

MINUTES
TEXAS BOARD OF PROFESSIONAL LAND SURVEYING
12100 Park 35 Circle
Building D, Room 191
December 13, 2013

Call to Order, Instructions and Comments from the Public

The Board meeting was called to order at 9:00 am by Chairman Jon Hodde. Present were board members Bill O'Hara, Paul Kwan, Mary Chruszczak, Robert Price, James Childress and Bill Merten. Also in attendance were Executive Director Marcelino A. Estrada, Assistant Attorney General Nancy Fuller and Board Investigator Garey Gilley.

1. Approval of the August 2nd and October 31st meeting minutes

The Chairman presented to the Board the minutes of August 2, 2013 Board meeting for approval whereupon motion duly made, seconded and unanimously approved with corrections, the minutes were adopted. The Chairman also presented to the Board the minutes of October 31, 2013 whereupon it was decided to revisit the meeting minutes of October 31, 2013.

2. Director's Report

Mr. Estrada reported on the Information Resources Deployment review. The Department of Information Resources is collecting information on the types of systems state agencies have, what they are being used for, the type of software being used, security levels and if they are using "the cloud". The collected information is to be compiled and produced into a report and sent to the Legislature, providing them with information on how state agencies are using information resources.

The agency is currently participating in DIRs Legacy Systems Study which is looking for old information systems; predominately software. A report will be compiled by DIR that will inform the Legislature of the age of state agency information systems. TBPLS does have some older software programs, for example, that are DOS oriented and run on Windows XP. Not all of the agency computers have been migrated to Windows 7 and odds are slim that the older software will be compatible. While a newer version of the software is available, the company is offering it as cloud-based which means our exam database would be placed on their servers in the cloud but be accessible to all staff. It was recommended that Mr. Estrada speak with TCEQ IT staff to get them involved because of their extensive knowledge with IT security.

The State Office of Risk Management has scheduled a consultation with the agency in February 2014. They will be reviewing risk management and business continuity plans.

Mr. Estrada will attend the NCEES MBA meeting February 4th thru 6th in Scottsdale AZ. The Southern Zone meeting is scheduled for April 2014 in South Carolina. Mr. Estrada will send more information to the Board once received.

Mr. Estrada posted information from NCEES to the TBPLS website. NCEES is looking for surveyor volunteers to assist with the judging of Future Cities competition. There were two surveyors presently interested in assisting, Jamie Higgins and Tim Fulmer. Volunteers are still needed.

The RPLS License Renewals process was opened earlier this year in (November 1st rather than the 15th). We are receiving about 50 renewals per day but there are presently 1300 that still need to renew. Mr. Estrada is hoping they will not wait until December 31st.

Mr. Estrada posted the announcement for the Administrative Assistant position in October but was not pleased with applicant pool. Two interviews have been conducted and one is pending.

The Investigator position has also been posted and we are in receipt of applications for that position as well.

Mr. Estrada asked for direction from the Board regarding making a statutory change to the Act which would assist individuals with lapsed licenses, particularly due to medical issues, in getting reinstated. Mr. O'Hara asked if the statute currently gave latitude in regards to make an exception but it does not. Mr. Kwan asked if the bill went to committee last year but was told it had been pulled.

Mr. Estrada then brought forth a concern of the practice that if there is more than one firm in one building, the firms are being allowed to share an RPLS. Mr. Childress stated that a definition of responsible supervision would answer this question because a surveyor could only be spread so thin. Mr. O'Hara stated that this and the previous item should be agenda items for the next meeting so that members would have time to think about the issues and discuss them.

Mr. O'Hara asked about the IS support for TBPLS. Mr. Estrada stated all support comes from TCEQ who provide telephone, network, and use of their server. He stated that TBPLS has a Memo Of Understanding with TCEQ and TBPLS pays a fee for the services. TBPLS purchases its own software and TCEQ is responsible for connecting and providing access to the network, troubleshooting issues and security.

This concluded the Director's Report.

Before going on to Complaints, the Chairman wanted to take up the October 31st minutes. Mr. Gilley offered an addition to the October 31st minutes. On the 3rd page of the minutes, an edit was made to the paragraph that began "Mr. Gilley then asked the board concerning rule 663.18". Mr. Gilley stated that he had embellished over what Mr. Estrada had in the minutes and suggested that paragraph as it appeared in the workbook be replaced. Mr. Childress moved to include the edits to the first full paragraph on page 3 of the minutes of October 31st. The motion was approved. Mr. Merten then moved to

approve the minutes of October 31st with edits proposed. The motion was approved with corrections and adopted.

3. Complaints

Mr. Gilley asked that the complaints as listed in the workbook be disregarded and the Board's attention was called to the following complaints:

- a. Complaint 13-10: complainant alleged the surveyor made a misleading survey by reporting a fence along the common line. The fence is 3/10 ft. north of the common line and 6/10 ft at the west terminus. Two surveyors both agreed there is no question about the property line and the fence is 3/10 and 6/10 on the adjacent property. The surveyor did admit that it was probably misleading to show the fence was exactly on the line. Thus he was cited in violation of section 663.10(7) for creating a misleading representation as to the location of the fence.
- b. Complaint 13-27: the surveyor conducted a survey in February 2012. The note in the survey report states "property does not lie in a FIA designated flood zone for map #XYZ. The flooding information is based on graphic plotting; due to inherited inaccuracy of FEMA maps, do not assume responsibility for the exact location." The complainant relied upon the survey and tried to obtain a building permit but was informed the property was in fact in the flood plain. The complainant contacted the surveyor who admitted the mistake and changed the report to reflect the property in the flood plain and gave them new survey. The firm owner chose to employ a person whose sole job is to review the FEMA maps and make a determination whether the property lies inside or outside the flood zone and place the statement on the survey PLAT. In this case, this property is in Houston adjacent to Interstate 45; the technician input the wrong address into Google Earth to obtain property coordinates; he then entered the coordinates in the City of Houston GIS system which caused the coordinates to be for a piece of property inland and not near Interstate 45. Mr. Gilley felt this was a lack of supervision on the part of the surveyor who allowed the technician to control the end product by stating the property was not in the flood plain, violating 663.5(1). The surveyor violated 663.10(7) when he created the misleading impression by certifying the subject property was not in the flood plan.
- c. Complaint 12-46 and 12-47: same complainant and surveyor; the surveyed lot is in the City of Houston. The surveyor conducted a survey to show the building set back lines on the property per the City of Houston ordinance which is a 10 ft. The Surveyor failed to note a 25 ft set back line on the plat. The complainant built buildings using the 10ft set back vs. the 25ft setback. Later surveys disclose the difference and now complainant is having problems with lender. The license of the firm who conducted the survey in January 2012 expired in 2005 and was never renewed. Upon interview with the surveyor, he confirmed he is a full-time employee of the firm and they continued to offer survey services. Therefore, the surveyor was found in violation of 663.16(C) for failing to do adequate research; 663.19 (8) for not showing adjoiners; and 663.10(7) for misleading impression. The firm was also cited for not having a license. The surveyor was subject to a \$6,000 fine; the firm assessed a \$1,500 fine and still has not renewed their firm license.

- d. Complaint 14-01: This is a conflict between two surveyors who disagree where the common line has been. There is no rule violation, just a disagreement between two surveyors. The complainant filed a complaint against the current surveyor who is in conflict with the previous survey filed more than 10 years ago. The complainant has not had a recent survey done on his property.
- e. Complaint 13-29: The surveyor surveyed a 9.8 acres tract of land; the subject surveyor prepared the survey and closed it but continued to go back and do more surveying. The surveyor determined he had located previous property line incorrectly and corrected the survey to decrease land area by a little over half an acre. The current property owner was upset about losing the half acre. Mr. Gilley felt the surveyor should not have submitted the first survey. The surveyor admitted he was under pressure to complete the survey. The surveyor is in violation of rule 663.16(c) for not doing adequate research in the field and of the record, and will receive a reprimand and fine of \$1,500.
- f. Complaint 13-18: The complainant is in litigation with neighbor. During the trial, the surveyor testified he was working for the complainant's neighbor. The complainant filed a complaint alleging the surveyor falsely testified as to the interpretation of the Board rules regarding positional tolerance. In reading the trial transcripts, Mr. Gilley found the surveyor responded to questions asked by the attorney who had no idea what he was asking and what they meant. Mr. Gilley said there were no violations.
- g. Complaint 12-22: A surveyor submitted a survey where the monuments had not been set. The field crew had been sent out but their truck broke down so they did not set the corners. The surveyor violated rule 663.18(d) for certifying to factual information that he did not have personal knowledge of because the field crew had not assured him the corners had been set. An AVC will be issued.
- h. Complaint 13-31: The surveyor surveyed property several years ago and was asked to return to record monuments. He recovered the monuments that were previously set and still in place. At time of original survey, the property was heavily brushed and he indicated on the survey that the fence in the brush was "generally along the property line". The neighbor interpreted this to mean the fence was the property line and filed a complaint alleging the surveyor moved the property line because it's no longer where the fence is. The surveyor had not done a plat showing the second survey. He provided a certified survey of second survey to the Board showing where the fence was. He also provided a drawing of where the fence was. This information was shared with the Complainant who was satisfied. The complaint was dismissed with no rule was violation.
- i. Complaint 12-19 and 12-32, Agreed order: The surveyor conducted a survey set no corners or monuments, did not show adjoining. The surveyor was an employee of a firm awarded a contract with Texas Parks and Wildlife to conduct the survey. Complaint filed by another surveyor where it was revealed the surveyor is not an employee of said firm; there were numerous rule violations on the survey. The surveyor was subject to a \$28,000 penalty and revocation of license. An Informal Settlement Conference was held. The surveyor has agreed that on January 1, 2014 he will let his license go inactive and pay annual renewal fee in lieu of revocation. He will be allowed to complete present projects and submit to the Board for review but cannot say that the Board said his surveys are correct. Mr. Gilley reviewed and found

he failed to have a basis or bearing, but this was not considered a serious violation; others were fine. He agreed to decline any new surveying work and not to participate in any seminars teaching surveyors. The surveyor will pay a \$2,500 penalty and the remaining balance of \$25,500 will be probated as long as conditions were met. Mr. Gilley explained the conditions have been met. Agreed order submitted to Board for approval; Mr. Merten moved that for the approval of agreed order was duly made and accepted. Members of the Informal Settlement Conference did not participate in the vote. The surveyor named in this complaint was Armando Aranda, RPLS #1398.

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

4. Committee Reports

Chairman called for a break at 9:55 a.m.

The meeting reconvened and was called to order at 10:13 a.m.

a. Executive Committee

Mr. Hodde reported that there was no action taken by the Executive Committee.

b. Rules Committee

Mary Chruszczak reported on rules that are being revised. The following items requested changes:

- 661.31 definitions; issue with “sole proprietor”; a recommendation has been written to remove “sole proprietor” and add at the end “or other entity conducting business under assumed name” to assist individual who is doing individual surveys. We are also adding to item 8 “any form of advertisement which contains the firm contact information and offers”, and deleting “for” preceding “land surveying services”.

Mr. Gilley asked if “verbal offer” had been removed but Mr. Estrada pointed out that the language was left in to cover radio or television advertisement.

Ms. Chruszczak proposed a motion to change 661.31(7) and 661.31(8) to read:

- “Firm -- a business entity including but not limited to a partnership, limited partnership, association, corporation, limited liability company, limited liability partnership and/or other entity conducting business under an assumed name.”
- “Offer of surveying services – any form of advertisement which contains the firm contact information and offers land surveying services, including but not limited to verbal offer, hard copy, electronic web site, telephone listing, written proposal or other marketing materials.”

Mr. Gilley asked Ms. Fuller the appropriate way to word the motion since the rules are being proposed to be considered. Ms. Fuller said it would simply be a motion for the Board to approve these for publication in the Texas Register. Mr. Kwan seconded the motion. Mr. Childress said that limited liability or limited partnership were creatures of statute. He wondered if the language should read “a business entity”, which would accommodate any other types of entities created by the Legislature. Ms.

Fuller thought that the language in the motion made it clear what types of entities were included in the definition. Mr. Price asked if all the entities listed in the definition were required to be registered by the State and Mr. Childress said they were. Mr. Childress offered a friendly amendment to change “a” to “any” preceding “business entity” in section (7).

The motion to approve the rule changes and post for publication in the Texas Register was seconded and passed unanimously.

661.33 Easement Depiction: Mr. Estrada thought the Board may want to discuss this rule; there were no proposed changes to 661.33.

661.45 Examinations: Ms. Chruszczak made a motion to consider changing (c) “the applicant repeating the examination will be required to repeat the entire examination on which the applicant made less than a passing grade”. Mr. Kwan seconded the motion. Mr. Price asked if this was a requirement of computer-based testing. Mr. Kwan and Ms. Chruszczak explained that this had to do with the overlap of the legal and analytical portion of the exam. Mr. Kwan felt the change would be immediate but Ms. Fuller explained that the Board’s discussion of this issue in October 2013 was simply putting forth that the Board made it official that they want to move in the direction of retaking the entire exam. The motion carried.

661.46 Seal and Oath: Ms. Chruszczak explained that a couple clarifications needed to be made and she was making a motion to recommending the following changes:

- “(a) at the time the applicant receives a certificate of registration/licensure, the applicant will secure an impression seal of the type specified by the Board.
- (b) at the time the applicant receives a certificate of registration/licensure, before he/she can offer land surveying services, they shall sign and affix their impression seal on the following oath and forward same to the Board Office.
I, _____, Registered Professional Land Surveyor, Certificate Number _____, hereby affirm that I will place the interest of the public above all others in my practice of Professional Land Surveying. I will adhere to the Texas Board of Professional Land Surveying Act and General Rules of Procedures and Practices.
- (c) at the time a registrant renews their certificate of registration/licensure, he/she shall affirm the oath in subsection (b) of this section.
- (d) a rubber stamp is not considered an impression seal but may be used at the discretion of the licensee for the purpose of this rule. A rubber stamp signature or computer generated signature is not permitted.
- (e) a registrant or a licensee may place their seal and signature on electronic data at the surveyor’s discretion provided that the hard copy form is signed

and sealed and maintained by the surveyor and carries the original signature and seal.”

Mr. Kwan seconded Ms. Chruszczak’s motion. Mr. Price asked if, when the Board was amending the rules, whether “impression” was taking out. Mr. Gilley stated that it was an oversight that caused it to be removed.

Ms. Fuller asked if in subsection (d), that a rubber stamp is not an impression seal but may be used at the discretion of a licensee “for the purposes of this rule”. “For the purposes of this rule” adds ambiguity. Mr. Merten suggested changing “impression” to “embossed”. Mr. O’Hara stated that most surveyors use a rubber stamp seal when signing and sealing a plat or field notes. The embossed seal is used very little. Mr. Gilley pointed out that the language actually goes back to the 1955 Land Surveyor’s Act. Mr. Kwan inquired about computer-generated signature versus signature on electronic data. Ms. Chruszczak explained that a computer-generated signature would be a PDF of your signature. She interprets the signature on electronic data meant scanning and sending a document electronically but it was not the original. Members continued discussing electronic signatures. Mr. Gilley suggested considering what “seal” is and then read a definition from Black’s Law Dictionary. Ms. Fuller pointed out that the definition was consistent with the Board’s definition.

The following changes were then discussed:

- “(a) at the time the applicant receives a certificate of registration/licensure, the applicant will secure an **impression** seal of the type specified by the Board.
- (b) at the time the applicant receives a certificate of registration/licensure, before he/she can offer land surveying services, they shall sign and affix their **impression** seal on the following oath *and forward same to the Board Office.*
I, _____, Registered Professional Land Surveyor, Certificate Number _____, hereby affirm that I will place the interest of the public above all others in my practice of Professional Land Surveying. I will adhere to the Texas Board of Professional Land Surveying Act and General Rules of Procedures and Practices.
- (c) at the time a registrant renews their certificate of registration/licensure, he/she shall affirm the oath in subsection (b) of this section.
- ~~(d) a rubber stamp is not considered an impression seal but may be used at the discretion of the licensee for the purpose of this rule. A rubber stamp signature or computer generated signature is not permitted.~~
- ~~(e) a registrant or a licensee may place their seal and signature on electronic data at the surveyor’s discretion provided that the hard copy form is signed and sealed and maintained by the surveyor and carries the original signature and seal.”~~

Ms. Chruszczak then offered an amended motion to amend only section (b). The motion was seconded and carried.

661.52 Inactive Status: Ms. Chruszczak offered a motion to modify item (e)(1) adding “must apply by completing and submitting an application” and to modify (e)(4) by adding the word “form” following the word “application”.

The motion was seconded and Ms. Chruszczak explained that originally the application for inactive status had to be brought to the Board but the proposed amendment would put it back in the hands of the Executive Director. The motion was seconded and approved.

Mr. Gilley noted that in rule 663.18, the word “only” needed to be removed from section (a). Ms. Chruszczak moved that the following be changed to the rule on Certification be amended as follows:

“(a) The Registered Professional land Surveyor shall personally apply his/her seal and signature ~~only~~ to final documents released to the public representing professional land surveying as defined in the Act. The professional land surveyor shall maintain control and possession over his/her seal at all times.

The motion was seconded and approved.

Ms. Chruszczak asked if the Board wanted to discuss rule 661.53 Active Duty Military. Mr. Estrada explained that recent bills passed by the Legislature required regulatory agencies to “fast track” military personnel or their spouses if they meet the qualifications for obtaining licensure with the agency. Mr. Estrada said he would pull the bills for the next meeting. Members suggested that the rules committee draft language for a proposed change for the next meeting.

Ms. Chruszczak then asked if the members wanted to discuss rule 663.17 Monumentation. Mr. Gilley explained that a surveyor had submitted a suggestion to paragraph (c) to read:

“All metes and bounds descriptions prepared as an exhibit to be used in easements shall be tied to corners of record related to the boundary of the affected tract and monumented in accordance with section 663.17(b).”

The surveyor would like the Board to clarify their position whether easements should be monumented like any other boundary. Mr. Gilley stated that (c) was not intended to speak to monumentation; the rule was adopted because easement documents were the only controlling item on the document being grid coordinates. Paragraph (c) was adopted to at least tie the easement corridor to the property corners.

Ms. Chruszczak moved to add the language “and monumented”. The motion was seconded. Mr. Kwan stated that he did not think this made sense and that it would not be practical. Ms. Chruszczak agreed because 663.17 already states to use sufficient monumentation.

Mr. Gilley raised the issue of pipeline surveys where the reference to a corner is 20,000 feet away, the surveyor is in compliance with the rule as written but wondered if the Board wanted to further define “reference”. Members decided that they could discuss this at the next meeting.

The motion failed.

Mr. Childress asked for a moment to speak with Ms. Chruszczak. A motion was then made to 661.45 Examinations, section (c) to improve the wording.

“An applicant that fails to make a passing grade on any portion of the examination will be required to repeat the entire examination.”

The motion was seconded and approved.

This concluded Ms. Chruszczak’s report.

c. RPLS/SIT Exam Committee

On the legal exam, 36 applicants sat for the exam, with 18 passing; on the AP exam, 38 sat for the exam with 24 passing. Sixteen examinees took the Reciprocal exam and nine passed. Fifty-one sat for the SIT 51 exam and 23 passed. Those names will be released on the website today. Mr. Childress moved to certify all successful applicants who passed the SIT Exam. The motion was second and approved. Mr. O’Hara moved to register all applicants that successfully passed the RPLS examination. The motion was seconded and carried.

Mr. Hodde called on Mr. O’Hara to report on the creation of the application checklist. Mr. O’Hara said that a checklist was drafted to assist the member reviewing plats submitted by applications. Mr. O’Hara anticipates presenting a finished checklist to the Board at the next meeting. This checklist will then be placed on the web site to help streamline the submittal process.

This concluded Mr. Hodde’s report.

d. LSLS Exam Committee

The LSLS exam was given in October; there were two candidates who sat for the exam but neither passed. An exam will be selected for the April administration between now and the March meeting. It is not known how many applicants applied for the April 2014 exam.

This concluded Mr. O’Hara’s report

e. Continuing Education

Mr. Kwan reported that there were six submittals. Civil 3D for Surveyors requested 16 hours, Mr. Kwan recommended eight hours. The other submittals were acceptable. Mr. Merten moved to accept the submittals with the exception noted by Mr. Kwan. The motion was seconded and carried.

This concluded Mr. Kwan's report

f. Oil Well Issues Committee

Mr. O'Hara reported that the oil and gas industry still strong on the state of Texas based on a report from the Rail Road Commission. The Commission issued a total of 1,735 new drilling permits in the month of October 2013 compared to 1873 in October 2012. The October total included 1,517 permits to drill new oil and gas wells, 22 to reenter existing well bores and 196 for recompletion.

The September crude oil production average 1,796,784 barrels per day up from 1.3 million the prior year, 2012. The preliminary Texas crude oil production for September 2013 is 53.9 million barrels, up from 40 million the previous year. Oil and gas wells produce 577.6 million, 1000 cu ft, of gas based on preliminary figures from September 2013, up from September of 2012 which is about 529.6.

This concluded Mr. O'Hara's report

g. Legislative Needs Committee

Mr. Merten reported no Legislative needs since the last meeting

This concluded Mr. Merten's report.

The Chairman moved that the absent Board members be excused. The motion was seconded and carried to excuse Jerry Garcia and Nedra Foster.

This concluded Mr. Merten's report

A motion was made to excuse absent Board members Jerry Garcia and Nedra Foster. Motion was seconded and approved.

5. Other Business – Update on SIT/RPLS Candidate Guide Revision

Mr. Merten reported that a final copy of the flow chart for SIT and RPLS was included in the workbook. Staff member Natalie Jackson had been a big input. Comments were also received from Ms. Foster and Ms. Chruszczak. In addition, Natalie is revising the text of the initial procedures.

This concluded Mr. Merten's report.

6. Future Meeting Date

The next Board meeting was set for February 28, 2014. It was suggested that the meeting time be moved from 9:00 a.m. to 10:00 a.m.

7. Comments From Public

There were no comments from the public.

8. Adjournment

There being no further business, the meeting was adjourned at 11:48 a.m.

Attest _____
John Hodde, Chairman

Marcelino A. Estrada