

MINUTES
TEXAS BOARD OF PROFESSIONAL LAND SURVEYING
12100 Park 35 Circle,
Bldg. A, Room 172
May 16, 2014

Call to Order, Introductions, and Comments from the Public

The Board meeting was called to order at 9:04 am by Chairman Jon Hodde. Present were Board members Bill O'Hara, Paul Kwan, Bob Price, Jerry Garcia, Nedra Foster, Bill Merten, Mary Chruszczak and Executive Director Marcelino A. Estrada. Also in attendance were Assistant Attorney General Nancy Fuller, and Board Investigator Larry Billingsley. Absent was member Jim Childress.

Public Comments:

A member of the public distributed to the Board a copy of an advertisement from a company that he felt was not working as a benefit to the surveying community and was a "degradation" to the surveying profession. The Board reviewed the document and asked the name of the firm, as it was omitted by the member addressing the Board. The Board agreed that they were not at liberty to discuss the matter further.

The next member of the public called on by the Board to speak stood to recognize the Board investigator, Larry Billingsley, for the seminar that he conducts, commenting that the seminar was one of the best he had ever attended. He then mentioned, in reference to the previous speaker, that he had experience with a firm having a similar business practice and felt displeased as well. He explained that the firm he had contact with held an office in "virtual space", would not permit him contact with the field crews or drafters (as they were on "the other side of this planet"), and expected him to sign and seal surveys without sufficient experience with the land or customers. He added that the company seemed to be perpetrating multiple rule violations and that he decided to separate from them professionally. Mr. Hodde thanked the individual for sharing the information with the Board and added that if the individual had any of the surveys that were created by this firm that the Board would be interested in seeing them.

Another member of the public stood before the Board to suggest that there be put in place an exception to the requirement for an applicant to hold a four year degree to qualify to take the RPLS/Reciprocal Exam.

The next member of the public to address the Board explained that he did not feel the rule change regarding the displaying of firm registration numbers served to protect the public or promote the surveying profession.

Another member of the public stood to ask the Board, in regards to surveyors that sign and seal multiple surveys in a short period of time, why they felt title companies promote surveys that are the most inexpensive. He then asked if he was permitted to file a complaint against a surveyor that has generated a survey with a copyright on it. His last question to the Board was of their opinion of how a surveyor that wanted to do "quality work" could maintain a business when there are firms that "go around" Board rules conducting business at the same time.

The next member of the public to address the Board gave his opinion that anyone conducting surveying services should be registered with the Board.

1. Approval of the February 28, 2014 meeting minutes

Mr. Price brought to the Board's attention grammatical issues, and missing information, within the February 28th meeting minutes. Mr. Estrada assured him that corrections would be made. Mr. Hodde asked if there were any other additions to the meeting minutes. Mr. O'Hara moved that the meeting minutes be approved with corrections and Mr. Merten seconded. The minutes were adopted unanimously.

2. Director's Report

Mr. Estrada reported that the TSPS/TBPLS "Roundtable Meeting" was held. In attendance were Curtis Strong, Jim Gillis, Jerry Lehew, and Board Investigator, Larry Billingsley. Mr. Estrada explained that the meeting was regarding an analysis of the profession and determining the steps that should be taken by each agency before the ensuing Sunset Review. The group identified certain individuals to invite into the discussion and intends to extend the invitation. The group determined that the 'roundtable meetings' are to be held quarterly, the day before scheduled board meetings.

Mr. Estrada also mentioned that he will report to the Board on the strategic plan the agency is preparing that is due June 23, 2014.

This concluded the Mr. Estrada's report.

a. Complaints

Mr. Estrada reported to the Board that Mr. Billingsley was working through the backlog of complaints. He told the Board that the agency had nine reports from Mr. Billingsley to review and have identified several complaints for dismissal that are going to be brought before the Complaint Review Panel.

Mr. Estrada also mentioned that an Informal Settlement Conference held on Thursday, May 15, 2014 and that Mrs. Foster would report to the Board about the proceedings.

Mr. Estrada added that the Board was sending a case to SOAH but that Dennis McKinney of the Attorney General's Office is in talks with the respondent party and attempting to organize an Informal Settlement Conference for May or June of 2014 before official proceedings begin.

Mrs. Foster reported on the Informal Settlement Conference held on May 15, 2014 for complaint 14-01. The committee met with the respondent in the complaint and the committee's concern with the surveyor was the apparent inadequacy of research done. During the ISC, the committee decided the surveyor had done adequate research and felt their concerns did not rise to the level of a violation. The committee recommended the complaint be dismissed. Mr. Hodde asked that Mrs. Foster describe the complaint to the Board and she provided a detailed synopsis. She then offered a motion to dismiss the complaint and the motion was seconded. Mr. O'Hara asked if both concerns cited in the investigator's report were, in fact, relieved and Mrs. Foster assured him that the

committee felt that they had been. The motion to dismiss the complaint passed unanimously.

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

3. Committee Reports

a. Executive Committee Report

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

b. Rules Committee

Mrs. Chruszczak reported that the Board had received one comment in reference to the proposed rule change that dealt with changing exam protocol for the RPLS Exam. The letter expressed concern with the change that would eliminate the option to retake just a part of the exam if failed. The Board also received a question concerning the Board rule dealing with contract crews. The individual submitting the question asked why the Board omitted the language concerning contract crews. Mrs. Foster asked if the language was omitted intentionally and Mrs. Chruszczak remarked that she did not know and asked the Board if they wanted to address the issue. Mr. Hodde explained that he did not favor the use of the word “contract” in the language. Mrs. Chruszczak then made a motion to adopt the rule changes that were published in the February 21st addition of the Texas Register. The motion is seconded and the Board discussion began.

Mrs. Chruszczak commented that the reason that the changes were initially proposed by the Board was that the Legal and Analytical sections of the RPLS Exam share subject matter making it difficult to prepare questions for the exam and assign them to one part or the other. Mr. Kwan added that another reason for the proposed rule change was to follow the design of the LSLS Exam where an applicant fails all eight hours of the exam or passes all eight hours of the exam. Mr. O’Hara added that he found it interesting that the only feedback that the Board received about this proposed change was from an individual that wasn’t yet an SIT. The Board agreed that they were surprised to have only received the one comment. Mrs. Chruszczak commented that the Fundamentals of Surveying, or the SIT, Exam is also one piece and Mr. Kwan added that the engineering exam was the same. Mr. O’Hara asked if there were only the two rule changes published and Mrs. Foster asked if there had been a rule change published that dealt with the issue of adjoiners being shown on plats. Mr. Estrada indicated that there had not been but that it would be. Mr. Hodde then asked for a vote on the motion and the motion carried unanimously.

Mrs. Chruszczak continued her report stating that language regarding contract crews had been removed accidentally from the Board rules.. The former rule contained the following language: “Any firm furnishing contract land surveying crews must have a RPLS as a full time employee and in that firm is reflected in its registration form filed with the board. A full time employee is an individual employed by a company in an on-going position with a minimum of 35 scheduled work hours per week, 52 weeks per year.” She then made a motion to add the language back to the rule 661.55. She added that it would be easier if the language was added to the end as “(h)”. The motion was seconded. Mr. Price explained that

his reluctance for the Board to quote numbers of hours determining a full-time work week in the rule was because federal laws were changing the definition of the full time work week, which was mainly due to the new health care law. Mr. Garcia agreed with Mr. Price but that the Board did need to set forth parameters for the full-time work week. He explained that there needed to be a minimum set in defense of the public. Mr. Estrada then suggested that the Board add the language under the rule dealing with firm compliance rather than registration. Mr. Hodde asked Mrs. Fuller if she agreed with Mr. Estrada and she said she did and added that it seemed logical. Mrs. Chruszczak explained that the rule number would be 661.57(10). Mr. Hodde asked for a vote and the motion carried unanimously.

This concluded the Mrs. Chruszczak's report

c. RPLS/SIT Exam Committee

Mr. Hodde reported results of the April 2014 exam. He explained that 27 individuals took the SIT Exam, of which eight passed. He continued by reporting to the Board that 34 individuals took the Legal exam and 22 passed, 39 individuals took the Analytical Exam and 24 passed, and 10 individuals took the Reciprocal Exam 6 passed. He added that the average passing rate was 60%. Mr. O'Hara asked how many new RPLSs the Board would be approving at the meeting and he answered that there were about 30. Mr. Garcia asked if the Board ever received feedback from examinees about the exam, to which Mrs. Chruszczak explained that there was a questionnaire distributed to test takers the day of the exam in April. She added that a better approach to having the exam takers complete a survey would be via email after the exam. She said that she felt that the questionnaire that was distributed was a waste of time.

Mr. Merten commented that he was surprised to hear that out of 27 takers of the SIT Exam only eight individuals passed and Mr. Kwan explained that it was his opinion that the change in format must have been one of the reasons.

Mr. Hodde presented the next item for discussion as exam questions/items. Mr. Kwan pointed out that the information on the website no longer required references from the RPLS applicants. He felt that it was necessary for these applicants to provide references and the Board office staff assured him that the website would be changed. Mr. Kwan assured the Board that it was not a matter of a rule revision and Mr. Price commented that he felt that the discussion had veered off topic.

Mr. Kwan then asked if it was appropriate to collect a new angolf rating for a question that had already been offered on many exams. Mr. O'Hara explained that a question is reevaluated when it performs poorly and at that time the Cut Off Score Committee decides how to treat a question.

This concluded Mr. Hodde's report.

d. LSLS Exam Committee

Mr. O'Hara reported the LSLS exam was given in April and that one applicant took the exam. The Board recognized and congratulated Mr. Rex Hackett on successfully gaining licensure. Mr. Merten, Mr. O'Hara and Mrs. Foster presented his certificate.

Mr. O'Hara continued his report by stating that the next LSLS exam is scheduled for October and sometime in the future the exam will be chosen by the LSLS Committee.

This concluded Mr. O'Hara's report.

Mr. Hodde then returned to the SIT/RPLS Committee report and asked for a motion to certify the applicants that successfully passed the SIT Exam. Mr. Garcia made the motion and it carried unanimously. Mr. Hodde added that a motion was needed to register the applicants that successfully passed the RPLS Exam. The motion was made by Mr. Merten and the motion carried.

The Chairman called for a 10 minute break at 10:09 a.m.

The meeting reconvened and was called to order at 10:34 a.m.

e. Continuing Education

Mr. Kwan made his recommendations to the Board. Mr. Garcia had some technical questions about the subject matter of the Smart Vent course that were answered by Mr. Kwan and Mr. Price. Mr. Merten asked the chairman if it was necessary for him to abstain from the vote due to his involvement in a course. Mr. O'Hara moved to approve the courses that Mr. Kwan recommended. The motion was seconded. Mr. Price then asked Mr. Kwan if a certain course recommended for approval dealing with business practices also dealt with the practice of surveying and Mr. Kwan said that the subject matter was included on the RPLS Exam. Mr. O'Hara then asked if the Smart Vent course was offered at a specific location and Mr. Kwan answered that the course more or less traveled around. A vote on the motion was taken and carried unanimously.

Mrs. Foster, commenting about the Board's online ethics course, suggested that it be a requirement for a course-taker to download and print out the Act and Rules because the exam for the course is based mainly on one's knowledge of specific rule numbers. She also voiced concern that the Board's rule numbers change and that that may present a problem for the test taker. She suggests that the exam be looked at in effort to shift it to a more content based exam. Mr. Merten agrees that he had received comments from the public that the exam was confusing or difficult.

This concluded Mr. Kwan's report.

f. Oil Well Issues Committee

Mr. O'Hara reported that he visited the Railroad Commission web site to acquire the latest reports and statistics concerning the oil and gas industry. He reported that for the month of April, 2014 there have been three new oil field discoveries 1,069 wells completed. There were 1,919 oil and gas permits issued for the month of April as well.

For the year of 2014, there were almost 65 million barrels of crude oil and 621 million m.c.f. of natural gas. Mr. O'Hara reported that crude oil production has increased, while gas production has slightly declined.

This concluded Mr. O'Hara's report.

Mr. Hodde added that he's received calls from surveyors requesting specifics on requirements for dealing with oil and gas wells. He suggested that the Board work toward drafting these specifics.

g. Legislative Needs Committee

Mr. Merten reported considering possible revisions to the Act, due to the recent rules changes and testing procedures change for the SIT. Mr. Merten listed and identified ten sections the board should look at:

- i. Section 1071.001 Definitions
Mr. Merten explained to the Board that there was no definition of an 'SIT' or a 'firm' in the Rules and that the Board may want to include them. He added that it was his feeling that the definitions section also needed rearranging.
- ii. Section 1071.54 Surveyor's Roster
Mr. Merten suggested that this section may need to be revised due to the availability of the online roster and the fact that mailing out a copy of the roster to every applicant is costly.
- iii. Section 1071.251 Registration and Licensing
Mr. Merten suggested that the Board make any needed changes to the Act and/or Rule to insure there are no conflicts between the two.
- iv. Section 1071.252 Application Requirements
Mr. Merten suggested making a change to reflect the new SIT Exam protocol and application process.
- v. Section 1071.256
Mr. Merten reported to the Board that there should be an amendment to reflect the new SIT Exam protocol, in reference to offsite CBT (computer based testing).
- vi. Section 1071.257 Examination Results
Mr. Merten suggested that the Board needed to make sure that there were no violations of the Rules in regards to SIT Exam results being released to the examinee from NCEES.
- vii. Section 1071.259 Registration of Out of State Surveyors
Mr. Merten suggested the board address protocol for accepting SITs from other states.
- viii. Section 1071.263 Inactive Status
Mr. Merten suggested that the Board make sure there are no conflicts between the Act and Rules due to the recent rule changes.

- ix. Section 1071.351 Performance of Land Surveying Official Seal
Mr. Merten felt as though there may be possible conflicts between the Act and section 661.46 of the Rules.
- x. Section 1071.352 Surveying by Business Entity
Mr. Merten suggested that the Board insure that there were no conflicts between the Act and the Board Rules.

This concluded Mr. Merten's report.

4. Other Business

- a. Revocation of license for Steven Pruett RPLS No. 5106

Mr. Estrada reported to the Board that Mr. Pruett was charged with a felony offense and was incarcerated following his conviction. Thus, according to the Occupations Code section 53.021(b), his license has been revoked. However Mr. Estrada explained that upon release the same statute gives him the right to request reinstatement. Mr. Kwan asked if Mr. Pruett's firm was closed and Mr. Estrada explained that the firm acquired a new full time RPLS. Mr. O'Hara asked about the process by which Mr. Pruett could ask for reinstatement and Mr. Estrada explained that the Board would go through the same process that they would when determining if a felon would be eligible for licensure. He added that the Board would set parameters by which the individual would regain licensure

- b. This item was tabled by the chairman.
- c. Violation of injunction by Alvin Keel

Mr. Estrada reported on a default judgment the Board obtained in 2000 prohibiting Mr. Keel from practicing as a surveyor. However, Mr. Estrada explained that information has been uncovered in a recent legal case showing Mr. Keel violated that judgment. Mr. Kwan explained that in 1995 he was assigned to a complaint that alleged that Mr. Keel was practicing surveying without a license. Mr. Kwan at that time asked the Board to acquire an injunction against Mr. Keel to stop him from surveying and practicing engineering services. He explained that there were also fraudulent activities being perpetrated by Mr. Keel. In summation, Mr. Kwan asked the Board to intervene and stop Mr. Keel's activities. Mr. Price asked if the lands involved in this situation were the same as the lands that had previously been discussed during the report on complaints at the start of the meeting and Mrs. Foster confirmed that they were and that the situations were not linked by anything more than location. Mr. Garcia asked Mrs. Fuller what a court order would do in this situation and she explained that, when the court makes an order, and Mr. Keel disobeys it, he would then be found in contempt of court and in violation of the order. Mrs. Fuller explained further that violating such an order could result in fining or jail time. Mr. Garcia then made a motion to authorize the Attorney General's Office to proceed in filing motion of contempt or enforce the injunction. The motion was moved and seconded, opening the floor for Board discussion. Mr. Kwan reported that, in a previous situation where an injunction was sought, he took it upon himself to distribute the injunction document to surrounding areas, effectively putting the unlicensed practitioner out of business. He suggested that enlisting the help of TSPS, or enlisting the

help of the internet, would be advantageous. A vote was then held and the motion was approved.

- d. Mr. Estrada reported the Board office received an email inquiry regarding the process for becoming licensed as a professional photogrammetrist in the state of Texas. He mentioned that, because the legislative needs committee was focusing on the amendment of statute, that this would be a good time for the Board to address the needs of the photogrammetry community. Mr. Hodde felt this issue should be re-visited the committee that had previously spoken with the photogrammetrist and GIS professionals. He explained that these practitioners were included in the other state's Board rules and that the Texas Board may want to consider doing the same. Mr. O'Hara voiced his agreement because he felt as though these professionals are providing surveying services but are unregulated. Mr. Hodde then explained further the details of the practice of photogrammetry, adding that the Board should be regulating this practice in Texas. Mr. Hodde then asked Mrs. Chruszczak if she would organize a meeting with this community. A motion was made by Mr. Merten to form the committee that would investigate the possible adoption of photogrammetry into the surveying act. The motion was seconded and carried unanimously.
- e. Future Agenda Items

Mrs. Chruszczak mentioned that the military issues should be included on next meeting's agenda.

5. Future Meeting Date

The next board meeting was set for August 15, 2014 9:00 a.m.

6. Comments from the Public

A member of the public stood before the Board to address his concerns regarding the selection and qualification of candidates for RPLS Exam. The individual felt that the requirement for a four year degree was holding back the surveying community. He added that experience, in his opinion, was as important, or more important, to have than a degree. He suggested more experience should be required of applicants. Other members stood in agreement.

Another member of the public stood to suggest that the Board use an email notification system to apprise the public of notable changes or updates.

The next member of the public to speak to the Board suggested that the Board post information about complaint outcomes on its website.

Another individual from the public stood in agreement regarding the previous comments about the degree requirements.

The next member of the public to address the Board suggested that a respondent to a complaint should possibly be subject to going before the Board to plead their case.

7. Adjournment

There being no further business, the meeting was adjourned at 11:38 a.m.