of this decision made on the part of the surveyor, the panel agreed to dismiss the complaint.
- Complaint 11-33:
Complaint was deemed outside the jurisdiction of the Board so it was dismissed.
- Complaint 11-36:
The complainant wanted a copy of an elevation certificate that the subject surveyor would not grant. Investigation showed that the subject surveyor no longer worked for the subject firm and the records were lost. The Board could take no further action due to lack of documentation so the complaint was dismissed.
- Complaint 11-39:
The complaint was filed alleging that the subject surveyor trespassed on the complainant’s property. As trespassing is outside the jurisdiction of the Board, the complaint was dismissed.
- Complaint 11-40:
Complainant alleged that the subject surveyor was taking too long to get a plat approved with the city. The investigation found no rule violations.
- Complaint 11-41:
The complaint was rooted in a boundary dispute. As boundary disputes are outside the jurisdiction of the Board, the complaint was dismissed.
- Complaint 11-43:
The complainant alleged that the subject surveyor staked the line for a fence in the wrong place. Investigation showed that the surveyor did stake in the wrong place. When the surveyor was made aware of the mistake they paid to have the fence relocated in the proper place and the complainant was satisfied.
- Complaint 11-45:
The complaint was filed because the subject surveyor could not provide copies of the previous surveys. The investigation showed that the surveyor was having computer issues. When the issues were cleared, the surveys were provided to the complainant. The complainant was satisfied with this so the complaint was dismissed.

- Complaint 11-47:
Complainant was insisting that the subject surveyor drive an iron rod to mark the front corner of the property. The front corner however fell inside a side walk that was protected as a historical landmark in the city of Tyler. As setting an iron rod in that location was not permitted, the surveyor set reference monuments. No rule violations were found.
- Complaint 11-48:
The complaint was filed but no supporting documentation was provided by the complainant. The Investigator tried to contact the complainant to request the information and was unable to reach them. The complaint was dismissed.
- Complaint 12-05:
This complaint is not dismissed. The complaint resulted in an Agreed Order with a reprimand and fine of \$7500. The Board has approved the order.
- Complaint 12-11:
The complainant alleged that the subject surveying firm was permitting an unlicensed person to provide surveying services. The agency had already had dealings with this firm and the firm had corrected its practices. So, the complaint, as already having been taken care of in the past, was dismissed.
- Complaint 12-16:
The complaint was rooted in a boundary dispute. As boundary disputes are outside the jurisdiction of the Board, the complaint was dismissed.
- Complaint 12-17:
This complaint is not dismissed.
- Complaint 12-19:
This complaint is not dismissed.
- Complaint 12-26:
The complainant alleged that the subject surveyor had not provided a survey. The investigation showed that in fact the survey had not been provided. Instead a working sketch was provided as the subject surveyor was waiting on additional information. When the information was obtained, the survey was completed. No rule violations were found so the complaint was dismissed.
- Complaint 12-39:
The complaint was filed alleging that the subject surveyor was falsely advertising services. The investigation found no rule violations in the advertisement. The complaint was dismissed.
- Complaint 12-44:
The complaint was filed because the subject surveyor had not finished a survey. In the process of the investigation the survey was finished and provided to the complainant at no cost. The complainant was satisfied with this and the complaint was dismissed.
- Complaint 12-58:
The complainant alleged that the subject surveyor was taking too long to complete a survey. The survey was completed during the course of the investigation and the complainant was satisfied.
- Complaint 13-01:
The complainant alleged that the subject surveyor was unfairly copying his work. The investigation showed that though the two surveyors surveyed the same property, the subject surveyor had performed additional work. The complaint was dismissed.

Mr. Gilley informed the Board that there are approximately 10 notifications being prepared to be brought before the Board. An Informal Settlement Conference is being requested in the case of one complaint. The Board members Mr. Gilley requests sit in the conference are the same that sat on the Complaint Review Panel that dealt with the complaint. He stated that no other Board member would be appropriate under the circumstance. Mr. Smyth asked Mr. Gilley for an outline of the flow of a complaint in order to understand what role the Board members play. Mr. Gilley explains that the Board members are somewhat isolated from the process. He continues with a general overview of the complaint process explaining that when a complaint comes in that the surveyor is notified and forwarded all subsequent documentation on the matter. Mr. Gilley, as Board Investigator, when having received the response to the complaint from the subject surveyor, compares the complaint and response as a first step of his investigation. Then he will contact both parties. Mr. Gilley then makes a determination as to whether there are rule violations present. When this determination is made, he forwards his report to the Executive Director. At that time, the subject surveyor is notified of the violations and the penalties for them. In cases that have the propensity to end up contested, or that contain major or multiple violations, a Complaint Review Panel is formed consisting of two Board members (one surveyor and one public member). Mr. Gilley adds that the members sitting on the panel are then conflicted out of the final judgment of the complaint. The identities of the subject surveyors of complaints are kept confidential with the exception of the Executive Director, the Board Investigator, and the Complaints Administrator. Mr. Gilley added that even the information that the agency previously would forward to the complainant is being questioned (and contingent upon the previously mentioned Attorney General decision). Mr. Gilley then referred to Ms. Fuller for further explanation of the fact that the Board members must stay unaware of identities of persons that are the subjects of complaints. She explained that the statute sets procedure this way to preserve the objectivity of the members as final judges of the complaints. Chairman Smyth asked what part the Board members play if the complaint is not to be contested. Mr. Gilley explained that the Board has the authority to deviate from the penalty matrix. Mr. Gilley then asked Ms. Fuller if it is necessary for him to submit dismissed complaints to the Board, and in which format. She then explained that the statute provided 20 days for a complainant to contest the decisions of the staff and request the Board reconsider the complaint. Mr. Gilley then asked if a request is so made, is it necessary to bring it to the whole Board. Ms. Fuller says that administering that request is a matter of policy and not statute. She added that the final decision on complaints lies ultimately with the Board. Mr. O'Hara then asked if the notification of the agency's decision has been sent to the complainant, how would the Board overturn or change it. Ms. Fuller answered that the Board has the authority to overturn the agency decision and hence overrule the notification that was sent. Ms. Fuller said that the Board staff should be trusted to investigate and adequately advise the Board. She went on to say that after the 20 day lapse after notification is sent to the complainant, the Board Investigator is permitted to send the written report for a complaint to the Board members for review. Board member Price asked if there is a need for formal action to be taken on the complaints listed as dismissed. Ms. Fuller answered no. Mr. Price asks of Mr. Gilley which complaints that were on the list of dismissed complaints are not dismissed. Mr. Gilley repeated the complaint numbers that have not been closed. Mr. Price then asked about the statutory authority of changing a complaint to frivolous. Mr. Gilley then explained the statute. Mr. Price moved that the Board accept the report of the Investigator and consider the proposed dismissed complaints as closed as recommended. Board member Chruszczak seconds the motion. The motion carried.

Mr. Gilley then presented the Agreed Orders that have been submitted and signed by the subject surveyor in the complaint.

- Complaint 10-53

The subject surveyor made a mistake on a survey. When he realized that there had been a mistake on his part he withdrew from employment and charged no fee. An Informal Settlement Committee was formed, including Board member delegate O'Hara, Board member Childress, Executive Director Estrada, and Board Investigator Gilley. The surveyor agreed that the mistake was on his behalf and agreed to a reprimand and additional Continuing Education Units required in order to renew his license for the coming year. Mrs. Foster moved that the Board accept the recommendation and Agreed Order submitted by the Investigator. Mr. Price seconded the motion. Mr. O'Hara abstained. Motion carried. Mr. Gilley then identified the subject surveyor as Jerry Wilke, RPLS number 4724.

- Complaint 12-10

The complaint alleged that the subject surveyor was illegally practicing law. At the time of the investigation the Board was in possession of a letter from the Unauthorized Practice of Law Subcommittee of the State Bar that confirmed that the surveyor was in fact practicing law. An Informal Settlement Conference was formed, including former Executive Director Frank Ditucci, Board member Childress, Board member Chruszczak, and Board Investigator Gilley. During the conference, the attorney for the subject surveyor demonstrated that the subcommittee that wrote the letter alleging that the subject surveyor was practicing law was not able to make that determination. Because the letter was the only finding the Board had to support the allegations, the conference concluded that an AVC with the agreement that the surveyor would refrain from offering to provide services outside the scope of a professional land surveyor, unless otherwise qualified, would suffice. Mr. Gilley recommended that the Board accept the signed Agreed Order. Board member Kwan moved to accept. The motion was seconded. Mr. O'Hara asked if the penalty was still enforced and Mr. Gilley said no. Mrs. Chruszczak abstains. Motion carries.

This concluded Mr. Gilley's report

5. Committees (*NOTE: Committee reports do not follow the agenda.)

a. Complaint Review Process Committee

Chairman Smyth asked Board member Kwan to give his report on the Complaints Process Committee. Mr. Kwan, Committee Chair, informed the Board of the committee's members: Mr. Childress, Mrs. Chruszczak, and Mr. Hodde. Mr. Kwan then presents a flow chart outlining the complaints process to the Board. The committee proposed a "preemptive strike" method of enforcement when it comes to rule violations; the necessity to catch individuals before they violate the rules. The first item on the flow chart includes a proposal to stop combining complaints under one number. There should be a complaint for each piece of property and each complainant. Mr. Kwan mentioned the necessity to charge both the subject surveyor for violations and also the relative firm. Mr. Gilley added that there should be a change in rule language. The third item on the flow chart lays out a time line that the committee recommends should be strictly followed. Item four on the flow chart addresses who is to have access to the complaint information. Item five includes the penalty matrix. Item six proposes that the identities of the respondents in complaints be published by the Board as it sees fit. This, the committee proposed, will deter rule violations within the community and to fully inform the public of the history of both the surveyors and the firms. Mr. Kwan then described one exception to lodging a complaint per survey against a surveyor and that is in the case that a surveyor/firm lets their license expire and still practices. In this case the Board will

open one complaint against all the surveys completed during the expiration. Investigator Gilley clarified by saying that the complaint will hold separate administrative penalties per violation/survey, yet not have the necessity to open multiple complaints. He continued saying that the exception should officially be known as practicing with an expired license.

This concluded Mr. Kwan's report.

- b. Executive Committee
Chairman Smyth said there was nothing to report.
- c. Rules Committee
Chairman Smyth said there was nothing to report.
- d. RPLS/SIT Examination Committee
The Committee chair, Mr. Hodde, informed the Board members of the number of applicants taking the exam. Mr. O'Hara moved to certify all the individuals that passed the SIT exam. Mr. Kwan seconded. Motion carried. Mr. Hodde asks for a motion to register the individuals that successfully passed the RPLS exam. Mr. Kwan offered a motion to register, seconded by Mr. O'Hara. Motion carried. The chairman asked if these items could be approved by the executive committee rather than the whole Board. Mr. O'Hara asked when the information about the numbers have passed would be available to the Board. It was confirmed that the information is available far sooner than the Board can usually meet and that starts discussion about whether the Board can yield to the Executive Committee to make such certifications. Mr. Kwan said that when he was certified he was the first Chinese man to become an RPLS in the state of Texas. He mentioned that due to the actions just taken by the Board, they had just registered the first Vietnamese woman RPLS in the state of Texas. Ms. Fuller addressed the question of the executive committee certifying the new applicants. She said that in order to take final action on an item, such as certifying and registering individuals, there would have to be a formal meeting subject to the Open Meetings Act. She said that the members of the executive committee would be sufficient but that they would have to meet versus speak over the phone. The Chairman decided that the Board should continue to meet to make the certifications and registrations. Mrs. Foster added that the licensing of individuals does deserve due recognition.
- e. Mr. Hodde next discussed the committee members of the Item Writers, Cut-off Score and QAQC committees. Al Hargraves is to move to the Items Writers Committee and Colleen Johnson is to move to the Item Writers from the Cut-Off Score Committee. Mr. Kwan moved to accept these moves/appointments. Mr. O'Hara seconded and the motion carries.
- f. Oil Well Issues Committee
Mr. Hodde presented figures regarding open permits. To date, 21,022 permits were open, 1586 alone in November. In 1960, there were 15,601 permits opened and while in 1981 there were 48,000 permits opened. The number opened for 2012 is approximately the same amount as in 2011.

This concluded Mr. Hodde's reports.

Chairman Smyth mentioned that there will be a change in committee heads. Mr. O'Hara will chair the Oil Well Issues Committee and Mr. Hodde will chair the Legislative Committee.

- g. LSLs Examination Committee
Mr. O'Hara, Committee Chair, described the capacity of a Licensed State Land Surveyor. He delineated their role and what they are responsible for in the profession of Land

Surveying. Mr. O'Hara mentioned those that LSLs community had recently lost: Don Hickey, of Brookes Baker Surveying, and Jerry Goodson. He said that becoming an LSLs is a huge accomplishment. Mr. O'Hara then presented the first certificate to Dave Klotz. Mr. Klotz makes the fifth LSLs on staff at the General Land Office. Pictures were taken with the new registrant and the LSLs Exam Committee and the plaque was awarded. Then Mr. O'Hara presented the second certificate to William Robert Wolfram, III. The plaque was awarded and pictures were taken.

That completed Mr. O'Hara's reports

h. Continuing Education Committee

The committee chair, Mr. Paul Kwan, addressed the recent submissions of course approvals (details included behind the minutes document). Mrs. Foster moved to accept the courses as approved with changes by Mr. Kwan and Mr. Hodde seconds. The motion carried.

Mr. Kwan presented a request from Mr. Terrance Mish to add "The American Surveyor" to the list of Board approved publications. Mr. Kwan said that in 2010, magazines of this type were not approved because they are trade magazines rather than peer-reviewed and edited publications. He recommends that Executive Director write a letter refusing the request. Mr. Price moved to accept the recommendation of Mr. Kwan. Mr. O'Hara seconded. Mrs. Foster then asked about another publication, with advertising, and Mr. Kwan confirmed that the publication is also not on the list. The motion carries.

This concluded Mr. Kwan's report.

i. Legislative Committee

Mr. Bill O'Hara, Committee Chair, began with an overview of what he presented in the last Board meeting. He said that there was nothing else to report from his committee. A bill, House Bill 87, was introduced into the legislature that impacts licensing Boards. It's an effort to remove some of the regulation on occupations.

This concluded Mr. O'Hara's report.

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

Mrs. Chruszczak, Committee Chair, says that there is nothing to report from her committee.

6. Correspondence

Mr. Estrada presented a letter to the Board asking for a \$200 reduction in registration fees due for senior citizens. The Board has tabled this issue many times before and, after some discussion, Mr. Kwan moved to reject the request. Mr. O'Hara seconded, and the motion carries. Mr. Price asked Mr. Estrada to respond to the requestor.

7. Other Business

The Chairman called for a motion to rescind the decision made last meeting permitting an SIT with no four year degree to apply for the RPLS exam. Discussion followed about how exactly to do this. Investigator Gilley offered that the action could be taken in two motions: one to reconsider the action and another to rescind. The first motion was made by Mrs. Fuller and seconded by Mrs. Chruszczak, with Mr. Price abstaining. The motion carries. Board members discussed which part of the statute addresses this issue, confirming section 1071.254 of the Act. Mrs. Fuller says that it was her understanding that the Board was given an interpretation of the statute that said that the SIT would be eligible to apply for the RPLS exam if they were an SIT before the changing of the statute took effect, January 1, 2003 when in fact the statute states that

the SIT must have applied for the RPLS exam before the change. She adds that there was a window of time set forth by the legislature to allow applicants time to adjust their application. She suggests that the Board stick to the “plain language” of the statute. Mrs. Foster motions to rescind the action taken at the last Board meeting in dealing with the case of the SIT applying for the RPLS exam without a four year degree and Mrs. Chruszczak seconds. Motion carries.

8. Next Meeting Date

It is proposed that the next meeting be held March 8, 2013. Investigator Gilley requests that the Board excuse the absence of Board member Garcia and Board member Childress.

Questions/Comments from the public

A surveyor stood to voice his disapproval of the statute requiring the four year degree of applicants and the actions of the Board. He suggested that there be an addition to the rule regarding an applicant not able to get a four year degree.

Another individual stood to say that he agreed.

The previous individual stood again on the same comment. Board member O’Hara reminds the individual that there was a great amount of time and discussion spent on the topic. He also reminds that the degree requirement is a law.

Another individual stood to talk about the value of mentoring. He also questions the four year degree requirement due to the “lack” of degree programs being offered by the state of Texas.

Another individual stood to agree with the “lack” of degree programs in Texas. He reminds the Board that the state had degree requirements decades before and it was abolished due to there being no degree programs offered in the state.

Board member Foster moved to excuse Mr. Price from the October Board meeting and Mr. Garcia and Mr. Childress from the current meeting. Mr. O’Hara seconds and the motion carries.

9. Executive Session – SOAH Case

The public meeting is now in recess pursuant to section 551.008 of the Texas open Meetings Act. The public left the meeting room at 1:05 pm and all members present, with the exclusion of Member O’Hara, remained.

The public meeting reconvened in open session at 1:55 pm. No actions were taken in the closed meeting.

10. Adjournment

There being no other business, the meeting was adjourned at 2:00 pm.

The meeting was adjourned at 1:05pm.