

MINUTES
TEXAS BOARD OF PROFESSIONAL LAND SURVEYING
12100 Park 35 Circle, Bldg. A, Rm. 172
Austin, Texas
June 14, 2013

Call to Order, Introductions, and Comments from the Public

The Board meeting was called to order at 9:06 a.m. by Chairman Jon Hodde. Present were Board members Bob Price, Paul Kwan, Bill O'Hara, Mary Chruszczak, Jim Childress, Bill Merten, Executive Director Marcelino A. Estrada, and Assistant Attorney General Nancy Fuller. Absent were members Nedra Foster and Jerry Garcia.

TSPS President Curtis Strong commented that the legislative session had gone well for TBPLS. He would like to see a round-table discussion with a panel of TSPS members, surveyors, and Board members to look at the future, in light of Sunset review in 2019. This is especially important in light of the way the Legislature would like to reduce the size of government.

1. Approval of the March 1, 2013 Minutes

Minor corrections were offered to the March 1, 2013 minutes. Member Price offered a motion to adopt the minutes as revised. The motion was seconded and passed unanimously. Member O'Hara also requested that the Executive Director distribute the minutes prior to the meeting where they will be approved so that members will have time to review them.

2. Director's Report

a. Budget report

Mr. Estrada provided members with a year-to-date financial statement showing a balance of \$167,875.44 left for the remainder of the year.

b. 83rd Legislature, Regular Session review

Two bills were introduced in this Legislature; one to give licensees whose license had expired due to a medical condition the ability to get their license back and another adding language to our statute that permitted computer-based testing, were pulled. HB 1188 and HB 798, which passed, were applicable to our agency but would not have a major impact.

Our budget was attacked on the floor during discussion of SB1. Had the proposed amendment been adopted, our budget would have been zeroed out. The proposal was pulled before consideration.

Mr. Estrada also reminded members about the upcoming NCEES Annual Meeting in San Antonio in August.

c. Public Information Act request, OR2013-08449

A second PIA request was filed with the Board regarding an open investigation. Mr. Estrada filed another request with the Attorney General for an Open Record letter ruling. Unfortunately, even after explaining the complaint process, the ruling received followed suit with the first ruling saying that the Board had to provide copies of the file to the requestor. The Board has the right to challenge the ruling in District Court. Member Childress moved that the next time a PIA request is received regarding a pending complaint that has not been fully adjudicated, the Board authorize Ms. Fuller to file suit in District Court for a declaration that those are not public records until the completion of the Board's investigation and a determination has been made by this Board. Mr. Price seconded the motion and stated that it would be derelict for this Board not to move forward on this issue because it sends a bad message to the citizens of Texas. Someone

would read the accusation that has not been adjudicated and consider it gospel truth and this would not be fair to the readers when they do not understand what they are reading. The motion was seconded and passed unanimously.

d. NCEES Annual Meeting

Mr. Estrada reminded Board members of the upcoming annual meeting in San Antonio and the need to register prior to July 12 should they wish to attend.

3. Complaints – Garey Gilley, Investigator

Mr. Gilley reported on complaints. Four complaints were dismissed because their issues were outside the scope of the Board rules.

Complaint 13-16. The surveyor prepared survey of platted lot. The field crew went to the property one day; the surveyor went to property owner the next day demanding payment. The owners noted there were no flags and the surveyor said he would take care of it later. When the property owners went to the city, city staff compared the survey to the recorded plat and there was no similarity. The surveyor did not respond to the notice of complaint. As such, Mr. Gilley had no guidance to notations that appeared on the survey report. The surveyor was cited for failure to respond, failure to provide proof of Continuing Education, failure to provide the Board with a current address, violation of the boundary construction rules and failure to set monuments. Compared to matrix, the surveyor could be subject to a reprimand and \$9400. The surveyor has history with us (signed an AVC in 1998, in 2004 paid restitution of \$1900 to complainant and paid a fine of \$250. He was required to take additional courses, but not required to pass the courses successfully.) The history shows that penalties have not worked. This time we are seeking a \$9400 penalty and revocation of license.

Complaint 12-23. An Informal Settlement Conference was held but there was no resolution reached. It is back in the hands of the attorney general and their attorney.

Complaint 12-25. Mr. Childress, on behalf of the Informal Settlement Conference committee (Mr. Estrada, Mr. Gilley, Mr. Hodde, Mr. Childress and Ms. Fuller), presented Complaint 12-25 which involved the surveying of 75 acres of a 250 acre tract. The surveyor ignored the senior call which resulted in an excess of 25 acres being added to the client's tract based on the client telling him where one of the property boundary's was located. The surveyor was found in violation of Rules 663.5(1), 663.16(a), 663.16(c) and 663.18(d). An Informal Settlement Conference was held and the surveyor agreed to a reprimand and an additional eight hours of continuing education over and above the required hours. The additional hours must be in boundary construction and must be completed between the date the Board approves the Agreed Order and the next Heart of Texas Boundary Retracement seminar. The ISC committee recommended acceptance of the agreement. Mr. Kwan moved to accept; the motion was seconded and passed unanimously. Committee members Mr. Hodde and Mr. Childress abstained from voting.

Complaint 12-51. Mr. Gilley reported that an Informal Settlement Conference was held the day before the Board meeting. Committee members were Mr. Estrada, Mr. Gilley, Mr. Kwan, Mr. Childress and Ms. Fuller. Mr. Kwan reported on behalf of the Informal Settlement Conference. The complaint concerned a surveyor practicing with an expired license. The surveyor did not respond to the Board in writing but did eventually call and speak with the staff. Examples of correspondence submitted along with the complaint showed the surveyor was unprofessional in responding to the person sending the email, who happened to be a City of Huntsville employee. The surveyor's license had been expired for seven months but during that time submitted plats with the City. After talking to the City and County, he submitted recertified surveys but did not revisit the property to ascertain that there had been no changes since the survey was performed. Violations identified were failure to respond to the Board, engaging in conduct that discredits the profession, and making a post-certification to facts on the ground of which he had no personal knowledge. The surveyor had already paid the late fees and renewed his license. The violations yielded a reprimand and administrative penalty of \$4,100. However, the committee felt the

surveyor was remorseful and recommends a reprimand, a penalty of \$1,600 with the remaining \$2,500 probated on the condition that the surveyor take an additional eight-hours of continuing education in ethics by December 31, 2013.

Mr. Price asked if there had been any discussion regarding the surveying products that were signed with an expired license. Mr. Kwan said that with the plats filed with the court house, the surveyor had complied with their requirements. There is no way to address the surveys done for private individuals. Mr. Hodde said that, in his opinion, the surveyor should have certified that he was re-signing the surveys due to an expired license but based on the prior survey date. Mr. Hodde noted that there was an agenda item regarding handling surveys performed during the time the individual's license was expired. The Board also needs to discuss a fine for each survey outside of having their license renewed or putting a total cap on the entire or each incident.

Mr. Kwan said that the surveyor had performed 50 surveys and 8 subdivision plats and asked if it would be fair to put a cap on 1,000 surveys or 50? Mr. Hodde said a maximum cap of \$25,000 or \$50,000 for an individual who had not renewed their license might be appropriate. Under the current matrix, the fine could be \$400,000 if hundreds of surveys had been performed but there would be no way the Board would collect that amount. Mr. Price felt that if the surveyor charged for recertifying while his license was expired, that would be a more serious matter.

Mr. Childress asked about the status of the survey. Is that survey void? Mr. Childress believed that the quality of the survey is still what it is. The Board would be creating more problems requiring the surveyor to go back and alter the plat. The surveyor should still face the consequences before the Board.

Mr. Kwan felt that the survey would still be valid. The surveyor should notify the client that the survey was performed under an expired license. Mr. Childress asked if one person did not receive a recertified survey, but their neighbor did, would that make the first person's survey inferior. Mr. Gilley asked if there was litigation, would the survey be permissible as evidence in court if the survey was performed with an expired license. Mr. Childress asked if having a current license affected the quality and accuracy. If one survey is recertified and one is not, does it elevate one survey over the other? Mr. Childress believed that the Board would be creating a greater problem for the public.

Mr. Price asked if, from the title company's perspective and issuance of a title policy, would the recertification create a cloud and therefore require an exception. Mr. Childress said it would be a disservice to the public to require the surveyor to recertify a survey performed under an expired license but the consequence should be only that surveyor answering to this Board.

Mr. O'Hara said he did not know how you could go back and undo the survey. The person with the expired license should answer to this Board. Mr. Childress said that the public needs to know it can depend on a product; once the product is completed, it causes problems to undo them.

Mr. Merten asked if the Board was in a round-about way validating the surveys by reprimanding the surveyor and going through the process. Mr. Childress said that once he pays his fees, it covers the surveys retroactively. Ms. Fuller said that this Board can only do so much and rather than get into altering recorded documents, the focus should be on the importance that you not practice without an expired license and why these professionals should renew your license. Once the problem arises, this Board cannot go back and undo those things and create unintended consequences of confusion and cloud, about which documents have priority.

Ms. Chruszczak moved that the Informal Settlement Conference committee's recommendation regarding Complaint 12-51 be accepted. The motion was seconded and passed unanimously. Mr. Kwan and Mr. Childress abstained from voting. Mr. Kwan said that the licensee was Joe Fuller of Huntsville.

a. Committee Reports

b. Executive Committee –Jon Hodde, Chair

i. Presentation to Greg Smyth and Jo Ann Hodgson

Recently appointed Chair Jon Hodde presented out-going Chair Greg Smyth with a resolution and a Texas flag that was flown over the Capitol. Mr. Smyth was thanked for his dedication and service to the Board. A copy of the resolution is attached to these minutes.

Chairman Smyth also recognized Jo Ann Hodgson upon her retirement after 15 years of service to the Board as Executive Assistant.

The Chair then called for a break at 10:07 a.m. in order for attendees and guests of honor to enjoy cake and coffee.

The meeting was reconvened at 10:40 a.m.

ii. Committee appointments

Chairman Hodde announced that Mary Chruzcak will serve as Chair of Rules Committee and will assist with RPLS Committee. Bill Merten will serve as Chair of Legislative Needs Committee.

c. RPLS/SIT Examination Committee – Jon Hodde, Chair

Regarding the exams, Chairman Hodde said that 32 examinees took the SIT exam, of which 13 passed. Two examinees are under investigation. Regarding the RPLS exam, 35 examinees took the Legal part, of which 25 passed; and 42 examinees took the Analytical part, of which 28 passed. Fourteen examinees took the Reciprocal exam and 10 passed.

Member O'Hara moved to approve the SIT candidates that passed the exam. The motion was seconded and passed unanimously.

Chairman Hodde then called for a motion to approve the 37 individuals that passed the legal, analytical and reciprocal exams. Member Kwan moved that these individuals be licensed as Registered Professional Land Surveyors. The motion was seconded and passed unanimously.

d. LSLs Examination Committee – Bill O'Hara, Chair

Mr. O'Hara stated that three individuals sat for the exam but none passed. The next exam will be in October 2013 and the Board will be selecting the exam at the next Board meeting.

e. Continuing Education Committee – Paul Kwan, Chair

i. Continuing Education Audit

In March, the Board performed a random audit of 25% of the licensees (611 individuals). Twenty-three individuals were just been licensed so they were removed from the audit. An additional 27 recognized they were late renewing and did so before the letters were mailed. In all, 561 letters were mailed out. Fourteen licensees paid a late-renewal penalty for not having earned CE credit and five never responded. Certified letters were mailed to the five and three responded. Of the remaining two, one cannot be located. Mr. Kwan believes self-auditing is working well. Mr. O'Hara asked if complaints would be opened against those that did not respond, to which Mr. Kwan answered in the affirmative.

ii. Approval of classes.

Mr. Kwan recommended approval of the courses submitted by HalfMoon. Mr. O'Hara moved to approve the classes based on Mr. Kwan's recommendation. The motion was seconded and passed unanimously. Mr. Kwan then recommended approval of the courses submitted by TSPS for their annual convention. Member O'Hara moved to approve the

TSPS courses and it was seconded and passed unanimously. Mr. Kwan recommended approving all classes submitted by McKissock except for the course “Water Rights”. Mr. O’Hara moved to approve the course by McKissock with the exception of the course “Water Rights”. The motion was seconded and passed unanimously. Mr. Kwan recommended approval of PDHpro courses except for the course “Texas Act and General Rules of Practice for Land Surveyors”. Mr. O’Hara moved to approve the courses as recommended by Mr. Kwan. The motion was seconded and passed unanimously. Mr. Kwan recommended approval of the TSPS Chapter meeting topics and the Individual Course requests except for Tim Pappas request titled “Cadastral Information Systems”. Mr. Pappas recommended 36 hours but Mr. Kwan suggested limiting to 16 hours. Mr. O’Hara moved to approve the courses as recommended by Mr. Kwan. The motion was seconded and passed unanimously.

f. Oil Well Issues – Bill O’Hara, Chair

Mr. Hodde explained that he and Mr. O’Hara attended a meeting with the Railroad Commission to discuss informally land grants, surveys and other questions they had. A two and one-half hour presentation was given and one outcome was that the Railroad Commission staff will speak with their director to set up a meeting with this Board to address items that should appear on oil and gas plats. It would also apply to pipelines as well.

Mr. O’Hara asked the audience how many were involved in surveying for oil and gas development. The Railroad Commission indicated that they are issuing 2600 to 2700 permits per month. In Texas, for May 2013, there were 2988 completed wells, between January and May of this year there were 10437 wells completed. In March 2013, there were over 50 million barrels of oil produced in Texas, over 570 million MCF of gas produced.

4. Other Business

a. Request to Return to Active Status

i. James Ferguson

Mr. Estrada reported that Mr. Ferguson had submitted his documentation for CE and his Return to Active status form. He had been inactive for two months.

ii. Stephen Godinich

Mr. Godinich was present at the Board meeting. Mr. Estrada explained that Mr. Godinich had moved to North Dakota but then received an offer in Texas and desired to return. He had gone inactive but submitted his form to go active and also submitted documentation on CE credits.

iii. James Jackson

Mr. Estrada said that Mr. Jackson also submitted similar documentation to Mr. Ferguson.

Mr. O’Hara moved that all three individuals be returned to active status. The motion was seconded and passed unanimously.

b. Discussion of status of surveys signed by surveyor with expired license

Mr. Hodde said that this item had been discussed previously.

c. George Griffith and Jerry Roberts – SIT and responsible charge requirement

Mr. Griffith made a presentation to the Board regarding “delegated responsible charge”. He related the story of a student that wished to become an SIT learned that she did not meet the Board’s requirement. The student found that her qualifications met California’s requirements

and obtained the SIT certification there. Texas recognizes SIT certification from other states so she was able to come back to Texas. Mr. Griffith says the problem is that in recruiting for classes in community colleges or doing mentorship for students preparing for the FS exam, the requirement is time consuming. He would like the Board to consider changing the wording in the statute.

d. Discussion of public comments and adoption of proposed rules published February 8, 2013

The Board discussed public comments received during the 30-day period after publication of the proposed rules on February 8, 2013 in the Texas Register. Each comment was addressed by the Board, with some changes adopted and incorporated into the rules. Adoption of the rules at this Board meeting would make them effective 20 days after adoption. Board members discussed making the rules effective closer to the next calendar year. Mr. Price moved that the Board table the adoption until the October Board meeting. The motion was seconded and passed unanimously.

Chairman Hodde asked for a motion to excuse Ms. Foster and Mr. Garcia, who were absent. Mr. Childress moved that Ms. Foster and Mr. Garcia's absence be excused. Motion was seconded and passed unanimously.

5. Future Agenda Items – Select next meeting date

Mr. Gilley said that he had items for the next meeting but would send them to the Board members.

Mr. Estrada informed the members that TSPS had invited the Board to the TSPS Annual Meeting in Arlington, October 31, at the Sheraton Arlington Hotel and Convention Center. They have reserved a room to hold the Board meeting from 1:30 p.m. to 5:30 p.m. Mr. Childress moved to adopt the meeting date, which was seconded and passed unanimously.

Mr. Price asked about setting a tentative date for December. Members selected December 13 as the tentative date.

7. Comments from the Public

Jerry Lehew wanted to thank the Board for all their work on the rules. He especially mentioned Garey Gilley and Ben Thomson, and their committees. He noted that Nancy Fuller had learned more than she ever wanted to about the Texas Register.

6. Adjourn

The meeting was adjourned at 4:00 p.m.