

MINUTES
TEXAS BOARD OF PROFESSIONAL LAND SURVEYING
12100 Park 35 Circle, Bldg. A, Suite 172
Austin, Texas
March 1, 2013

Call to Order, Introductions, and Comments from the Public

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, Robert Price, James Childress, Executive Director Marcelino A. Estrada, and Assistant Attorney General Nancy Fuller. Absent were members Nedra Foster and Jerry Garcia.

Curtis Strong, TSPS president, expressed appreciation to the Board for holding the Public Hearing on the proposed rules on February 28, 2013 and for considering the comments made at that time. Mr. Strong invited the attendees of the meeting to become members of TSPS.

1. Approval of the December 14th meeting minutes

The Chairman presented to the Board the minutes of the December 14, 2012 Board meeting for approval whereupon motion duly made, seconded and unanimously approved, the minutes were adopted.

2. Directors Report

a. Budget

Mr. Estrada provided an overview of the budget for Fiscal Year 2013 to date. He noted that the Board office has expended half of its budget and presented a comparison of the current fiscal year to the previous fiscal year.

b. Open Records Decision

The agency sought a letter ruling from the Attorney General's office regarding Public Information Act requests of open and ongoing complaints. Though, in Mr. Estrada's opinion, the AG's office didn't have a good understanding of the TBPLS complaint process, the ruling determined the contents of the complaint file were not confidential. Ms. Fuller elaborated on the complaint process and why she too believed that the AG's office potentially made the wrong decision. Mr. Estrada asked Ms. Fuller to explain the difference between a "letter ruling" and a "decision" from the Office of the Attorney General; the letter ruling being what the agency received. She explained that an open record decision is like an Attorney General's opinion but only in the open records world and carries weight. A ruling, often requested by a governmental body, asks questions about the application of different laws related to the confidentiality of information. The members discussed the options available to the agency for reversing the letter ruling and the unsuitability of releasing the information of an open complaint to a member of the public.

c. Proposed Bills (Draft of Section 1070.2541)

Mr. Estrada reviewed the subject matter of and said that a state Representative had volunteered to sponsor it in the legislature, with some changes. Mr. O'Hara explained

that TSPS had concerns about the bill. Chairman Smyth added that he understood that TSPS was neither behind, nor against, the proposed bill and that they were not going to have time to take the bill before their Board.

d. Other Legislation

Mr. Estrada presented five legislative bills for which the Board office was required to file a Legislative fiscal note. None of the five bills would add to the agency's expense should they pass. Mr. Estrada clarified, for Ms. Chruszczak, House Bill 661 (presented by TSPS) explaining there was concern that the language in the current statute was not clear enough to permit the move to computer based testing for the SIT exam in January. Member Hodde adds that it was his understanding that the Legislature would not be pursuing this bill this session. He continues that House Bill 87 bill is being pulled to be rewritten. TSPS has offered to help with the rewrite.

e. NCEES Computer-based testing

Mr. Estrada presented computer-based testing information gathered while attending the NCEES Presidential Assembly in Atlanta. He described the conditions examinees would experience and security measures that will be in place at the testing facilities and explained the time line on which the tests will be offered. The test time will be reduced from eight hours to six with a ten minute tutorial, one 25 minute break, and, at the end, a five minute survey (additional breaks being taken out of overall allotted test time). Mr. Estrada explained that the system will monitor for "bad pairs" on exams, assuring that the examinee will not get the same type of question more than once on the exam. The time needed to grade the exam and report the grade to the examinee will be greatly reduced to 24 hours. The testing facilities will compile statistics on the exam and its questions. Initially the exam will cost more to take and administer but that that projected cost will decrease over time. Due to the Board's Act, the Board may not be able to use the "automatic" application option for SITs. The Board will still have to approve those wishing to take the exam. Mr. Estrada mentioned that NCEES is seeking volunteers to test the Professional Surveyor exam.

f. NCEES Annual meeting August 2013

Mr. Estrada informed the Board that the annual NCEES Meeting is being held in San Antonio this year and is being hosted jointly by TBPLS and the Board of Engineers.

g. Surveyors' Week, March 17-23, 2013

Mr. Estrada announced Surveyors' Week was March 17-23 then presented a NCEES video to the Board and meeting attendees dealing with the public's perception of the profession of Engineering and Surveying.

As a side note, Mr. Estrada mentioned and demonstrated new bookmarks added to the Act for easier navigation. The meeting attendees then recognized the new website with a round of applause.

This concluded the Executive Director's Report.

3. Complaints

Chairman Smyth explained that Investigator Gilley could not attend the meeting so Mr. Estrada would take his place in updating the Board on complaints.

a. Closed Complaints

- i. 11-38: Complaint opened in the name of the Board. Surveyor was found in violation of three Board rules. A reprimand and fine were issued. After the Informal Settlement Conference, the complaint was dismissed.
- ii. 11-46: Surveyor failed to survey the complainant's property as asked. Complainant wanted a survey that did not show a present conflict and the surveyor declined to create such a document. Investigation showed no violations and complaint was dismissed.
- iii. 12-15: Complainant filed the complaint against a firm over the level of service and professionalism. The Board opened a new complaint (12-15) against the surveyor due to the fact that a survey was filed with a title company but was not signed. Violation of Board rule 663.51 was found in the investigation. After an ISC, an Assurance of Voluntary Compliance was signed.
- iv. 12-21: Complaint filed because the subject surveyor recognized an iron rod as a common marker. No violations were found in the investigation.
- v. 13-19: Complaint concerned the location of the property of the complainant. Multiple surveys were performed. It was determined that the subject surveyor, who is deceased, was found in violation. The current Board rule states that when an RPLS is found in violation of Board rules, the firm is found in violation as well, but this rule did not exist in 2003 when the violations occurred. Thus the Board could take no further action and the complaint was dismissed.
- vi. 13-20: The subject surveyor collected a fee but did not complete the requested work. After the investigation, the surveyor returned the fee to the complainant and the complaint was dismissed.

b. Open Complaints

Two Informal Settlement Conferences are scheduled for March 6, 2013 and the agency has had no requests for any of the closed complaints to be marked as "frivolous".

This concluded the report on complaints as given by Mr. Estrada.

The Chair called for a break at 10:09 a.m.

The meeting reconvened and was called to order at 10:32 a.m.

4. Committee Reports

a. Executive Committee Report

The Chairman, Mr. Smyth, had nothing to report.

b. Rules Committee

Chairman Smyth notified the public in attendance that the suggested changes heard at the previous public hearing will be considered by the Board.

c. RPLS/SIT Exam Committee

The Chairman, Mr. Hodde, reported the number of applicants approved to take each exam in April 2013: 14 taking the Reciprocal Exam, 29 taking the Legal Exam, 41 taking the Analytical Exam, and 64 taking the SIT Exam. He also thanked Mr. O'Hara for his assistance with reviewing applications this time.

d. LSLS Exam Committee

The Chairman, Mr. O'Hara, reported the number of applicants approved to take the LSLS exam in April 2013 was three. He added that he will soon be selecting the exam questions and submitting them to Ms. Foster and Chairman Smyth for approval, mentioning the help of Jo Ann Hodges, who recently retired from TBPLS, and current staff in assisting with compiling the exam.

e. Continuing Education

The Chairman, Mr. Kwan, gave his recommendation to approve certain submitted CE courses. Mr. O'Hara moved to approve Mr. Kwan's recommendations, seconded by Ms. Chruszczak. Motion carries.

f. Oil Well Issues Committee

The Chairman, Mr. O'Hara, reported on oil/gas statistics he received from the Railroad Commission regarding new and past permit numbers, production numbers, and total well completions. He summarized that the numbers represent an overall increase for the industry. He then discussed the areas most affected by the oil/gas industry, mentioning that it is a major part of the Texas economy and the surveying community.

Chairman Smyth presents Bill Merten as the newly appointed member of the Board and Member Hodde as the newly appointed Chair.

5. Correspondence

There is no correspondence to report.

6. Other Business

a. Request for reciprocity of Josh Burge

Mr. Burge addressed the Board to request licensing through reciprocity. His application to the Board was rejected for lack of four-year degree. He obtained his SIT in 2008 and is licensed in Mississippi (2009) and Oklahoma (2011) many years of experience. Chairman Smyth asks Ms. Fuller if the Act permits the Board to accept this applicant without a degree. Ms. Fuller explained that the Board has discretion in accepting an applicant under our reciprocity statute but the Act requires that the licensing requirements of the state the applicant is coming from must be "substantially equivalent" to the Texas requirements. The discretionary call, or decision, for the Board is determining if the licensing requirements of the other state are "substantially equivalent" to Texas. The Board does not have the discretion to waive registration requirements in other licensing situations like the discretion given in the reciprocity statute. Mr. O'Hara pointed out that Texas does not license through comity; we do not use the principle and practices exam that other states use. Mr. O'Hara expressed concern that allowing an individual without a degree to become licensed might open the door to others without degrees to use the reciprocity statute to become licensed in Texas. Mr. Kwan agreed, saying that it would mean the universities offering surveying degrees would lose the Board's support. Mr. Kwan moved that Mr. Burge's request be denied. The motion was seconded by Mr. O'Hara and carried unanimously.

b. Request for reciprocity of Andres Estrada

Mr. Estrada addressed the Board requesting waiver of the rule effective January 1, 2003 requiring candidates must have a bachelor degree. He is applying under Rule 661.41 and section 1071.259 of the Act. Mr. Estrada obtained an Associate in Applied Science in Surveying from University of Columbia which includes 25 hours in math and science, 9 hours in humanities and social science and 19 hours in engineering topics. Upon

graduation, he received a registered land surveying license in Columbia. He obtained his SIT from Arizona in 2007 and become registered in Nevada in 2010. Mr. Estrada would like the Board to determine if the Nevada requirements are substantially equivalent to the Texas requirements. Mr. Kwan asked Ms. Fuller if our statute would allow us to accept a license from out of the country, to which she replied it did not. The members agreed that the Nevada license is the only license that the Board can consider. Due to his lack of a four year degree, Mr. Kwan moved to deny the request, seconded by Mr. O'Hara. Motion carries unanimously.

c. Request from Terrence Mish to discuss approved publications for CE purposes

Mr. Kwan explains that trade journals do not use peer-review for its articles. They will publish whatever is submitted. ACSM journals do use peer-review and these articles should be approved for CE credit. If a surveyor writes an article and has another surveyor review what he has written, documentation can be submitted to that Board showing that a fellow surveyor or two has reviewed the article. They can then publish in trade journals. The Board web site lists the approved journals. Credit for the article is based on individual basis.

7. Future Agenda Items – Select next meeting date

Mr. Hodde moved to excuse Ms. Foster and Mr. Garcia who are absent. Mr. O'Hara seconded the motion and it carried. The Board then selected June 14, 2013 for the next meeting.

8. Review of Exam Material

Chairman Smyth asked Mr. Estrada to explain his concern about the agency mailing copies of exams for Board members to review as has been done in the past. Mr. Estrada was concerned that the exam would fall into the wrong hands before the exam was given. He requested that the Board review the exam in Executive Session. The Board decided to go into Executive Session to review the exam at the conclusion of the public portion of the meeting. Chairman Smyth then opened the floor for public for comment.

9. Comments from the Public

Gene Woods addressed the Board and requested an opinion regarding the validity of plats being submitted, accepted and filed of record by a registrant with an expired registration. What needs to be done to validate these surveys? When the registrant pays the late fee and renews his registration, is it retroactive? He requested further Board attention be brought to the matter. Mr. Kwan offered his personal opinion being that the surveyor would have to recertify the surveys. Mr. Childress expressed that this would be a subject of a complaint and noted that there is nothing on the face of the plat that would show the registrant's license was expired. Mr. O'Hara stated that since this was not on the agenda, the Board could not address it but promised it would be on the next meeting's agenda.

Mr. Woods also asked for clarification on the rule concerning the requirement of three required continuing education units covering the act and rules or ethics. He asked if the units could be carried over from a previous year or if it was required that they be newly acquired every year. The Board explained that it requires that a surveyor take three hours of continuing education units over the act and rules or ethics annually and not carry over those credits from the previous year.

Mr. O'Hara recognized Chairman Smyth for his 12 plus years of service on the Board, for the surveyors and the citizens of this state. Mr. Smyth said it had been a pleasure and an honor.

The Board adjourned to Executive Session at 12:47 p.m. to review the upcoming RPLS exam.

Chairman Smyth reconvened the public meeting at 2:13 p.m. No votes were taken during the Executive Session.

9. Adjournment

There being no further business, the meeting was adjourned at 2:15 p.m.

Attest

Jon Hodde, Presiding Officer

Marcelino A. Estrada, Executive Director