

**MINUTES**  
**TEXAS BOARD OF PROFESSIONAL LAND SURVEYING**  
**12100 Park 35 Circle**  
**Building A, Room 172**  
**August 15, 2014, 9:00 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 9:12 a.m. by Chairman Jon Hodde. Present were Board members Bob Price, Bill Merten, Mary Chruszczak, Nedra Foster, Bill O'Hara, Paul Kwan, and Jim Childress. Absent was Board member Jerry Garcia. Also in attendance were Executive Director Marcelino A. Estrada, Assistant Attorney General Nancy Fuller and her trainee, Harold J. Liller, Board Investigator Larry Billingsley, and the Board office staff.

Members of the public were invited to introduce themselves and offer comments to the Board. Comments received from the public included thanks to the Board for their representation at the recent TSPS Strategic Planning Meeting and recognition and thanks for the new audio equipment put into use by the Board for the meeting.

**1. Approval of the May 16, 2014 Minutes**

The Chairman presented to the Board the minutes of the May 16, 2014 Board meeting for approval. A motion was made by Mr. Price to adopt the minutes. It was seconded and unanimously approved with corrections.

**2. Director's Report**

**a. Legislative Appropriations Request**

Mr. Estrada began his report by directing the Board's attention to the Legislative Appropriations Request for 2016. He continued by reporting the Texas Legislature requested that the Board prepare a budget that was decreased by ten percent, in five percent increments over two years. Mr. Estrada reported he will request an exceptional item being funding for an additional part time investigator. He added that he and Rita Evans, a member of the Board office staff, would be attending the Joint Governor's Office/Legislative Budget Board meeting in order to report on the agency. Mr. Estrada added that salaries and travel tend to be the biggest expense of the agency but that they stay fairly consistent year to year. Mr. Price asked Mr. Estrada if there would be any merit to asking the Governor's office, because of the degree of which funds are received by the agency, if the agency could be considered for SDSI status. Mr. Estrada replied that he would discuss the matter with the agency's LBB analyst.

**b. Resolution presented at the TSPS Strategic Planning Meeting**

Mr. Estrada presented a resolution that was drafted at the TSPS Strategic Planning Meeting in Fort Worth. He reported that there was discussion at that meeting about possible outcomes the Board could face if the Texas legislature cut funding completely.

**c. Legacy Study**

Mr. Estrada reported that the agency had completed the Legacy Study being conducted by the Department of Information Resources (DIR). He explained that the purpose of the study was to identify outdated hardware and software used by agencies. This information will be reported to the Legislature by DIR for possible funding. He explained further that TBPLS had recently

replaced some older computers at the office but that the agency was still using software (in relation to exam generation and analysis) that would be considered obsolete.

### **3. Complaints – Larry Billingsley, Investigator**

Mr. Billingsley reported on the following complaints:

12-56: Filed by a former employee of a firm. Complainant claimed that the firm was performing surveying services for the general public without having an RPLS on staff full time. In their response, the firm provided a survey that was signed and sealed by a RPLS that was contracted to do such work. Based on that information the investigator found no rule violations.

14-05: Complainant alleged that the respondent surveyor took too long to complete the survey the complainant hired them to complete. This resulted in the complainant having to use an older survey to obtain a permit to have their driveway constructed. The subject surveyor responded he had been in frequent contact with the complainant (verbal and written) but failed to complete the work within the time quoted to the complainant, citing various reasons for the delay. Due to the fact that there are no Board rules delineating how long it should take a surveyor to complete a surveyor, no rule violations were found. However, the Complaint Review Panel recommended sending a letter to the subject surveyor containing advice to not mislead clientele.

14-11: Complainant alleged that the subject surveyor was trespassing. However the subject surveyor's client's attorney had authorized the subject surveyor to conduct the survey and asked the local sheriff's department to be present to insure the work could be completed. No rule violations were found.

14-31: Filed anonymously. Complainant alleged that the subject surveying firm was operating/offering surveying services without employing a RPLS full time. The investigator found that the subject firm did, in fact, have a full time RPLS employed. The surveyor of record for the subject firm, in conversation with the Board Investigator, surmised that the complainant was a disgruntled former employee who was intending to defame the subject firm. No rule violations were found.

Mr. Billingsley added to his report that there were roughly 42 open cases from the current fiscal year, 12 to 15 open from the previous, and a few open from fiscal year 12. He explained that the complaints were all in various stages of investigation.

Informal Settlement Conferences / Administrative Hearings

Mr. Estrada suggested the Chairman lay this item on the table.

### **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 reported that there was one proposed rule amendment to be published dealing with active duty military, Rule 661.53. She explained that, in working with Mrs. Fuller and Mr. Estrada, the Rules Committee addressed what was necessary by adding section (b) which provides a new procedure for reviewing the applications of persons on active military duty. They also added section (c) to outline the new procedures in reviewing applications from spouses of active duty military personnel. These changes were made in response to changes made to the Texas Occupations Code, sections 55.004 and 55.007.

Mrs. Chruszczak then proposed an amendment to Rule 661.47, explaining that the rule amendment would add the language "...with the exception of the un-waived education requirement,..." to

current section (c). She then made a motion to accept the proposed rule amendments. This motion was seconded and the Board began discussing the rule amendments.

Mr. Price commented that the organization of Rule 661.53 be changed to reflect a more cohesive message. Mr. O'Hara asked for a clarification of the language "alternative demonstrations of competency" under section (c), in Rule 661.53 and Mrs. Chruszczak explained that the language was in response to the Act. Mr. O'Hara then asked if this rule change was meant to create a path to licensure that did not require an applicant to take the exam and Mrs. Chruszczak responded that was not the intent of the amendment. Mrs. Fuller added that this issue was addressed during the meeting that she, Mrs. Chruszczak, and Mr. Estrada had when drafting this amendment and that the Occupations Code made it clear that the legislature was not intending to allow an applicant licensure without taking the exam. Mrs. Chruszczak explained that the new language being proposed was just to give the Board some leniency when expediting an application from active duty military personnel. Then, upon further reading of the Occupations Code, Mrs. Chruszczak suggested that the statement "with the exception of the examination requirement" be added to the end of Rule 661.53(c)(2), to insure that the exam would still be a requirement of licensure. A vote was taken to approve the proposed rule amendments and the motion carried unanimously.

Mr. Estrada reported that the Board had received suggestions for possible rule changes from the public that the Board may want to consider. Rule 661.46, dealing with the requirements for a surveyor's seal and oath. He explained that, after the recent rule change to Rule 661.46, sections (d) and (e) of this rule were removed. Mr. Estrada said that the email that he received suggested that the language be replaced by the statement "a rubber stamp signature is not permitted". A motion was made and seconded to begin Board discussion. Mr. Childress asked if there was a definition of "seal" in the rule and Mr. Price pointed out that it is defined under the *Definitions* section of the rule. Mr. Price added that, when an applicant is newly registered by the Texas Board of Professional Engineers, a facsimile of the required seal is mailed to them. After this brief discussion a vote was taken and the motion was denied unanimously.

Mr. Estrada presented the next item as a proposed change to rule 661.55 dealing with firm registrations. He explained that this issue has been reviewed by the Board at the previous meeting, held in May. The concern was addressed by the Board and was slated for publication in an upcoming edition of the Texas Register. The next rule amendment proposed by a member of the public was to rule 663.19, dealing with survey drawings. This, Mr. Estrada explained, was also addressed at a previous Board meeting held in February. This amendment is to be published in an upcoming edition of the Texas Register as well. Also, rule 663.17, dealing with monumentation, had a proposed rule change at the December Board meeting. The motion made to approve the amendment at the December meeting failed. The concern from the public was concerning whether or not to monument easement corners. A motion was made to maintain the rule as written and the motion was seconded. No discussion followed and a vote was taken. The motion passed unanimously.

Mr. Estrada then presented a number of rule amendments that are to be published in the Texas Register. He reported that the rule amendment for rule 663.18, concerning certification, did not get published in December so it is set to be published soon. The word "only" needs to be deleted. The rule amendment for rule 661.41(b)(2), concerning applications, will also be published. Maximum dimensions for a surveyor's report will be changed to 11" x 17".

This concluded Ms. Chruszczak's report.

The Chair called for a ten minute break at 10:32 a.m. The meeting resumed at 10:50 a.m.

Before the other committees were invited to give their reports, Mr. Hodde explained that the report from the Rules Committee would need to quickly be revisited due to the fact that Dr. Gary Jeffress

wished to speak to the Board about adopting language that dealt with licensed RPLS as professional educators. The recommendation was that the Board consider a rule that mirrored one adopted by the Engineering Board stating that an applicant for licensure as an RPLS be considered without taking the exam, as long as they meet criteria set by the Board. Dr. Jeffress contended that those individuals that would like to hold a license for purely academic use may not have the opportunity to go through the path to licensure currently set out by the Board Rules (i.e.: becoming a SIT and completing a mentorship). Mrs. Chruszczak asked if it was the responsible charge requirement that Dr. Jeffress thought that these individuals would not be able to complete, not necessarily taking the exam, and Dr. Jeffress agreed that that would be the requirement that these individuals would not be able to meet. He added that the new Ph.D. program being offered by Texas A&M Corpus Christi is going to require many individuals to be conducting research, and later become educators, due to the move of the field to a digital base. These individuals will not have the opportunity in their professional careers to practice surveying but would still need to be licensed. Mrs. Fuller commented that she felt that it would be prudent for the Board to “tie itself” to this progression. Mr. Hodde asked Mrs. Chruszczak, as head of the Rules Committee, to look into what Dr. Jeffress suggested and report back to the Board at the next meeting. Mr. Price then asked what the opinion of TSPS was on the subject and whether or not the Board should take that opinion into consideration. Mr. Hodde agreed that Mrs. Chruszczak should consult with the TSPS membership. Mr. Hodde suggested that, as set forth by the NCEES Model Law, an individual would still need to take an exam, be it a separate exam, or a change in exam application requirements.

At this time Mr. Hodde brought the tabled item, regarding Informal Settlement Conferences, for discussion. Mr. Merten reported that there had been an Informal Settlement Conference held, which included he, Mr. Garcia, and Mr. Hodde. The subject surveyor worked for a firm and, though he was told that the firm was registered with the Board, the firm was not. He was also found to have not set a corner as noted in his survey. His administrative penalty was set at \$750.00 and was required by the Board to submit for review 10 surveys per week during the 90-day probationary period. Mr. O’Hara asked if it was just one corner that he did not monument and Mr. Merten answered that he was correct. Mr. Kwan asked if this subject surveyor owned the firm and Mr. Merten answered that he did not. Mr. Billingsley added that the subject firm was an unregistered firm that was not owned by a surveyor. Mr. Merten and Mr. Billingsley agreed that they did not know if the firm currently was registered or had a surveyor of record. Mr. Hodde asked for a motion to approve the Agreed Order, a motion was made, and the motion was seconded. The motion passed unanimously.

Mr. O’Hara reported to the Board that he and Mr. Garcia served on an Informal Settlement Conference. The subject surveyor surveyed three lots in a fairly old subdivision near Lake Whitney. The surveyor was found in violation on many counts. The members of the ISC decided that the violation of not showing an adjoiner was a violation that should result in penalty so they agreed upon a \$500.00 administrative penalty. Mr. Hodde asked for a motion to approve the Agreed Order, a motion was made and seconded, and the motion carried unanimously.

Mr. Merten told the Board that the subject surveyor in the ISC that he attended was Richard Willet, RPLS 4615, and Mr. O’Hara reported that the subject surveyor in the ISC that he attended was Jessie Ince, RPLS 5175.

c. SIT/RPLS Examination Committee- Jon Hodde

Mr. Hodde noted that between May 16, 2014 and August 13, 2014 16 individuals took the Fundamentals of Surveying exam and six passed.

Mr. Hodde then noted the next agenda item was to review of RPLS exam situation 13-01. He explained that the Board would review this item, as well as the upcoming exams, later in Executive Session.

Mr. Hodde then discussed the appointment of Jeremy (J.D.) Davis to the Item Writers Committee. A motion was made to appoint Mr. Davis and seconded. The motion carried. The next appointment recommendation that Mr. Hodde offered was to reappointment to the QAQC Committee: Bill Massey (chair), Robert Seipel, Robert McDonald, and Paul Easley. A motion was made to reappoint the individuals and seconded. Mr. O'Hara asked if the other two exam committees were only 10 members and if 10 members were enough to hold a productive meeting. Mr. Massey stood to answer that he felt that they were able to achieve their charge with the number of members that they had but would always welcome new members. A vote was taken and the motion passed unanimously.

Mrs. Chruszczak asked Mr. Estrada for a listing of the members of each exam committee and their terms. Mr. O'Hara commented, on behalf of the Board, their appreciation for the work of the exam committee members. Mr. Massey stood to ask Mr. Hodde to appoint a vice chair to the QAQC Committee, recommending David McDow. A motion was made to appoint David McDow as Vice President of the QAQC Committee, the motion was seconded, and the motion passed unanimously.

Mr. Kwan asked why an exam question that has an angoff score would be granted a new angoff score during the Cut Off Score Workshop. Mr. O'Hara answered that sometimes the analysis of the exam, done under the supervision Dr. Jack Warner, will "flag" an item whose performance was undesirable for review by the Cut Off Score Committee. At that time the committee decides how to treat the question and grants the question a new angoff score. Mr. Kwan contended that, if the agency was made to cut its budget by 10 percent as may be suggested by the Texas legislature, that the Board consider analyzing the exam scores without the use of a psychometrician (suggesting the Board move toward setting a base score as a passing rate for the exams held in the future). Mr. O'Hara commented that two of the benefits from the current method used by the Board to analyze the exam scores were that the data shows the performance of individual items and individual test takers. He suggested that these analyses hold value for the Board. Mr. Kwan suggested that the Board try a base score method on the October exam. Mr. O'Hara then suggested that the Board consider moving toward using the NCEES PS exam. Mr. Hodde and Mrs. Foster added that the NCEES exam already has questions with subject matter specific to boundary surveying in Texas. Mr. O'Hara added that a move to the PS Exam would change Texas to a comity method of licensure from a reciprocal method of licensure. Mr. Hodde added that in 2015 the PS exam would be moved to a computer based offering. Mrs. Foster commented that the data being collected through the TBPLS exam score analysis is not being well tracked or used at the moment, but NCEES collects data from their exams and puts it to use. Mr. Price raised a concern that the profession of surveying may be damaged by not using the current analysis protocol and a psychometrician. Mr. Kwan answered that he didn't know how the change would affect the community in the future. Mr. Hodde reported to the Board that he was in possession of a few sample PS exams and that he would share them with the rest of the Board members in Executive Session. He added that it is something to consider for the future.

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

Mr. O'Hara reported that there were two applicants for the LSLS Exam being offered in October and added that the exam is still being graded by hand. He suggested that the LSLS Committee needed to create new items for the exam. He also reported that there was only a fraction of the registered LSLS performing LSLS-type work, though there is quite a bit of work for an LSLS in the state.

This concluded Mr. O'Hara's report.

- e. Continuing Education Committee – Paul Kwan, Chair  
Mr. Kwan gave his recommendations of approval/disapproval for the continuing education courses submitted to the Board. A motion was made and seconded to accept Mr. Kwan’s recommendations. The Board voted to accept the recommendations unanimously.

This concluded Mr. Kwan’s report.

- f. Oil Well Issues Committee – Bill O’Hara, Chair  
Mr. O’Hara reported that the oil and gas industry in Texas was doing well and that there was great activity in the area of alternative energy as well. He suggested that the Board reopen a dialog about oil well surveying considering Railroad Commission rules at the next Board meeting.

This concluded Mr. O’Hara’s report

- g. Legislative Needs Committee -Bill Merten, Chair  
Mr. Merten reminded the Board that at the last meeting the Legislative Needs Committee suggested that certain statutes be amended. He explained that upon further examination of these statutes the committee decided not to move forward with the previously proposed amendments. Mr. Merten recommended that the Board leave the Act as is.

This concluded Mr. Merten’s report.

The Chair called for a lunch break at 12:11 p.m. The meeting reconvened at 1:10 p.m.

## **5. Other Business**

- a. Discussion of Online Continuing Education Testing and Requirements for Obtaining a Passing Score  
The Board discussed the issue briefly but no action was taken.
- b. Discussion on Firm Contract Labor and Board Concerns  
Discussion on this issue was tabled.
- c. Update on Licensing of Photogrammetry by TBPLS- Mary Chruszczak  
Mrs. Chruszczak reported to the Board that NCEES was looking into “grandfathering in” photogrammetrists but suggested that more talks were needed with TSPS. She suggested that a committee be created to include TSPS, a selection of Board members and the representative that she had been working with from the National Photogrammetrists. She told the Board that her goal was for the National Photogrammetrist representative to make a presentation to the Board at the next meeting. Mr. Chruszczak explained that four states already have a path to licensure for photogrammetrists.
- d. Discussion of Application Process and Application Review Checklist – Bill O’Hara  
Mr. O’Hara presented the checklist that the Board is currently using to review sample surveys submitted by applicants. He explained that Mr. Merten, Mrs. Chruszczak, and he had put together the checklist last year to aid in the review of the sample surveys. He invited the Board to look it over and make any suggestions necessary. The members had a brief discussion about the items listed on the checklist and Mr. O’Hara assured them that any required changes would be made to the form. The Board also decided to require applicants to submit field notes descriptions along with the rural sample surveys.
- e. Discussion of Rule 663.17 (d), Monumentation, and the Need for Additional Language Regarding Information on Caps

Mr. Estrada reported that the Board office had received an email regarding the rule 663.17 (d). The email communicated the frustration of an individual who came across an iron rod with a cap that did not yield enough information, in the opinion of the individual. The individual stated that he felt that this was a growing problem that the Board should address. Mr. Hodde suggested that the language of the rule was sufficient and that what was happening was a case of a surveyor, or surveyors, not following the requirement of the rule. The Board agreed and no action was taken.

f. Discussion of Rule 661.47, Reciprocal Registration, and Occupation Code Section 1071.259, Registration of Out of State Surveyors

Mr. Estrada reported that the Board office received a letter from an individual by the name of Michael Kersten requesting the Board clarify Rule 661.47 in relation to statute 1071.259. Mr. Estrada suggested that it is not clear, between the statute and the Board rule, which requirements for reciprocal applicants is waived and which requirements are not waived. Mr. Kersten was specifically concerned about the degree requirement. He then suggested that the Board add language to the rule that an exam is a requirement that would not be waived. Members of the Board asked if the required four year degree had ever been waived for an applicant and they agreed that it had not. Mrs. Chruszczak remarked that the Board had already set precedence in regards to this issue.

g. Request for Reciprocal Registration- Review of Letter Submitted by Michael Kersten  
The Board agreed that they had already addressed this item in the discussion above.

h. Discussion of Need for Statutory Change Regarding Reinstatement of Expired Licenses

Mr. Estrada wanted to verify the Board's position regarding reinstatement of expired licenses. He reminded the Board of an individual who sought reinstatement of his expired license which eventually led to the Board having a bill filed with the 2013 Legislature. The bill was subsequently pulled due to lack of support. Mr. Estrada explained that the individual had been in contact with him and was requesting that his license be reinstated. Though Mr. Estrada explained to the individual what happened to the bill that was proposed, the individual persisted. The Board remarked that the individual, in the time that he let his surveying license lapse was able to maintain his PE license. The members agreed that their answer to the question of reinstatement for the individual had not changed from the previous decision they had reached.

i. NCEES Annual Meeting- Review of Motions

Mr. Estrada reported that Mr. Hodde and Mr. O'Hara would be voting on the Board's behalf at the upcoming NCEES Annual Meeting and presented to the Board the motions on the table. Mr. Hodde elaborated on the motions regarding a change to NCEES model law. One of the motions would have an effect on the Engineering Board and that Board had asked if the Surveying Board submit their vote in support of the vote that the Engineering Board was to cast. Mr. Estrada presented another motion regarding changes to the language of the model law to the Board. The Board decided that they agreed with the stance of the Engineering Board and would vote accordingly. They also decided to support the motion Mr. Estrada presented suggesting changes to the language of the model law.

**6. Future Agenda Items – Select next meeting date**

The Board decided that the next Board meeting would be held at the Westin Galleria in Houston, Texas in congruence with the TSPS Annual Convention. The meeting was decided to begin at 1:30 pm.

**7. Comments from the Public**

A member of the public stood to support the Board's move to create a path to licensure for photogrammetrists but warned against 'grandfathering in' individuals. His second comment was in regards to information on caps. He said that his firm puts name and phone number on the caps that they place and that it was his opinion that that methodology was working well for his firm.

Another member of the public stood to comment about the caps on iron rods. He said that over the years information placed on the end caps of iron rods tends to be lost. His second comment was a suggestion to the Board to bring back the language to the Board rule regarding record calls. His next comment concerned contract crews. He said that there are occasions where a surveyor will send their contract crew to a property and never go to it themselves. The individual felt as though this was bad practice.

Another individual had comments regarding ABET accreditation for the surveying program at the University of Texas at Tyler. She said that, though the professors in the program would like the accreditation for their program, the institution is not interested in pursuing the accreditation.

The Chair stated that the Board would then go into Executive Session and that the public meeting was now in recess pursuant to section 551.008 of the Texas Open Meetings Act. The public left the meeting room at 2:03 p.m. and all members present, with the exclusion of Member Garcia, remained.

The public portion of the meeting was called back to order at 4:21 p.m.

## **8. Adjourn**

There being no further discussion, the meeting was adjourned at 4:22 p.m.