

MINUTES
TEXAS BOARD OF PROFESSIONAL LAND SURVEYING
The Westin Hotel at the Galleria
5060 W Alabama St
Houston, TX 77056
October 16, 2014, 1:30 p.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 1:40 p.m. by Chairman Jon Hodde. Present were Board members Bob Price, Bill Merten, Mary Chruszczak, Nedra Foster, Bill O'Hara, Paul Kwan, Jim Childress, and Jerry Garcia. Also in attendance were Executive Director Marcelino A. Estrada, Assistant Attorney General Nancy Fuller, Board Investigator Larry Billingsley, and the Board office staff.

After introductions the public was invited to offer comments to the Board. There were no public comments.

1. Approval of the August 15, 2014 Minutes

The Chairman presented to the Board the minutes of the August 15, 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

Mr. Estrada mentioned to the Board that the office had acquired new sound equipment to better project the meeting to the general public in attendance.

a. 2015 Renewals

Mr. Estrada informed the general public in attendance, and Board members, that the period for renewing licenses was about to open. He reminded everyone to access the online payment portal to confirm their user information so that they would be able to conduct transactions online. He added that the state licensing system was not managed by the Board and that, if any user was in need of assistance, they would need to contact the Health Professions Council because they are the system administrators. Mr. Estrada also reminded all in attendance that licenses must be renewed by December 31 and that a licensee that does not renew their license by that date will no longer be permitted to survey.

b. COOP: Continuity of Operations Planning

Mr. Estrada reported to the Board that the agency had been charged with creating a new business continuity plan. Mr. Estrada invited Board staff member Natalie Jackson, who he designated to fulfill the COOP requirements, to explain the process to Board members. He added that the deadline for submission of the "Crosswalk" to the State Office of Risk Management was October 31, 2014.

Ms. Jackson reported to the Board that the “Crosswalk” is a list of action items that need to be addressed by the continuity plan that was mandated. She explained that the “Crosswalk” was lengthy and that the agency was currently working to complete it by the deadline. She explained that the COOP was designed to ask in-depth questions of agencies in regards to their readiness to activate contingency operations and outline their essential functions. Mr. Estrada added that the COOP requires the agency to identify an alternate location from which to operate; maintaining licensure information will be the agency’s main priority. Mr. Garcia asked where the agency was in the process and Ms. Jackson explained that, through the use of the templates created by SORM, the agency was in the process of drafting the continuity plan. Ms. Jackson added that COOP started as a federal mandate that was adopted by the state of Texas and the mandate was then administered to all state agencies. She explained that the agency was working with the Texas Facilities Commission to identify various locations that the agency could move to in continuity plan activation. Ms. Jackson went on to explain that there were varied degrees of training and exercise required for the agency to put into place and that TBPLS would engineer a plan that would work to support the continuation of the agency’s critical functions.

c. Risk Management Audit

Mr. Estrada reported that the agency had just been audited by State Office of Risk Management and had passed under the conditions that the agency inspect its fire extinguishers monthly and that the agency add an indoor quality document to its risk management manual. He explained that it was recommended that the agency consider obtaining property and travel insurance. He added that, because the agency had already filed its LAR, the agency may have to request further appropriations if it chose to purchase insurance. The Board motioned to have Mr. Estrada look into options for getting the insurance and the motion carried unanimously.

d. Information on Self Directed, Semi-Independent (SDSI) agencies

Following up from the last Board meeting, Mr. Estrada reported on what it meant to become SDSI. He learned that the agency has to cover all expenses, including employee benefits and any retirement expenses. He added that some agencies that moved to a SDSI status encountered expenses that they had not considered. He noted that the Legislature was reviewing the SDSI process and considering putting certain requirements in place. Because of this, any agency requesting SDSI status would likely be placed on hold.

This concluded Mr. Estrada’s report.

3. Complaints – Larry Billingsley, Investigator

Mr. Billingsley had no closed cases to report to the Board but added that the agency had 41 open complaints and five investigative reports had been submitted to the Executive Director. Mr. Garcia asked if the Board receives updates on Agreed Orders previously presented to the Board. Mr. Estrada explained that when the orders are presented, the respondent has already signed the order, the only thing lacking is the Board’s approval and the Chair’s signature to make it final.

a. Informal Settlement Conferences / Administrative Hearings

Mr. O’Hara reported on the Informal Settlement Conference held in regards to complaints 14-26, 14-27, and 14-28. He explained that he, along with Mr. Garcia, attended an ISC for a surveyor from the Houston area. Mr. O’Hara reported that the surveyor was found in violation of rule 663.9(c) for use of an improper seal. The surveyor was also found in

violation of rule 663.18 (a), rule 663.19(3), 663.19(4), 663.19(6) and 663.19 (7) regarding plat description. Mr. O’Hara added that all three complaints were in relation to surveys done by the subject surveyor in the same subdivision. During the ISC it was determined that the surveyor’s work was substandard and he was advised of such. The surveyor agreed to accept a reprimand from the Board and agreed to pay an administrative penalty of \$5000 within six months of the Board’s approval of the agreed order. He was also instructed that he must complete an additional eight hours of continuing education and submit corrected copies of the surveys related to the complaints to the Board for review. In addition, the surveyor agreed to submit a listing of the job numbers completed by him for that month within 90 days of the approval of the agreed order and every 30 days after that. The Executive Director will then randomly select five surveys from the job numbers for the surveyor to submit as PDFs for review by the Board. This completed Mr. O’Hara’s report and Mr. Merten moved to accept the agreed order. The Chair called for a vote, Mr. Kwan abstained, and the motion carried unanimously. The name of the surveyor is George Lardizabal, RPLS number 6051.

Mr. Estrada reported that there had been another Informal Settlement Conference held before the Board meeting but that the agreed order was still being drafted so the Board would hear the report at the meeting in December. He explained that the complaint was regarding the elevation certificates in Jefferson County.

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 said that the committee had nothing to report.

c. SIT/RPLS Examination Committee- Jon Hodde

Mr. Hodde reported that the total number of applicants sitting for the exam, excluding the LSLS Exam, was 76. He explained that 19 applicants would be sitting for the Reciprocal Exam, 45 for the Legal Exam, 47 for the Analytical Exam, and one for the LSLS Exam.

This concluded Mr. Hodde’s report.

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

Mr. O’Hara reported that there was one applicant sitting for the LSLS Exam and that the exam had been selected.

This concluded Mr. O’Hara’s report.

e. Continuing Education Committee – Paul Kwan, Chair

Mr. Kwan offered his recommendations for approval and rejection of the continuing education courses submitted to the Board. Mr. O’Hara moved to approve or reject the continuing education courses offered in accordance with Mr. Kwan’s recommendation. The motion was seconded, and approved 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 was doing well in Texas

This concluded Mr. O'Hara's report

g. Legislative Needs Committee -Bill Merten, Chair

Mr. Merten reported that the Committee would be monitoring the upcoming legislative session closely.

This concluded Mr. Merten's report.

The Chair called for a break at 2:30 pm. The meeting reconvened at 2:50 pm.

Mr. O'Hara reported that the checklist the Board uses to review sample surveys submitted by applicants was complete and would be published on the Board's website.

5. Old Business

a. Discussion on firm contract labor and Board concerns

Mr. Estrada asked the Board if they would like to create a committee to examine concerns regarding contract labor. Mr. Price, Mr. Merten and Mr. O'Hara volunteered to serve on the committee.

b. Digital Signatures

Mr. Estrada reported to the Board that the office had been receiving calls from the surveying community regarding clarification of what a digital signature was and how its use is or is not permitted by the Board. Mr. Hodde asked for volunteers to form a committee to look into the issue and Mr. Price and Mr. Merten volunteered.

c. Update on licensing of photogrammetry by TBPLS

Mrs. Chruszczak reported that she had spoken with a representative from the photogrammetry community and the representative was intending on presenting to the Board at the next meeting. She said that the representative sent her the proposed rules from the state of Washington (which she provided to the Board for review).

d. Registration requirements for educators

Mr. Kwan reminded Board members that at the last meeting Dr. Gary Jeffress discussed the need for licensure of educators. Mr. Kwan said that he visited the A&M, Corpus Christi, campus to discuss the licensing of educators employed in the university's surveying program. He explained that the educators there would like to have the SIT mentorship requirement waived in lieu of their collegiate achievements and experience. Mr. Kwan suggested to the Board that the achievement of a Ph.D. should translate to one year's experience in mentorship and that teaching collegiately should translate to more experience. By doing so, these educators would meet the mentorship requirement and then be permitted to take the licensure exam. Mr. Kwan contended that to license these educators would benefit the students in the surveying program, the program itself, and the educators. Mr. Hodde added that NCEES was looking for an alternative path to licensure for educator and has attempted to adopt the alternate path into model law, but voted against it due to the fact that with a license anyone is permitted to practice. He explained that Mr. Kwan's suggestion was different because the educator seeking licensure would still be required to take the exam. Mr. Hodde asked Mr. Kwan if he would chair a committee

charged with looking into creating a path to licensure for educators and he agreed. Mrs. Chruszczak volunteered for the committee and added that the intent of this committee would be to create a proposed ruling for the path to licensure. Mr. Kwan and Mrs. Chruszczak agreed that they would like to hear from TSPS about this issue as well.

6. New Business

a. Investigation of surveys over 10 years of age

Mr. Estrada reported that the office had received a complaint regarding surveys that were older than 10 years. He explained that neither the Act nor Rules sets a limitation on investigating surveys based on age. He did, however, find a 10 year statute of limitation in the Texas Civil Practices and Remedies Code for bringing a civil action against a surveyor. He added that he understood the obstacles posed by an investigation of a survey over 10 years of age. Mr. Estrada asked the Board if it was their wish to have something in place that prohibited investigating surveys older than 10 years and Mr. Kwan offered a brief history to the Board about this implied statute of limitations. He explained that it began as a policy of the Board. Mrs. Foster asked if the Board had received any complaints regarding surveys that were older than 10 years of age and Mr. Estrada replied that the first one that he had seen had come in recently. Mr. Garcia told the Board that the statute of repose for home building was 10 years and that he thought 10 years was an adequate statute of limitation. He added that he would be in favor of a motion to adopt the statute of limitation. Mr. Childress agreed with Mr. Garcia. Mr. Hodde then asked Mrs. Fuller to comment and she explained that the civil courts placed the limitation for a reason but that the Board was of a different function due to it being charged with protection of the public. She added that if the legislature wanted the Board to stop investigating surveys after they had passed 10 years of age they would have placed the limitation on the Board. She agreed that an investigation into a survey that was 10 years of age or old would be difficult. But she stressed again that the limitation was not initially placed on the Board. Mr. Hodde asked Mr. Estrada to contact other regulatory Boards to find out how they handle this issue. Mr. Price asked if a complaint was open for longer than 10 years would the statute of limitations take effect and Mr. Garcia explained that, once a complaint is lodged, the statute of limitations cannot be applied. Mr. O'Hara then asked the difference between the term "statute of limitation" and "statute of repose" and Mrs. Fuller explained that she had not studied either term so she did not want to comment. The Board discussed the difference and Mrs. Fuller explained that the terms often mean the same thing. Mr. Kwan added that, in order to investigate a survey over 10 years of age, one would have to revert back to the rule that was current at the time that the survey was created. Mr. Hodde told the Board that Mr. Estrada would obtain more information regarding the subject and report back to the Board.

b. Recognition of Nancy Fuller, Assistant Attorney General

Mr. Estrada reported that Mrs. Fuller had decided to retire and effectively leave the service of the Board. Mr. Hodde read a resolution recognizing her service to the Board and offered her a small gift. Mrs. Fuller thanked the Board and recognized the Board for their dedication to the profession of surveying.

7. Future Agenda Items – Select next meeting date

Mr. Estrada told the Board that the TBPLS Exams will be held on October 24, 2014. The Board decided to hold the next meeting on December 12, 2014 at the TCEQ Complex at 9 am.

8. Comments from the Public

A member of the public stood to suggest to the Board that there be a separate registration for educators rather than a path to licensure for educators. The individual continued by voicing his concern about adopting a statute of limitations for investigating surveys. He contended that if a mistake was made on a survey that the surveyor is liable regardless.

Another individual stood to address the Board regarding the statute of limitation that was discussed. He said that he agreed with 10 years and added that, as a surveyor, he would like the opportunity to fix mistakes made in the past.

The next individual stood to ask if his liability as a surveyor stopped with the people that commissioned the survey or if it carried on to future owners of the property. Mr. Hodde told the individual that the Board's concern was whether the survey was correct, regardless of how many property owners handle it.

Andy Sikes welcomed the Board to Houston on behalf of TSPS.

9. Adjourn

There being no further discussion, the meeting was adjourned at 3:36 pm.

Attest _____

Jon Hodde, Presiding Officer

Marcelino A. Estrada, Executive Director