

MINUTES
TEXAS BOARD OF PROFESSIONAL LAND SURVEYING
12100 Park 35 Circle, Bldg. A, Rm. 173
Austin, Texas
March 6, 2015, 9:00 a.m.

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

The meeting was called to order at 9:05 a.m. by Chairman Jon Hodde. Present were Board members Bill O'Hara, Jerry Garcia, Jim Childress, Nedra Foster, Bob Price, Paul Kwan, Mary Chruszczak, and Bill Merten. Also in attendance were Executive Director Marcelino A. Estrada, and Assistant Attorney General Harold J. Liller.

The Chair invited the public in attendance to introduce themselves. The Chair invited the members of the public in attendance to make offer comments. Raymond Williams asked when the Board was going to clarify a question he brought to the Board and tabled a year ago. He had asked for people operating as contract surveyors not registered surveyors, was the company that hired them and paying them as 1099 responsible (meaning they are not associated with the company they are working for) or are they required to have the RPLS on their payroll? Also, companies that are hiring their own personnel out as 1099 employees, are they in direct control? Is the surveyor in direct control of the people that are being hired out.

Mike Roden asked how the exam was graded and suggested that field work should be required other than just boundary work; another member of the audience commented that the exam score cut-off was reasonable but felt the Board should be more proactive in evaluation of candidates by providing more guidance into improving the candidate's weak area.

Don King commented on contracting surveyors – someone with minimal education who buys GPS equipment and submits his work to a surveyor with whom they contracted. The work is not adequate. Mr. King also commented on investigating complaints with surveys over 10 years of age saying that it has always been that if the survey is over 10 years, you are home free.

Philip Payne agreed with Mike Roden's comment. He was in favor of a hard score of 70 that examinees either passed or failed. Eric Ashley agreed that there are some gifted surveyors that learn the business as a trade or craft, and we lose quality surveyors by not allowing this person to become licensed without a degree.

Mr. Ashley commented that a company should have a RPLS as a principal.

Another comment from the public was regarding contractors and suggested that these contractors be registered as a survey company with the Board. Dennis Hughes asked if the problem was with the contract crews or the RPLS that hires them. Mr. Hodde noted that ultimately the RPLS is responsible for the data collected. Mr. King pointed out that the contract crews he was referencing do not have education/training. He provided an example where he hired a contract crew to collect data on property that he had already surveyed and the individual was unable to locate any of the corners Mr. King had set. Tom Murdoch asked what direct supervision of a contract crew meant because he had seen ads from RPLSs in one city seeking contract crews in a different city. Curtis Strong mentioned that he used to stop and talk to contract crews when he saw them. He noted that often these crews have a supervisor from out of state and they did not even know that person's name. Jerry Lehew noted that the Board was going to approve a rule that would help this situation. Mr. Cortez said he did not understand why contract crews

were allowed by the Board because they are not supervised and they cause a problem for RPLS. Mr. Hodde noted that it was being allowed by the RPLS hiring them because he is the one signing off on the work. Another member of the public said that a contract crew picking up boundary pins or collecting survey data would be barred from the work unless they had an RPLS. He wondered if they could report these crews and if the Board could take action on them? Mr. Hodde noted that if they were surveying without a license or are not supervised by an RPLS, the Board could take action. Ms. Foster noted that it comes back to the surveyor – the professionalism and liability the surveyor is willing to accept. Mr. Kwan commented that surveying is abstracting, drafting and field work and that you should look at all three areas, not just on the ground when looking for substandard work. Another public comment, would it be legal for a company to hire employees in another city and manage them over the phone or internet?

1. Approval of the December 12, 2014 Minutes

Mr. Garcia moved to adopt the minutes and the motion was seconded. The Chair called for discussion and Mr. Price offered two corrections. No other corrections being offered, Mr. Garcia's motion was adopted unanimously.

2. Director's Report

a. Agency Appropriations Update

Mr. Estrada provided the members with an update to the agency's appropriations request. Both House and Senate committees have approved the appropriation request, including the addition of a part-time investigator.

b. Continuing Education Audit

The agency has sent out audit letters to licensees. The percentage being audit was reduced this year from 25% to 15%. The selection is random and unfortunately some people who were audited last year have received audit letters again this year. Mr. Estrada noted that Rita Evans had mailed out 345 letters with responses due back by March 20th.

c. NCEES Presidential Assembly, February 6-7, 2014

Mr. Estrada told the members that he and Mr. Hodde had attended the Presidential Assembly and wanted to highlight Surveyor's Week. NCEES had special medallions printed to be used in a geocaching contest beginning Surveyor's Week. A medallion was to have been sent to the Board but it has not been received to date. The idea was to place the medallion around Austin and then track where it has traveled.

d. TSPS Annual Meeting, October 10, 2015, 8:00 a.m.- 12:30 p.m.

TSPS has asked the Board to consider moving its Board meeting to Saturday morning during the TSPS Annual Meeting. It was suggested because the usual time slot conflicts with their business meeting. Plus, we offer CE credit for attending the meeting so it would fit in with other programs on Saturday. Mr. Estrada noted that he needed a response from the Board to pass on to TSPS. Mr. O'Hara offered that since our Board meeting attendance has grown, meeting rooms offered at the hotel are insufficient to contain the number of people that attend our meeting. Ms. Foster mentioned that holding a Board meeting during the TSPS Annual Meeting presents an opportunity for college students attending the TSPS Annual meeting to attend a Board meeting. However, she agreed with Mr. O'Hara's comments. Ms. Chruszczak offered a comment on behalf of TSPS, saying that she appreciates the difficulty TSPS experiences in attracting people to their business meeting when we are holding our Board meeting at the same time. She suggested that we try to attend the TSPS meetings when they are in the Austin area. Mr. Merten asked if there was any other time we could hold our meeting during the TSPS Annual meeting. Mr. O'Hara moved that we decline the TSPS offer to hold our regular Board meeting during their Annual meeting on Saturday, October 10, 2015 but hold our meeting during October in Austin. Ms. Chruszczak offered a friendly amendment to add "respectfully decline" which Mr. O'Hara cheerfully accepted. The motion was seconded and passed unanimously.

- e. Professional Services Procurement Act brochure
Mr. Estrada presented a brochure that was drafted by Lance Kinney, Executive Director of the Texas Board of Professional Engineers, with assistance from the Architecture Board. Mr. Kinney wanted to know if the Board was interested in acquiring copies. Mr. Estrada noted that Mr. Kinney would allow us to post the brochure on our web site as well. Board members agreed it would be worth having copies available to mail out.
- f. Letter from Glenn Breyshacher
Mr. Estrada directed the members to a letter from Mr. Breyshacher. He told them that it was not for discussion because the letter was from Mr. Breyshacher's attorney and being such, our attorney would have to respond. Mr. Estrada said he would be meeting with Mr. Liller at a later time.

3. Complaints

a. Discussion of closed cases

Complaint 14-46. The complaint was filed alleging the subject surveyor, a county surveyor, was withholding public records are part of a conspiracy to commit land fraud. The complainant alleges he is one of the heirs of an estate consisting of 10,000 acres in Panola County and alleges the surveyor is withholding a mandate handed down by a federal court in 1926. An employee of the surveyor made a comment that she knew where the file was kept at the county but now the file cannot be located, leading the complainant to believe the surveyor is withholding the document. The Board investigator spoke to the clerk in Panola County and was told there was no record in their files. The subject surveyor stated to the investigator that he did not now or ever have this document. Even if he did, this matter would need to be resolved in civil court. There are no rule violations.

Complaint 15-03. This complaint alleges the subject surveyor was paid to provide surveying services and failed to deliver a copy of the survey. Complainant requests a full refund of fee paid and to be able to use the survey for land selling purposes. The subject surveyor entered into a contract with the complainant's husband in December 2013 for the purpose of surveying a 6 acre tract of land and providing a property description and one plat of the survey. The survey was ordered for a title conveyance. Upon performing the survey, it was determined that the creek constituting the east boundary line of the tract had been manually altered. Three ponds thought to be on the subject property were actually on the adjoining property. The property conveyance failed to happen and in accordance with the contract, the surveyor provided one copy of the property description and one copy of the survey. These copies were given to the title company per verbal instructions received by the surveyor prior to the husband's withdrawal from the transaction. The complainant demanded a copy of the survey from the surveyor and was given a copy with the word "VOID" written across the seal, certification and signature and the statement "Survey may not be used for any purpose." This document may not be used for any real property transactions subsequent to the one for which it was originally prepared." The investigation determined this was a contract issue between the surveyor and the client. There are no violations by the subject surveyor.

Complaint 14-38: This complaint alleged the surveyor was conducting his business in an unethical manner. Complainant stated that the surveyor and two of his employees trespassed on his property. Sheriff's department was called and their report indicated that this was an on-going civil matter between the complainant and

the adjoining land owner. The surveyor responded to the complaint stating that he was not at the complainant's property. The investigation found that the surveyor was hired by an attorney to survey the limits of a public road that was being fenced off by the complainant. The road was deeded to the county in fee simple and because the road was fenced off, the attorney's client did not have ingress/egress to his property. The surveyor testified in court concerning the location of the gate and fence in relation to the public road. The court ordered the complainant to remove the gate and unblock the road. The complainant then filed a complaint with the Board. Our investigation failed to find any rule violations by the surveyor.

Complaint 15-09: This complaint was filed by the same complainant, against the same surveyor, as in Complaint 14-38. The complainant claims the surveyor falsified his testimony on the witness stand on April 30, 2013, regarding a 20 foot easement through the complainant's property which influenced the outcome of the judge's ruling. The complaint stated that when the surveyor was questioned by the complainant's attorney, the surveyor stated that the owner of the 20 foot easement could not access his easement due to a fence and gate owned by the complainant. In reviewing the court transcript, the investigator determined that the easement referred to by the attorney is a 15 foot wide easement that adjoins and parallels complainant's property. The easement is used by the land owners who adjoin the complainant's property. The complainant states that although the easement is mentioned in a deed, it does not describe the easement by metes and bounds. When examining the document, one can see that it is locatable by a centerline description in the document. Big Bird Lane is the road mentioned in Complaint 14-38 and is the road fenced off by complainant. In March 1928, a property owner in Washington County conveyed by warranty deed one-fifth of an acre of land; it contains a metes and bound description of this acreage of what is known as a public road, Big Bird Lane. There were no violations found.

Discussion of open cases

Mr. Billingsley reported that there were 58 open complaints. Of these, seven agreed orders have been sent out, there have been four Informal Settlement Conferences and there are four complaints that need Board approval for dismissal. This leaves 43 complaints active.

Mr. Billingsley also selected 15 complaints to see if any particular rule was being violated more than any other. Forty-seven percent of the chosen complaints were in violation of Rule 663.16, Boundary Construction; eighty percent were in violation of Rule 663.19, Survey drawing/written description/report.

The Board chair called for a 10-minute break at 10:12 a.m. The meeting was reconvened at 10:33 a.m.

- b. Informal Settlement Conferences / State Office of Administrative Hearings (SOAH)
Complaint 13-23, 13-24. Mr. Merten and Mr. Childress sat on the ISC committee related to these complaints. Mr. Merten reported that in both cases, the surveyor failed to respond to the complaint. In one complaint, he had collected his fee in advance of performing the survey and failed to perform. The surveyor was found in violation of four rules in each complaint: Failure to respond to the Board request, Ethical standards for failing to provide his client's survey; Offer to perform services,

failure to provide client's survey; and under disciplinary rules, failure to perform client's survey. The penalty for 13-23 included restitution to the client of \$300, an administrative penalty of \$4600, requirement of an additional course in the Board's Act, Rules and/or Ethics and one year probation. For 13-24, the penalty included restitution to the client of \$350, an administrative penalty of \$4600, and one year probation to run consecutively. The Board can request examples of the surveyor's work during probation and failing to comply with probation will result in revocation of licensure. Mr. O'Hara moved to accept the agreed order as recommended by Mr. Merten. The motion was seconded and approved. Mr. Merten and Mr. Childress abstained from voting. The surveyor involved in these complaints was Adam Salazar III, RPLS #5965.

Complaint 14-44. Mr. O'Hara and Mr. Garcia sat on an ISC committee related to this complaint. This complaint was regarding a drawing performed in 2002. The surveyor was hired to locate a fence along the property line and prepare a drawing that showed the lot line and the location of every fence post along the section of fence. He was also to show a distance from the property line to the fence post as well as one side of the house from the corner of the house to the lot line. The drawing did not show monuments at the lot corners, bearings and distances, but was signed and sealed by the surveyor. The surveyor provided information to the investigator demonstrating that he had done all the necessary work. The document was not used to convey property but could not recall why he signed and sealed the drawing since it did not meet the Board's minimum standards. The surveyor demonstrated that this was not the standard of practice for this company which has been in business for 40 years. Due to the age of the survey, the fact that there was no harm, the recommendation was to dismiss the complaint. Mr. Childress moved to accept the ISC committee recommendation. The motion was seconded and adopted. Mr. O'Hara and Mr. Garcia abstained from voting.

Complaint 14-45. Mr. Merten and Mr. Childress sat on an ISC committee related to this complaint. This complaint was brought by the neighbor of the property owner in Complaint 14-45, claiming that they were losing land based on the survey. The survey indicated iron rods at all four corners that were found and held as controlling the boundaries. The configuration did not follow the subdivision plat as the complainant thought the surveyor should have. Surveyor thought he was using the original monuments of the subdivision so held those as proper corners. There was no harm done to the complainant or anyone else; it may have been a less than wise boundary decision, but there is no evidence because the survey was completed in 1998. Based on the evidence and additional work the surveyor brought with him, he is following Board rules. The ISC committee recommended dismissal as there were no Board violations. Mr. Garcia moved to adopt the recommendation. The motion was seconded and adopted. Mr. Childress and Mr. Merten abstained from voting.

4. Committee Reports

a. Executive Committee –Jon Hodde, Chair

i. Election of Vice-Chair

The Chair stated that a vice-chair needed to be elected. Mr. Kwan nominated Mr. Garcia to serve as Vice-Chair. The motion was seconded and approved unanimously.

Mr. Estrada noted that there are three members whose appointments expired in January 2015. The Governor's Office has not made any appointments at this time.

b. Rules Committee – Mary Chruszczak, Chair

ii. Penalty Matrix

Mr. Estrada told the members that when the rules were revised in August 2013, the matrix was removed. Ms. Fuller, the former Assistant Attorney General to the Board recommended that the Board work on a new matrix. Mr. Hodde asked Ms. Chruszczak to work on this item. Mr. Merten volunteered to assist Ms. Chruszczak.

Ms. Chruszczak provided a follow up on educator licensing. She and Mr. Kwan discussed this issue and decided that there would be no way for the educator to not take the exam. As such, there is no change to the rule; however, she recommended a policy that a more concise review be made of applications from educators and have more documentation from the mentors to confirm the applicant has the experience required to take the RPLS exam. This concluded Ms. Chruszczak's report.

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

i. Approval of April 2015 exam

Mr. Hodde stated that fifty-two individuals are scheduled to take the RPLS and Reciprocal exam. Mr. Kwan asked how many reciprocals were taking the exam. Natalie Jackson offered a response saying there were twelve taking the exam. Mr. Hodde noted that between December 2014 and March 2015, seven out of 17 individuals passed the FS exam. This concluded Mr. Hodde's report.

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

Mr. O'Hara reported that the next LSLS exam will be April 17. Four candidates have completed their applications: two new, two repeat. The exam has been selected for that cycle. This concluded Mr. O'Hara's report.

e. Continuing Education Committee – Paul Kwan, Chair

i. Approval of Courses

Mr. Kwan recommended the following courses be approved:

Halfmoon Education, Inc.

Vertical Geodetic Datums and the Geoid

Our Evolving Horizontal Datums

State Plane coordinate Systems

Coordinate Transformations and Low Distortion Projections

Online Positioning User System

Using RTK GNSS

HeatSpring

Land Boundary Master Class (16 hours rather than 25)

Larry T. Billingsley,

Assessing the Rules

The Judge Has Spoken – A Study of Court Cases

TSPS Chapter 19

Architecture and Skills USA programs

Steven J. Freeman II

Common Noncompliance Issues, Module 3

Theodore B. Harp

Royalty Owner Program, Advanced Royalty Owner Program (8 hours rather than 42)

James Jimmerson, USI Southwest

Professional Liability Insurance Issues & Concerns for Surveyors

International Right of Way Association – Chapter 36

Hot Topics in Real Estate & Eminent Domain

Mr. Kwan recommended that the following courses be rejected:

RedVector.com, Inc.

Texas Land Surveyors: Texas Administrative Code, Chapter 661

Texas Land Surveyors: Texas Administrative Code, Chapter 663-665

Jason Jernigan

Survey Business Practices – Implementing Networkfleet

Mr. Garcia moved to approve 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

i. Oil Well Surveys

Mr. O'Hara noted that at the December 2014 meeting he noted that the price of a barrel of oil had slipped close to \$40 per barrel. The price is now \$51 dollars per barrel. An article in the business section of the American Statesman stated that 140,000 jobs could be lost at the national level if the price of oil stayed low. Another article examined the Texas economy and the article was optimistic. Our economy has diversified since the 1980s so the lower price will not affect us as badly. This concluded Mr. O'Hara's report.

g. Legislative Needs Committee—Bill Merten, Chair

Mr. Merten reported that the TSPS LSLS Committee was preparing legislation concerning the maintaining records for the county surveyors. This legislation will not be moving forward. Also, SB 765 (HB 2089) regarding removal of occupational tax, does not include land surveyors but the committee will continue monitoring the bill. This concluded Mr. Merten's report. This concluded Mr. Merten's report.

5. Other Business

a. Reconsideration of investigation of complaints regarding surveys over 10 years of age

Mr. Estrada noted that there was a belief that complaints involving surveys over 10 years could not be investigated because of a section of the Civil Practice and Remedies Code. This applies to civil matters and not Board investigation. Mr. Estrada was seeking guidance because complaints surrounding older surveys have been filed recently. Mr. O'Hara said that he would like to see Board rules align with the Civil Practice and Remedies Code. Mr. Garcia recommended using a 10 year cut-off because anything less would create a bias. Mr. Estrada reminded the members other regulatory boards had a range.....some cut-off at 5 years, some had no cut-off date. Mr. Garcia felt that not having a cut-off in place was doing a disservice to the profession. Mr. Kwan said that the 10 year policy was adopted by the Board in the 1990's and he agreed that a land surveyor should not have to worry about a complaint being filed over 10 years from the date the survey was performed. Mr. O'Hara asked how the Board would address the situation where a survey exceeded 10 years in age, but there was obvious harm to the public? Mr. Garcia said a review of the survey at the time it was done would have revealed the harm. The dynamics of the situation would have remained the same. Mr. Childress explained his understanding that the courts and legislature submitted the public policy it is best that all things are finally settled, especially in land titles. A surveyor who performed a survey over 10 years ago would be graded by today's standards, information is destroyed, and witnesses have died so it is best to have a limitation. Mr. Garcia offered a motion to limit complaints to 10 years, anything over would be disregarded. The motion was seconded. Ms. Foster clarified that the date of implementation would be the date the surveyor signs the survey. Mr. Price offered an example where a subsequent survey was performed on property and it resulted in an incorrect boundary and wondered how the Board would respond. Mr. Hodde stated this would be a civil matter. Mr. O'Hara asked what would happen if a complaint was near being 10 years of age when submitted but became over 10 years of age during the

process. Members agreed that the complaint would still stand. Mr. Hiller appreciated Mr. Childress' comments on the statute of repose. However, Mr. Hiller believed that we must consider our call to protect the public and cautioned the Board to not make hard and fast rules, especially if a complaint regarding an older survey demonstrated there was significant public harm. In conjunction with the Civil Practice and Remedies Code limiting civil suits to 10 years, the public would have no recourse if the Board established a hard and fast rule. Mr. O'Hara suggested rather than a rule change, a policy that a complaint involving a survey over 10 years of age be brought before the full Board and if the Board determines there was no significant public harm, the complaint would be dismissed. Mr. Price asked if, following this suggestion, the person bringing the complaint would have recourse of appealing to SOAH or district court if they disagreed with the Board's decision that there was no public harm. Mr. Price appreciated that Mr. O'Hara's suggestion placed the determination on the Board and not singly on the Executive Director. Mr. Childress offered to amend Mr. Garcia's motion by adding if we receive a complaint on a survey that is over 10 years old, the complaint will go directly to the Board to determine whether, as a result of the error disclosed by the survey, it resulted in significant injury to the public, otherwise the complaint will be dismissed. Ms. Chruszczak asked if land surveyors would be required to retain documentation longer than 10 years if the Board adopted the proposed policy. Mr. Price seconded the amendment. Mr. Garcia accepted the amendment. Mr. Price raised concern that a policy would not be as transparent as a rule. Mr. Garcia suggested that the Board establish the policy and submit it to the Rules Committee for publication. A vote was taken and motion passed.

b. Adoption of proposed rules

The Chair stated that Rules 661.41, 661.46, 661.53, 661.57, 663.18 and 663.19 had been proposed and were ready for adoption. Mr. Estrada noted that no public comments had been received during the 30-day publication period. Mr. Merten moved to adopt the rules as published in the Texas Register. The motion was seconded and carried unanimously.

c. Request from Seth Hawkins seeking waiver of 1-year waiting period after 3rd FS exam attempt

Mr. Hawkins was unable to attend the meeting but his tutor, Jonathan Cooper, was present. He stated that there may have been unintended consequences of the rule stating that a person had to sit out after three failed attempts since this is the first full cycle of the Fundamentals of Surveying exam being offered as a computer-based test through NCEES. NCEES allows an individual to sit for the exam four times before having to wait. Mr. Kwan noted that the Board's rule was adopted in the 1990's and it applied to both the SIT exam and the RPLS exam. The purpose for the break is to encourage individuals to be prepared and improve themselves if they fail. Mr. O'Hara asked if the rule should be reconsidered because of the change to computer-based testing. Mr. Merten pointed out that the NCEES method of testing is an avenue of allowing individuals to sit for exams, not a change to our policy. Mr. Kwan moved to deny the request. The motion was seconded and carried unanimously.

The Chair announced that the Board would break for lunch and attend a webinar at 12:02.

The meeting was called back into session at 1:10 p.m. The Chair then called for the Board to go into Executive session to review the April exam and to discuss moving to the NCEES administered PS exam. No action will be taken during the executive session.

The Chair closed the executive session at 4:50 p.m. and went back into regular session. No official business was conducted during the closed session.

The Chair called for a motion to continue moving towards the NCEES PS exam with a vote to be taken at the August meeting. Mr. Kwan moved that the Board fully investigate the PS examination and discuss this further at the next meeting. The motion was seconded and carried unanimously.

The Exam Committee was charged with determining the length and content of the state specific exam will look like after the Board moves to the NCEES PS exam.

6. Future Agenda Items – Select next meeting date

The Board chose the next meeting date as May 29, 2015 at 9:00 a.m. A tentative date was also set for August 28, 2015.

7. Comments from the Public

There were no members of the public present after the Board resumed its regular session.

8. Adjourn

The meeting was adjourned at 5:01 p.m.