

**MINUTES**  
**TEXAS BOARD OF PROFESSIONAL LAND SURVEYING**  
**12100 Park 35 Circle**  
**Building A, Room 172**  
**February 28, 2014, 10:00 a.m.**

**THE BOARD WILL CONSIDER AND ACT UPON THE FOLLOWING MATTERS.**

*The Board may go into Executive Session on any of the following agenda items if authorized by Tex. Gov't Code, Chapter 551.*

*Call to Order, Introductions, and Comments from the Public*

The Board meeting was called to order at 10:13 a.m. by Chairman Jon Hodde. Present were Board members Bob Price, Bill Merten, Mary Chruszczak, Nedra Foster, Bill O'Hara, Paul Kwan, Jim Childress. Absent was Jerry Garcia. Also in attendance were Executive Director Marcelino A. Estrada, Assistant Attorney General Nancy Fuller and Board Investigator Garey Gilley.

Members of the public were invited to offer comments. Shane Neally, President of Texas Society of Professional Surveyors, discussed a public relations campaign that TSPS worked on with Blue Sky of Austin. The campaign includes of a print advertisement that will be sent to all local chapters to appear in their local markets. TSPS need to be the ones to explain why it is important to have a boundary survey. TSPS is also working on a 30-second television commercial. Pine.texasurveyor.com will have questions that the general public can access for information. A recruiting campaign will follow.

Paul Carey offered comments on the use of the term "original signature" (Rule 663.19). Mr. Carey wondered if the Board would recognize the technology and processes available for a surveyor to use his signature in a scanned format in his office and still have control over that signature for documents to be sent to clients electronically. The other issue Mr. Carey raised noted that county surveyor records had been delivered to a private company. The county surveyor was in violation of his statutory duty to surrender the documents to his successor or to the county clerk. The county clerk or his deputies denied knowledge and admitted no knowledge of the records existence. After Mr. Carey learned of their whereabouts, he was denied access to those records. TBPLS has no authority over individuals other than surveyors. Mr. Carey wondered if the Board could require surveyors, or surveying firms, to surrender records to the county clerk or request permission from the county clerk to own and maintain the records, provided that the surveyor or surveying firm index the records and provide public access.

Raymond Williams, CTS Surveying in Synder, addressed the Board regarding an application submitted by Pete Elrod in January. Mr. Elrod discovered that he was three-months short of the experience required on the application. In discussing the application with Mr. Elrod, Mr. Williams determined that Mr. Elrod had experience obtained while in the military that would apply. Mr. Williams is asking the Board to consider Mr. Elrod's application and allow him to take the exam in April 2014.

*1. Approval of the December 13, 2013 Minutes*

The Chairman presented to the Board the minutes of the December 13, 2013 Board meeting for approval whereupon motion duly made, seconded and unanimously approved with corrections, the minutes were adopted.

*2. Director's Report*

*a. Introduction of new staff*

Mr. Estrada informed the Board that two staff positions had been posted, Investigator and Administrative Assistant, and filled. Garey Gilley had tendered his resignation effective February 28, 2014 and was replaced by Larry Billingsley. The Administrative Assistant position had been vacant for one year and was filled by Jackqueline Chase.

*b. Budget update*

Mr. Estrada provided Board members with an Expense statement to date but said there was nothing unusual with the budget at this point.

*c. Continuing Education Audit*

Mr. Estrada asked staff member Rita Evans to report on the audit. Ms. Evans stated that on February 12 she had conducted a 25% audit of all renewals. 563 audit letters were mailed out and 300 responses were received two weeks later. She noted that she had received calls from individuals who had been audited twice. This is a random audit and no one is being exempted. Mr. Hodde noted that he had been audited twice and had not been exempted. Mr. Kwan had also been audited twice in the past. Responses are due back by March 14. Mr. O'Hara asked if we audited 25% every year. Ms. Evans stated that our rule indicates a minimum of 5% so we do 25% each year simply because not everyone is complying with continuing education requirements. Mr. O'Hara asked what percentage was not in compliance. Ms. Evans stated approximately 10 individuals or so do not comply. She said that others that are not in compliance immediately obtain their needed CEU and pay the late renewal fee.

*d. Publication of proposed rules*

The proposed rules were published on February 21, 2014 and those pages were included for members. Mr. Estrada noted that two rules had been left out due to his oversight. These rules will be incorporated in the next publishing of proposed rules.

*e. State Office of Risk Management Review, June 2014*

Mr. Estrada informed the Board members that the SORM audit he previously reported had been rescheduled for June.

*f. NCEES MBA Meeting Report*

Mr. Estrada attended the NCEES MBA Forum in February. NCEES is asking states to remove impediments that prevent individuals from becoming licensed. He also noted that the Texas Board of Professional Engineers had recently gone through Sunset and were asked to begin fingerprinting their licensees. Mr. Estrada will monitor the upcoming session to see if the statutory requirement will be amended or removed. Mr. Estrada suggested that the Board may wish to consider putting this into practice. Mr. Price offered a dissenting view and suggested the Board wait until the Legislature requires it of the Board.

*g. 84<sup>th</sup> Legislative Session*

Mr. Estrada noted that the session would be starting this coming January and suggested that, should the Board wish to make amendments to its statutes, the Board may wish to begin working on this now.

*h. Board member reminders*

NCEES sent a survey to Board members and wanted the members to be reminded. Mr. Estrada also reminded members that their Personal Financial Statements would be due by the end of April to the Texas Ethics Commission.

3. *Complaints – Garey Gilley/Larry Billingsley, Investigators*

Mr. Gilley reported on Complaints:

13-19: Survey done in 2003 had incorrectly located lot lines. The surveyor is now deceased and the firm he worked for acknowledges that he may have located the lines incorrectly. The firm did not wish to do work for the individual. At the time that the survey was done, the Board did not have the authority to take action against the firm so there was no action to be taken on this complaint.

13-16: Complainant had deed to property that was 100 acres. After the survey, the surveyor found 110 acres. The complainant was concerned the surveyor stole 5 acres even though he found 110 acres. Mr. Gilley did not agree and recommended dismissal of the complaint.

13-27: This complaint was discussed at the last meeting.

13-28: This was a rehash of a complaint filed in 1994. Ben Thompson reviewed the complaints and found no violation. Mr. Gilley did not find any new issues and found no violations.

13-29: Surveyor prepared a survey of less than 10 acre tract, signed and sealed. The property was sold and conveyed relying on the survey. The surveyor began second-guessing himself and determined that his first survey was incorrect by having mislocated one of the corners. He issued an amended survey decreasing the original acreage by a half-acre. The surveyor was found in violation of Rule 663.16 (c).

14-08: Complainant is the adjacent owner of a tract of land that was surveyed. He felt that the surveyor mislocated the common north corner by two feet. He felt that the corner should be an additional two feet north which is based on a deed prior to 1931 where the original tract before partitioning had a deed call of 407 8/10 feet. After the partition, the deed call was 405 8/10 feet. All deeds since 1931, including adjoining deeds, have the call of 405 8/10 feet. We do not have information to determine that the deed call is incorrect and so it is determined there are no violations. This complaint will go before the Complaint Review Panel.

14-01: There is no report for this one but Mr. Gilley determined there were no violations and recommended dismissal. The complainant asked for a review and the Complaint Review Panel, comprised of Nedra Foster, Jerry Garcia and Doug Turner, determined that there were violations and this will go to Information Settlement Conference.

Chairman Hodde called for a 10 minute break at 11:06 a.m.

During the break, Chairman Hodde asked for everyone's attention so that Mr. Gilley could be presented with a Resolution of the Texas Board of Professional Land Surveying in recognition of his service to the Board and upon his retirement, and a flag flown over the Capitol. Members and attendees then enjoyed cake served in Mr. Gilley's honor.

The meeting was called back to order at 11:33 a.m.

#### 4. *Committee Reports*

##### a. Executive Committee –Jon Hodde, Chair

The Chairman said there was nothing to report.

##### b. Rules Committee-Mary Chruszczak, Chair

Ms. Chruszczak asked the Board to consider modifying two rules; this is essentially clean-up of the previously adopted rules.

Rule 661.41(b)(2), *Applications*, states that survey reports submitted with the application not exceed 24x36 inches. Ms. Chruszczak offered a motion changing the size from 24X 36 inches to 11x 17 inches. The motion was seconded. There being no discussion, the motion was approved unanimously.

Rule 663.19(f), *Survey Drawing/Written/Description/Report*, reads:

“A reference shall be cited on the drawing and prepared description, if appropriate, to the record instrument that defines the location of adjoining boundaries.” Ms. Chruszczak made a motion that the phrase “if appropriate” be stricken. The motion was seconded and discussion ensued. Ms. Chruszczak asked Chairman Hodde to explain the reason for striking the language. Chairman Hodde said that as written the language was being interpreted to mean that adjoiners did not have to be shown on the survey report. Mr. Gilley offered that the Rules Task Force discussed this and it was their intent to do away with the requirement to show adjoiners. “If appropriate” was placed in the rule if the tract you were surveying called to adjoin a tract, then it would be appropriate to show the adjoiner. Mr. Gilley said that Jim Johnson pointed out that the Board had a rule stating adjoiners should be shown. When a survey was issued and an adjoiner was shown, Mr. Johnson's opinion was that this was a certification there was no overlap or separation between the two titles. How can you make that assertion unless you survey the property next door? The Task Force felt that this was creating a liability for surveyors. Mr. Gilley provided an example where you start

with a tract of land one mile wide, half-mile deep. The owner sells the east half, starting at the NE corner, describes a half-mile. Ten years later he sells the west half, describing it from the west-end, a half-mile square. You are surveying the west-end and find all the monuments called for. However, you do not check the corner half-mile away for whatever reason. You later find out that the original tract, instead of being a mile wide, was 50 varas excessive. Without locating the other corner, you would never know. Chairman Hodde felt that by showing the adjoiner means that he did his research and found the adjoiners, not that he surveyed the adjoining property. Ms. Fuller felt that using the language “if appropriate” creates vagueness and does not make it clear what the rule means. Mr. Merten agreed that the language was causing confusion. A vote was taken and the motion passed unanimously.

Ms. Chruszczak then informed the Board that two bills passed by the 2013 Legislature (HB 2254 and SB 162) during the last session required Board rules to accommodate military personnel seeking licensing by expediting their application. Ms. Chruszczak felt that the Board may wish to consider field experience applying towards requirements for sitting for exam and offered a motion to add the following to Rule 661.53, Active Duty Military:

“An applicant who is a military service member or military veteran with a verified military career field of surveying, with training, will receive 50% credit of the requirement described in 661.50(3)(b), Field Experience.” Ms. Chruszczak also suggested that the language be retroactive to January 1, 2014. The motion was seconded. Mr. O’Hara asked if the Board would have to qualify the type of military experience acceptable for the credit. Ms. Chruszczak said that was why she specified “land surveying”. Mr. Kwan suggested broadening the type of experience.

After much discussion, members drafted the following:

“An applicant who is a military service member or military veteran, with relevant military *service, training or education* in land surveying or a land surveying career field, may receive *credit for service, training or education* upon Board verification and evaluation.”

Ms. Fuller pointed out that the rules would also need to address military spouses and special forces. The laws require specific changes to agency rules so the Board cannot simply offer a policy. She also defined “expedite” as faster than ordinary process; preferential treatment. What the members have accomplished is a good beginning but more work is required by the Rules Committee to incorporate what is required by the bills.

Mr. Childress noted that the committee would have to work on the additional language. Chairman Hodde asked for a motion to accept the member’s revision regarding 661.53, Active Duty Military. Mr. Price offered a motion to accept the revision to section 661.53 which was seconded and passed unanimously. Ms. Chruszczak said her committee would work on the other amendments

A motion by Mr. Kwan was entertained to publish the revisions. The motion was seconded and passed unanimously.

This concluded Ms. Chruszczak’s report.

c. LSLS Examination Committee – Bill O’Hara, Chair

Mr. O’Hara reported that there were three applications submitted to the Board to sit for April’s LSLS Exam and that two have been approved by the committee. He added that the committee also selected the questions for the exam.

This concluded Mr. O’Hara’s report.

d. Continuing Education Committee – Paul Kwan, Chair

Mr. Kwan gave his recommendations of approval/disapproval for the continuing education courses submitted to the Board. Mr. Childress moved to accept the recommendations and the motion carried unanimously.

This concluded Mr. Kwan's report.

e. Oil Well Issues Committee – Bill O'Hara, Chair

Mr. O'Hara reported on various data delineating the status and progress of the oil and gas industry in Texas. He explained that the industry is growing and represents a great deal of the land surveying community and supporting the economy of Texas. He mentioned that surveyors are relocating to the areas that have greater concentrations of oil and gas wells and that the quality of the surveys being completed is reportedly being affected. Mr. Kwan added that he had noticed that the number of individuals applying for licensure through reciprocity is dropping.

This concluded Mr. O'Hara's report

f. Legislative Needs Committee -Bill Merten, Chair

Mr. Merten reported that the 84<sup>th</sup> legislature was due to convene soon and that his committee is interested in updating the Professional Land Surveying Practices Act due to changes made to the SIT Exam protocol by NCEES. He added that his committee would need additional help with drafting the amendments.

This concluded Mr. Merten's report.

5. Other Business

a. Revocation of Licensure

i. Steve L. Prewitt, RPLS #5106

Mr. Estrada reported that Mr. Prewitt was charged with a felony but that the Board is awaiting additional information before the Board can have a discussion.

b. Request for reinstatement

i. Randy Gregory, RPLS #4921

Mr. Estrada reported that, according to the current rules, decisions made regarding requests for reinstatement are a charge of the Executive Director. However, Mr. Estrada felt the need to report this case to the Board due to the discovery of a previous complaint filed against the applicant when he was registered. A letter from former Executive Director, Sandy Smith, informed Mr. Estrada that there was an intended administrative penalty levied on Mr. Gregory. However there was no evidence that the fine was paid nor the Agreed Order signed by Mr. Gregory. Mr. Gilley recalled that the applicant "dropped out of sight" and that orders, at that time, were written after an agreement was reached with the respondent (varying from the current practice of the agency). This information led Mr. O'Hara to move to deny Mr. Gregory's application to return to active status. Mr. Childress seconded and the motion passed.

c. SIT Application Review

i. Criminal Conviction

Mrs. Chruszczak reported the results of a meeting held earlier that morning with herself, Mr. Hodde, Mr. Merten, and the SIT applicant. She explained that her opinion was that the applicant, though he was involved in a crime of some magnitude, had experienced trauma

due to the incident, had paid his debt to society, and was a viable candidate to sit for the SIT Exam. Mr. Merten then reported that his feelings were favorable and that he also had confidence in the suitability of the applicant. Mrs. Chruszczak then made a motion to approve the applicant to sit for the exam. Mr. Merten seconded the motion.

Mr. Kwan began the Board discussion voicing his concerns about the applicant's criminal history. He said that he did not feel comfortable letting the applicant enter the profession and that his opinion was that the Board should not approve the applicant's application. He explained that there are certain licenses that, with a conviction of murder in a person's background, are no longer available to someone. He contended that a land surveyor's license is one of those licenses. He added that it was his opinion that, if the Board were to approve the application, that the public was not being properly protected. Mrs. Chruszczak added that she agreed with Mr. Kwan but, due to the role the applicant played in the crime as it was committed, the applicant was not a threat to the public. Ms. Fuller explained that the Board may consider a person to have been convicted of an offense if it is determined that the individual may pose a continued threat to society or if employment of the individual in the particular field would grant access for the individual to repeat the prohibited behavior. She further explained that if neither were found to be the case, the Board hasn't grounds to deny the individual. If the Board were to determine that either of these factors were present, then the Board would be required to perform a further analysis that Mrs. Fuller had delineated for the members in their workbooks. She added that, due to the nature of the crime committed by the applicant, the Board was able to consider the applicant as being convicted. The members, Mr. Estrada, and Mrs. Fuller then discussed the meaning of Deferred Adjudication. Mrs. Chruszczak then added that the applicant in fact did admit guilt in a court of law and Mr. Childress, determining that the applicant in this case is considered to have a felony on his record, asked if any individual could apply and be approved to sit for the exam. He was answered that there was no automatic prohibition of an applicant just because there was a felony on their record. Mr. Hodde then suggested that, though there was a meeting involving two Board members and the applicant, the whole Board may need to hear from the applicant himself. Mr. O'Hara added to discussion that the Board, in the recent past, had accepted the application of a felon. He then told the Board that he was prepared to accept the application of the applicant. The members continued to discuss the repercussions of accepting the application and the details of the crime. Mr. Price then added that it was his opinion that the Board speak with the applicant and asked if it could be done in executive session. Mrs. Fuller answered that could not be done; that it would be a matter that would have to be handled in open session. The Board would have to be granted specific permission by the legislature otherwise. Mrs. Foster then asked what rule dealt with the Board's authority to accept the application of a felon. Mr. Kwan answered that it was rule 663.14. Mr. Hodde then invited the applicant to come forward to speak with the Board.

The applicant introduced himself as Rafael Gonzales and invited the Board members to ask any question they made have had of him. Mr. Childress asked Mr. Gonzales if there was any finding of the court that he in fact did not touch the victim. Mr. Gonzales confirmed that there had been that finding in court and that it was the reason that he and others deemed to be involved in the crime were granted probation sentences. He added that the court gave him the option to take Deferred Adjudication or a flat conviction and, at the advice of his attorney, he took the conviction. His attorney advised that he ran the risk of being in trouble again in the future regarding this crime if he chose to take Deferred Adjudication and that his probation would be on different terms. Mr. Childress and Mrs. Fuller then provided members with more details about the law to explain the decision Mr. Gonzales' attorney, and Mr. Gonzales, made. Mr. Childress asked Mr. Gonzales how many individuals plead guilty to the crime and Mr. Gonzales answered that all defendants plead guilty. Mr. Childress asked Mr. Gonzales if he was able to vote and he answered that he

was. Then Mrs. Foster asked if Mr. Gonzales did vote and he answered yes. Mr. Childress then asked the applicant if he had applied for anything in his past that had brought his criminal record into question. Mr. Gonzales answered that when he applied for employment with any company, his background would be an issue. He stated he felt the need to be exemplary and superior to every other applicant that would apply for the same position in order to be considered. So, he added, that most often he would be accepted into a position after another individual could attest to his character and work ethic. Mr. O'Hara asked Mr. Gonzales about his personal life, and if he was employed, and the applicant answered that he was employed and married. Mr. Price asked if Mr. Gonzales was still in contact with any of the other individuals involved in the crime and he said that he was not and had not been since conviction. Mrs. Foster asked if the applicant used drugs or alcohol and he answered that he did not for the most part; that on rare social occasions he would have a drink but had received his 15 year sobriety chip from Alcoholics Anonymous. Mr. Price asked, because Mr. Gonzales described himself as a youth pastor in documentation sent in with his application, how he spoke about his past with the youth he worked with. Mr. Gonzales explained that he would openly discuss the situation with individuals old enough to comprehend the situation and its severity. Mrs. Foster asked Mr. Gonzales why he wanted to be a surveyor and he answered that he received an opportunity to enter the field at a very basic level and developed a love for deed research, which he described to be the function of his current professional position. He added that he felt solving puzzles was second nature to him. Mr. O'Hara asked about the college degrees that Mr. Gonzales had earned and he explained that he earned a bachelor's degree in Biology from the University of St. Thomas, a bachelor's degree in Surveying and Engineering Technology from the University of Houston, and two associate's degrees, one in science and one in art, from North Harris Community College. Mr. Hodde then asked if any of the Board members had any further questions and Mr. O'Hara thanked Mr. Gonzales having the courage to stand before the Board. Mr. Gonzales thanked the Board for the opportunity to speak and that he felt great gratitude for the being considered. He explained that his criminal record is a factor that has to be considered by him and his wife in everyday life and that it continues to affect them greatly. He added that he currently works in government and that he was able to gain employment strictly due to the quality of his work and his work ethic. Mr. Hodde then asked the Board if there was any further discussion before the vote. Mr. Childress asked Mrs. Chruszczak and Mr. Merten, the two members present at the previous meeting with Mr. Gonzales, if they both felt as though Mr. Gonzales would pose no threat to the public and that, by entering the profession of land surveying, Mr. Gonzales would not be granted access to commit the prohibited behavior and both members answered that they did believe this was the case. Mr. Hodde asked the Board again if there was any more discussion to be had and Mr. O'Hara said that he felt the whole situation was fairly severe but that he feels that Mr. Gonzales has shown to the Board that he is a viable candidate for licensure. The vote was held with seven affirmative and one opposed. The motion to allow Mr. Gonzales to sit for the SIT Exam carried.

Mrs. Chruszczak offered a motion to excuse the absence of Mr. Garcia and the motion carried.

6. Future Agenda Items – Select next meeting date

The Board decided on May 16, 2014 as the date of the next Board meeting.

7. Comments from the Public

Mr. Hodde invited public comment. Mr. Terry Rowe stood to say that he had known Rafael Gonzales since the crime was committed; that he and his family attended the same church. He explained that he

hired Mr. Gonzales and that he had every confidence that he would develop into a competent and trustworthy surveyor.

Mr. Hodde stated that the Board would then go into executive session at 2:03 pm.

*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 2:03 pm and all members present, with the exclusion of Member Garcia, remained.*

The public portion of the meeting was called back to order at 4:00 pm.

8. Adjourn

There being no further discussion, the meeting was adjourned at 4:03 pm.

Attest

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Jon Hodde, Presiding Officer

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Marcelino A. Estrada, Executive Director