

MINUTES
TEXAS BOARD OF PROFESSIONAL LAND SURVEYING
12100 Park 35 Circle, Bldg. A, Rm. 173
Austin, Texas
December 12, 2014, 9:30 a.m.

Call to Order, Establish Quorum, Introductions, and Comments from the Public

Chairman Jon Hodde called the meeting to order at 9:32 a.m. Present were Board members Jim Childress, Mary Chruszczak, Nedra Foster, Jerry Garcia, Paul Kwan, Bill Merten, Bill O'Hara and Bob Price. Also in attendance were Executive Director Marcelino A. Estrada, Assistant Attorney General Harold J. Liller, Board Investigator Larry Billingsley, and the Board office staff.

The Chair invited the public in attendance to introduce themselves. There were no comments from the public.

1. Approval of the October 16, 2014 Minutes

The Chair offered the minutes of the October 16, 2014 Board meeting for approval whereupon motion duly made, seconded and unanimously approved, the minutes were adopted.

Before proceeding to the Director's Report, the Chair stated that a presentation would be given on photogrammetrist licensing which was item 5b on the agenda. Michael Zoltek, who is with the National Photogrammetrist Association, offered a presentation on State Licensing of Photogrammetrist. At the conclusion of his presentation, Member Chruszczak thanked Mr. Zoltek for his presentation as it has given the Board something to think about. She also recognized his knowledge and insight to the relationship surveyors have to photogrammetrists.

2. Director's Report

The Chair then returned to the items on the agenda, beginning with the Director's Report.

a. TBPLS Budget, Year to Date

Mr. Estrada provided the Board members with an expense statement showing Year-to-Date figures demonstrating the beginning amount provided by General Revenue less expenses to date.

b. LBB Appropriations Growth

Mr. Estrada provided Board members with information he received from a meeting he attended recently. The Legislative Budget Board approved a growth on appropriations of \$94,267,654,158 for the biennium 2016-17. This is \$10 billion over the appropriations for 2014-15.

c. License Renewals

Mr. Estrada reminded Board members and attendees that there were 20 days left to renew their licenses. Approximately 1500 licensees have not renewed. Mr. Estrada also explained that when licensees pay online, they are going through three agencies: TBPLS, Health Professions Council and Texas.gov. Mr. Estrada also provided suggested tips to help make the process smoother.

d. Publication of Proposed Rules

Mr. Estrada noted that a copy of the proposed rules as published on December 5, 2014, were provided in the member's workbooks. Mr. O'Hara said he had attended a TSPS Governmental Affairs Committee meeting where the proposed rules were discussed. A

question arose regarding Rule 661.53. Mr. O'Hara wondered if the new language was the appropriate place or if it should be a new paragraph. Ms. Chruszczak thought that perhaps making the language a new paragraph would make things clearer. The Chair agreed and said this was a change that could be made during this period.

3. Complaints

Mr. Estrada provided Board members with information on whether other regulatory boards had a limitation of action on complaints. He found that the range varied from 2 years to 7 years except for the Plumbing Board which had no limitation on improper installations. He noted that they would even pursue complaints after retirees. The Board took no action.

a. Discussion of closed cases

Mr. Billingsley discussed two complaints that were dismissed. Complaint 14-02 alleged the subject surveyor failed to provide the complainant with the survey for which she paid. The complainant provided copies of cancelled checks, a copy of a letter sent to the surveyor and a copy of two letters from her attorney addressing the issue with the surveyor. Upon receipt of the complaint, the subject surveyor contacted the complainant. Personal and medical circumstances, along with a move to another city, caused the delay in completing the survey. The subject surveyor was unaware that the complainant was attempting to contact him as none of the letters reached his new address. The surveyor completed the survey and delivered it to the complainant. The complainant asked that the complaint be withdrawn. The complaint was dismissed.

Complaint 14-19 alleged that the subject surveyor trespassed on the complainant's property and stated a drainage easement that did not exist. After contacting a title company, the complainant was informed the easement did exist but the description was too general and vague to be of value. The subject surveyor had been hired by TxDOT in August of 2010 to establish a right of way for a highway adjacent to the complainant's property. The work included locating fence post believed to be encroaching in the right of way and staking an easement purchased by the State of Texas, acting through the State Highway Commission, in 1954 from the property owner at the time. The Board's investigator found that the subject surveyor did sufficient field work necessary to establish the right of way line. TxDOT right of way markers were found both north and south of the complainant's property and utilized in the boundary work. Sufficient information was found to enable the surveyor to establish stationing along the highway centerline, or baseline. The surveyor used the stationing to help locate the easement in question. There were no rule violations and the complaint was dismissed.

b. Discussion of open cases

There were no open cases discussed.

c. Informal Settlement Conferences / State Office of Administrative Hearings (SOAH)

There were no ISC/SOAH complaints to report.

4. Committee Reports

a. Executive Committee

Mr. Hodde reported that the Executive Committee had nothing to report.

b. Rules Committee

Ms. Chruszczak reported that she and Mr. Kwan had reviewed licensing requirements for educators wanting to become RPLS but who do not have the experience to qualify. She presented a draft rule, along with compliance verification for experience. Educators would still have to take the SIT exam but the Board could consider giving them credit towards the RPLS exam for experience, such as in field accuracy and

tolerance or field, along with nine months to one year teaching experience. No credit could be given towards the office experience portion of the RPLS requirement. For educators that have SIT certification, the Board would need proof of a Ph. D. from an accredited institution and at least one year experience as an instructor.

The Chair expressed concern over the fact that if these individuals were licensed, they would be able to practice. Ms. Foster stated that she would prefer the educators to be licensed and involved if they were going to be teaching our licensees. Mr. Kwan mentioned that the Engineering Board gave an exemption to educators but they had to be teaching, not working in research and development. Ms. Chruszczak said the intent was to acknowledge the situation and assist them but hand the license to them. These educators have been creative, working nights and weekends to gain experience. Their experience should be evaluated differently. Mr. Kwan said that educators would need to submit a detailed resume on what they teach, what they research, and for how long.

Mr. Price pointed out that Board of Professional Engineers had similar concerns when amending their rules to license educators. Since the adoption of those rules, few have taken advantage of their license and performed engineering services. Educators will be training our future professionals; we need to take care not to create a divide between education of future professionals and the professionals that exist in the current industry.

Mr. Merten asked if the recommended 9 months experience was the maximum that the educators could receive. Ms. Chruszczak replied that the Board could choose any time period but in her opinion was that the most she believed anyone could receive. Mr. Merten agreed.

Mr. O'Hara asked if the educators would still be required to take the exam. Mr. Kwan noted that that was required by statute. Mr. O'Hara then stated that the issue was in the educators acquiring experience. He noted that Patti Williams at Tyler Junior College and Dr. Jeffress at Texas A& M-Corpus Christi were RPLS who could serve as mentors. Mr. O'Hara mentioned that the rules state a surveyor providing services must be competent and an educator who becomes a RPLS would not be competent to perform those services. He believes that this is good direction for the Board.

The Chair thanked Ms. Chruszczak and Mr. Kwan for their work and asked that they bring a recommendation to the Board at its next meeting.

c. RPLS/SIT Examination Committee – Jon Hodde, Chair

Mr. Hodde noted that eight passed the SIT exam and 40 passed the RPLS exam. Mr. Kwan offered a motion to certify the SITs. The motion was seconded and passed unanimously. Mr. O'Hara asked if there were statistics on the trend on SITs. Ms. Jackson reported that the trend is dropping; she estimated that 40 people have sat for the exam and 8 passed.

Mr. O'Hara asked if there were similar statistics for RPLS. Mr. Hodde stated that there were more reciprocal examinees because of our economy. Mr. O'Hara asked if there were statistics of licensees who were leaving the profession and not renewing their license or putting their license in inactive status.

Ms. Foster offered a motion to certify the new registrants. The motion was seconded and passed unanimously.

The Chair called for a 10-minute break at 10:50 a.m. because there would be another presentation via telephone.

The meeting was reconvened at 11:06 a.m.

Jack Warner, Psychometrician, addressed the Board concerning the recent rule change requiring an examinee to retake the entire exam rather than only repeating only the part they failed. Mr. Warner stated that the Board currently offers two different exams. His concern was that if the Board required an individual to retake an exam that they had already passed, the exam could be challenged. Mr. Kwan offered a driving test as an example, saying that if you failed a part of the driving test, you had to take the whole exam over. Mr. Warner rebutted with the Colorado driving test being a written exam and a performance exam. You had to pass both but only retake the one you missed. He felt this was akin to the two separate exams offered by the Board. Mr. Warner was concerned with the situation where an individual passed the legal part but was required to retake the legal part because they failed the analytical part. He felt that the NCEES exam did not have the same requirement that this Board was suggesting. He felt that the Board's current system should not be changed.

Mr. Warner went on to offer his thoughts on providing an examinee with an analysis of his test results. He suggested the board: (1) consider delineating the content and scope of what is being tested in the analytical exam, and (2) then go through each item in the item bank that would classify all the questions according to the test blue print. This will also help ensure that the breadth of the profession is being covered and any areas not covered could be addressed. Mr. Warner thought it would be beneficial to have the Item Writing Committee and the Cut-off Score Committee address this in a workshop.

Ms. Foster felt that by treating our exam as one exam, we are aligning with other Board's and the NCEES PS exam.

Mr. Childress asked if there were any data supporting the concerns raised by Mr. Warner. Mr. Estrada stated that, as Mr. Warner had stated, there was no data, his concern was theoretical.

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

Mr. O'Hara reported that the next exam would be in April 2015. There are two applicants whose reports are being reviewed. This concluded Mr. O'Hara's report.

e. Continuing Education Committee – Paul Kwan, Chair

i. Approval of Courses

Mr. Kwan offered his recommendations to the Board. Mr. Kwan recommended approval of courses offered by Half Associates, TSPS Ch. 6, TSPS, R-Delta Engineers, Jon Hoelbelheinrich, and David Hunt. Mr. Kwan also recommended approval of an individual course submitted by Robert Hysmith with the exception that he receive eight-hours of continuing education credit.

Mr. Kwan recommended rejecting the individual course request from Stephen Horvath, Edward Prince and Robert Anguaino because the course was TxDOT specific.

Ms. Foster offered a motion to accept Mr. Kwan's recommendations. The motion was seconded and unanimously approved.

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

Mr. O'Hara reported that price of oil was on the decline. The U.S. benchmark price fell below \$60 for the first time in five years. The price of natural gas is holding steady, though it has dropped this past year.

The impact of the oil and gas industry on Texas is tremendous. Mr. O'Hara said there was still a lot of drilling activity. He also noted that a new Land Commissioner would be taking office next month. They will be examining revenues produced from the permanent school fund mineral interests, which includes the decline in oil prices.

This concluded Mr. O'Hara's report.

g. Legislative Needs Committee—Bill Merten, Chair

Mr. Merten reported that his committee has been keeping an eye on the upcoming Legislative session. He did want to bring a proposed bill to the attention of the members that would be filed by TSPS LSLC Committee. The bill concerns the custody of county surveyor's records when the county surveyor office is abolished. There has been a serious problem with LSLC being able to file required documents and surveys. Many files are lost and many are in the hands of private individuals when they should not be.

This concluded Mr. Merten's report.

5. Old Business

a. Discussion on firm contract labor and Board concerns

Mr. Merten spoke on behalf of his committee which included Mr. Price and Mr. O'Hara and referred to a draft comment contained in the member's workbooks. He reported that there were several questions regarding the definition of "independent contractors". The Texas Workforce Commission and the IRS have definitions that are in conflict with the Board's rules. Their definitions read that this is someone who provides a service for a fee where they have complete control over the service by the hiring entity. If an RPLS hires a contractor, he needs to be in control though the whole process. Mr. Merten said that the Board cannot control who people hire and whether they are contractors or not. This is a matter to be clarified by Texas Workforce Commission and the IRS and not TBPLS. The recommended statement, in response to the questions concerning this issue is, it is paramount that the RPLS, in responsible charge, retain complete control of the final product.

A secondary question dealt with firms outside of Texas soliciting work in Texas or an RPLS to do the work in Texas. This firm would be in violation of Board rules if they are not a registered firm. An outside firm hiring an RPLS is allowed so long as the work is done on the letterhead of the RPLS.

This concluded Mr. Merten's report.

b. Update on licensing of photogrammetry by TBPLS - Mary Chruszczak

This topic was covered earlier.

c. Licensing requirements for educators – Paul Kwan

This was addressed earlier except for the following:

i. Request from Nicolas Marina, Lone Star Community College

Mr. Estrada reported that Mr. Marina was hired by the community college but is not licensed in Texas. He was asking for a waiver in the educational requirement and being allowed to take the exam. Mr. Estrada felt that Mr. Marina would have to have his degree evaluated and referred members to documentation submitted by Mr. Marina.

Mr. Kwan said that a comparison of his education from Puerto Rico would have to be compared to a similar U.S. degree. Mr. Estrada will let Mr. Marina know.

d. Investigation of complaints regarding surveys older than 10 years

Mr. Estrada directed the Board members attention to a chart within their work book where he provides a comparison of other Texas regulatory boards and how they deal with complaints over 10 years of age.

The Funeral Commission has a two-year statutory limitation on complaints; Optometry has four-years. Plumbing has no limitation on improper installation and would apply to retirees depending on prior complaints.

Engineering treats these complaints on a case-by-case basis. Mr. Estrada asked the Board for guidance and stated he felt that a case-by-case basis might be an approach for the Board to take.

Mr. O'Hara asked if the Board did not have a 10-year statute of limitation. Mr. Hodde explained that applied to civil matters and not Board investigations. Mr. Price pointed out that researching an old complaint would depend on the documentation available and the enforcement arm being able to make a finding.

e. Digital signatures

Mr. Merten reported on behalf of Mr. O'Hara and Mr. Price. He reported that the committee studied many definitions of digital signature and provided a copy of a description that the committee thought was excellent. A digital signature is a "fingerprint" done by an individual program separate from the document you are working on and can be provided by a service or an individual that owns the program. An electronic signature is something like writing your name on an email. The committee looked to the Engineering Board because they have enacted rules regarding electronic seals and signatures.

Mr. Merten said the committee had three recommendations:

1) A document signed and sealed with a digital signature from a digital signature program or by a company that provides that service is acceptable. The surveyor shall retain digitally signed/sealed originals and a hand signed/sealed original in his/her permanent files.

2) Any electronic submittal that is an unalterable copy (i.e. PDF or similar format) of an original that includes a signature and seal should be considered a copy no different than a copy of an original from a copy machine and therefore acceptable. The surveyor shall retain the signed/sealed original in his/her permanent files.

3) A digital graphics program such as AutoCad, MicroStation or other similar platforms where it is possible to add a digitized (not digital) signature and seal into the drawing as a separate entity, shall not be allowed outside of the control of the surveyor and transmittal of such shall not be acceptable.

This concluded Mr. Merten's report. Mr. O'Hara asked what the surveyor's responsibility to sending a CAD file to his client. Mr. Merten said it would not have the signature or seal within the document because the signature could easily be removed from the drawing and placed in another drawing. Mr. O'Hara asked about sending the file without a signature. Mr. Merten said that would be considered a preliminary and not a problem.

Mr. O'Hara then asked what about when a project is complete and the client wants the CAD file. Is the only option to apply a digital signature? Mr. Merten said he would not consider the CAD file a final copy since the original hardcopy was also delivered. Mr. O'Hara pointed out that this was likely being done every day and wanted surveyors to understand their responsibility. Ms. Foster asked how this would protect the public. Mr. O'Hara said it would prevent someone from stealing the signature and seal of the surveyor. Ms. Foster thought it was more of a business decision between the surveyor and the client and how they want to transfer information. The Board has a rule saying surveyors have to protect their seal and this seems to be pushing the Board over the line, forcing surveyor's to protect their license. Mr. Merten stated that these are recommendations on what would be acceptable under the rules and Act since questions had been received.

Mr. Hodde asked if there were questions or if the members wanted the committee to consider further and bring suggestions to the Board. Committee members declined.

6. New Business

a. Request for reinstatement of expired license – Joseph E. Guerra

Mr. Estrada informed the Board that a letter had been received from Mr. Guerra whose license had been expired since 2004. A letter of support was also included. Mr. Kwan asked why his license was expired and Mr. Estrada stated that Mr. Guerra had not obtained the required continuing education and his license was expired. Mr. Kwan said that Mr. Guerra would have to start over and offered a motion to deny the request. The motion was seconded and passed unanimously.

b. Oil field plats – Mark Paulson

Mr. Paulson addressed the Board concerning unit plats. He wanted to know how, as surveyors, they can turn in a product that has boundary lines with no bearing, no distance and no way to reconstruct the boundary line. How can this be considered to protect the public? Mr. Paulson would like the Board to issue a statement to say that surveyors have to do this. Ms. Foster asked if the examples he presented had certification and Mr. Paulson said they did.

Mr. O'Hara asked if this could be discussed at this time. Mr. Garcia asked Mr. Paulson to explain to him, what information Mr. Paulson would like to see on the documents. Mr. Hodde stated that Mr. O'Hara was on the Oil and Gas Committee and was asking that he look into this matter. Mr. Hodde will assist and they will bring another member into this committee.

Mr. O'Hara stated that these types of drawings are acceptable to the Texas Railroad Commission but are substandard to the Board's minimum requirements. Somehow, the Railroad Commission rules override the Board's rules but it is something that needs to be examined again.

Ms. Chruszczak asked Assistant Attorney General Harold Liller if he would assist with this concern.

7. Future Agenda Items – Select next meeting date

The Board chose March 6, 2015 at 9:00 a.m. for the next Board meeting.

8. Comments from the Public

One public member stated that he agreed with Mr. Kwan regarding testing. He did not understand why the Board allowed separation of the tests. He also commented on the educator licensing and voiced concern that if individuals did not have field experience, they cannot do this type of work. He noted that other regulated professions did not have licensed professionals teaching and being licensed should not be a requirement for them to teach. An alternative might be a certificate for certified teachers which mean that the individual is certified to teach. He felt it would be better to have a surveyor take two years to obtain a Ph.D. and become an educator than to take an educator and make them surveyors. This would prevent a non-surveyor getting a license and then worrying that they might perform surveying.

Phil Payne commented on oil and gas plats and agreed with Mr. Paulson's presentation. He felt that the Board should send a letter to every surveyor when the Board arrives at a conclusion regarding oil and gas plats so that everyone will know what the rule is. There should be a minimum three state plane locations so that anyone can recreate the boundary. Regarding educators, he wondered if an institution of higher education would accept a professional degree in lieu of a Masters, there would be plenty of individuals who might be willing to become educators.

Jim Gillis, TSPS President, commented on the educator issue and wanted to speak for the land surveying community in general. He believes that the vast majority do not feel an educator should receive credit towards land surveying experience time from their education. There is a difference between surveying and land surveying. Educators teach how to measure; land surveying is about boundaries and law, and the educators do not get any experience in boundaries and law. In the current Act and Rules, we do not have a requirement for actual field time before a person becomes an RPLS. It is not just two years, it should be two years in the field measuring and learning how to establishing a boundary. On the oil field plats, he mentioned he brought some oil and gas well plats to the attention of the former Director Sandy Smith and it was determined that the plats had violations.

However, the Board did not enforce the rules. What is being done now is nothing more than a cartoon. Is this proper?

Mark Paulsen commented that the understanding is that the Railroad Commission would accept anything regarding oil and gas well plats but this thinking has progressed too far. Surveyors performing oil and gas well plats say how those plats are prepared do not matter because it's for the Railroad Commission. The Board-not the Railroad Commission-has control over the surveyors, and the Board needs to enforce its rules.

Another audience member commented that he agreed with the previous comments. The Board needs to take control of the surveyors and how surveying is done. He felt that if a surveyor is going to put their seal and signature on a plat, the document should meet the Board's standards. Regarding the educator issue, there is a difference between the practitioner and an academia. If we want the academia to have a surveyor's license, then we need to make certain they have the proficiency to practice land surveying.

The next audience member mentioned that Southern Association of Colleges and Universities requires, for accreditation purposes, that instructors have education in the field specific to the field they are teaching and that they also have a professional license.

Paul commented on the proposed legislation for county records that are no longer in possession of the county. He suggested that the records or an index of the records in the possession of surveyors should be given to the county clerks and hoped the Board could help facilitate this.

Ken Gold commented on exam committees. Dr. Warner suggested that we look at our test blue print but it is so well used that Mr. Gold felt that the blue print was a living blue print and it would be an exercise in futility. By combining parts of the exam, Dr. Warner said he would not support the Board. Mr. Gold hoped that we would weigh this carefully. Mr. Gold went on to say that the exam committees have had a problem with the raw score (passing score), allowing examinees to pass with below a 70. This is putting minimally qualified people in the profession and they are staying minimally qualified. He hopes the Board will make a careful study of whether to continue with Dr. Warner or not.

Charlie Gutierrez of El Paso asked how line item and cut-off committee members are selected. Mr. Hodde stated that people have volunteered to serve on the committees and they are chosen on an as-needed basis.

Bill Masey commented that Dr. Warner seemed to not know we had a blue print. The analytical exam has eight categories and examinees know in which category they did in those eight categories.

John Barnard commented that it would be futile to have the item writers re-categorize the items that are already created. The question is how can we inform the applicants that have not passed what their deficiencies may have been? If the items are properly categorized, the QAQC or cut-off score committee could, as a double check, ask if a question is in the correct category. To hold a workshop as Dr. Warner suggested would be a waste of time.

Marty Costa asked if the Board was trying to put the legal and analytical parts together or take them apart. When he took the exam there were four parts and you only took the part(s)

you failed. He wondered how many passed the exam the first time. He believes that not many would be able to pass the exams if they had to be passed the first time.

9. Adjourn

There being no further business before the Board, the meeting was adjourned at 12:55 p.m.