

MINUTES
TEXAS BOARD OF PROFESSIONAL LAND SURVEYING
12100 Park 35 Circle, Bldg. E, Rm. 201
Austin, Texas
December 2, 2016, 9:00 a.m.

THIS MEETING'S LIVE-STREAM ARCHIVED AT [HTTP://WWW.TXLS.TEXAS.GOV](http://www.txls.texas.gov).

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

The Chair called the meeting to order at 9:07 a.m. In attendance were Mr. Hodde, Chair, members Mr. Garcia, Mr. Merten, Mr. Kwan, Ms. Chruszczak, Mr. Cheatham, Mr. Paxton and Dr. Edwards. Also in attendance were Mr. Estrada, Executive Director, Mr. Gordon, Assistant Attorney General, and Board staff members. Attendees were invited to introduce themselves. The Chair then invited comments from the public but there were none.

1. Approval of the October 14, 2016 Minutes

The Chair called for approval of the October 14 minutes. Dr. Edwards moved to approve the minutes. The motion was seconded. Mr. Garcia abstained because he was not in attendance. The motion was approved.

2. Director's Report

Mr. Estrada reported that staff member Rita Evans would be retiring at the end of December and wanted to recognize her for her service to the Board.

a. Scheduling Informal Settlement Conferences for FY2017

Mr. Estrada explained to the members that he and Ms. Estrada, Complaints Coordinator, had created a calendar for the next year that set dates for Informal Settlement Conferences. Proposed board meeting dates were also included. Mr. Garcia moved to accept the calendar and the motion was approved unanimously.

b. Virtual Offices

Mr. Estrada wanted to let the members know that questions had been received concerning virtual offices in the event the members wished to discuss this at a future board meeting.

3. Complaints

a. Closed or Dismissed Complaints

i. 13-30

This complaint alleges that the surveyor/engineer was hired to prepare a preliminary plot plan for a proposed duplex apartment project for a fee of \$500.00. The complaint goes on to explain that the surveyor was paid the \$500.00 but never delivered the plot plan. In his response, the surveyor stated that an identical complaint had been filed with the Texas Board of Professional Engineers in that the job called for an engineering solution and no surveying solution was involved in the project. In a phone interview the complainant indicated that the issues had been resolved and that he was satisfied with the results. The dispute regarding an engineering study and not involving surveying services is a contractual issue in which the Board does not become involved. In this instance, the complainant did apparently receive the requested Plot Plan and was satisfied with the results. No violations were found and the executive director recommended dismissal.

ii. 13-46

This complaint alleges that an individual was hired to prepare an elevation certificate for a new home that the complainant was preparing to build. The individual provided an elevation certificate and invoice from a surveyor. Multiple insurance companies apparently advised the owner that the certificate was incomplete and could not be used for insurance purposes because Section 2, Box A was not completed and that he had checked "NO" to answer the questions in Section D. After the individual advised the owner that those sections could not be revised until after the slab was poured, the owner contacted another surveyor who prepared a completed form survey so flood insurance could be obtained. The

surveyor apparently did contact the owner after the other surveyor had been hired and offered to complete the elevation certificate.

In his response, the surveyor, provided a statement that he acquired all assets of a firm that had been owned by the individual originally hired by the owner. The individual and another former employee were employees of the surveyor. Said firm ceased operation in 2012.

In a phone interview with the complainant, he indicated that he was satisfied with the results by the second surveyor and that he had not paid the individual or the surveyor. He had no objections to the complaint being dismissed. The dispute regarding the results of the elevation certificate under the circumstances outlined above represent a contractual issue in which the Board does not become involved. In this instance, the surveyor did offer to prepare a completed form. In addition, the surveyor passed away early in 2016. His business apparently ceased operations upon his passing. No violations were found and the executive director recommended dismissal.

iii. 14-35

This complaint alleges that the surveyor: (1) signed a plat (subdivision plat) that states, “is a true and correct representation of an on the ground survey made under my direction and supervision in June 2010”; (2) a road serving the subdivision does not follow the platted right of way and encroaches on our property; (3) “#2 in the notes section states that “all roadways will be constructed according to the County Subdivision Regulations. There is no road base or drainage.”; and (4) there is a conflict of interest in that the surveyor signed the subdivision plat and another surveyor, the owner of the surveying company, signed the plat as the County Surveyor for his review of the plat for the county.

Regarding Item (1) The plat in question is a subdivision plat and not a survey plat for title purposes.

Regarding Item (2) Based on a phone interview with the surveyor and a review of historic aerial images on Google Earth, the road was constructed after the subdivision plat was recorded. The surveyor indicated that he was not involved in the construction of the road. He did stake the R.O.W. and the lot corners.

Regarding Item (3) It is apparent, from the Google Earth images, that the road was not constructed entirely within the platted right of way. Based on the Google Earth images, the road appears to be little more than a driven path. Construction of the road to County Standards would be the responsibility of the developer and not the surveyor.

Regarding Item (4) While this may appear to be a conflict. The County Surveyor is an unpaid position. It is unusual for the County Surveyor to sign off for a plat review. It is not unusual for the county surveyor to have a private surveying practice. According to the surveyor’s response, the client for the subdivision plat was aware of his relationship with the county surveyor.

The complainant asked that the surveyor’s license be revoked and that he should have an accurate survey conducted at his expense by an independent party or the board. The surveyor conducted his survey for the preparation of a subdivision plat, any on the ground surveying he did was prior to development. He was not involved in development and did not prepare a lot survey prior to the acquisition of the subject lot by the complainant. No violations were found and the executive director recommended dismissal.

iv. 15-16

This complaint alleges that the subject surveyor and subject firm were practicing land surveying without a firm registration and did not have a RPLS employed at the firm.

The Board received an anonymous complaint stating that the subject firm was practicing land surveying by providing measurements regarding stockpiles and landfills, which the anonymous complainant believes falls under the definition of land surveying. To investigate, the Board opened a complaint in the name of the Board.

The land Surveyors Practices Act defines “professional surveying” as:

“... the practice of land, boundary, or property surveying or other similar professional practices. The term includes:

(A) performing any service or work the adequate performance of which involves applying special knowledge of the principles of geodesy, mathematics, related applied and physical sciences, and relevant laws to the measurement or location of sites, points, lines, angles, elevations, natural features, and existing man-made works in the air, on the earth's surface, within underground workings, and on the beds of bodies of water to determine areas and volumes for:

If the definition ended there, then the information being provided by the subject firm would fall under the definition. However, the definition goes on to say “for:

- (i) locating real property boundaries;
- (ii) platting and laying out land and subdivisions of land; or
- (iii) preparing and perpetuating maps, record plats, field note records, easements, and real property descriptions that represent those surveys.”

The subject firm does not fall under this definition and it is recommended that the complaint be dismissed.

v. 16-10

This complaint was filed alleging the subject surveyor failed to act in a professional manner when presenting his proposal to perform a survey.

The subject surveyor was contacted by the complainant, via email, on September 12, 2015, requesting a quote to survey the complainant’s property. A quote of \$250.00 was given to the complainant, and later changed to \$350.00 due to a review of the deeds which determined there was more property than originally thought. The subject surveyor then followed up with another email saying he hit the wrong number on his keyboard, and that the price would be \$650.00 plus one skunk at city hall. He also said he would not be sitting around waiting on the complainant’s acceptance to a near-to-free survey service.

In his response, the subject surveyor said the reference to the skunk had to do with the complainant’s father delivering a skunk to city hall in a protest against a city code back in the 80’s when the subject surveyor’s dad was the chief of police. He said he responded to her the way because she was telling people at the appraisal district office and county clerk’s office that he was money hungry and had a gross lack of compassion for the underprivileged and elderly.

The issue here is contractual and as such, does not fall under the purview of the Board. However, the following rule was violated in regards to the behavior of the registrant:

§663.10. Disciplinary Rules.

(5) Engage in any conduct that discredits or attempts to discredit the profession of surveying;

It is recommended that subject surveyor sign an Assurance of Voluntary Compliance stating that the behavior he demonstrated will not be tolerated and that he will make every effort to ensure that it will not happen again, conducting himself in a more professional manner and not let personal feelings get involved.

vi. 16-60

Complaint 16-60 was filed alleging that the subject surveyor received payment for providing a survey and not delivering on agreed date.

The subject surveyor responded by saying that an oral agreement was reached between him and the complainant on or about July 8, 2016. The agreement included surveying an approximately 60 acres of land in Hudspeth County. He said a firm delivery date was not agreed upon. He said he received a check for full payment on July 13. Field work was completed on July 21 and pictures were taken of the surveyed area. During the week of August 13, the complainant contacted the subject surveyor and was informed that the field work had been completed and that the drawing was being prepared. The subject surveyor went on vacation from August 15 thru 23, and the survey was ready for his review on returning to work on August 24. All pictures and the survey was emailed to the complainant and the subject surveyor believes the oral agreement has been satisfied.

On September 21, the complainant emailed the Board's office, signifying he had received the survey and wanted to withdraw his complaint.

This complaint is based on a contractual issue which does not fall under the purview of the Board. The subject surveyor provided the survey documents to the client who has written the Board to request withdrawing the complaint. It is recommended that this complaint be dismissed.

b. Request for Reinvestigation

i. 16-23

Mr. Estrada brought a request for reinvestigation from the complainant of this complaint that had been previously dismissed. The owner of the property was subdividing the property in sections and had metes and bounds descriptions based on fence lines. The complainant believes some fences had been moved and has information to prove this was true. The complainant originally felt that the surveyor had not followed the rules laid out by the board but the investigator found that the surveyor had indeed correctly performed his duty based on the fences. The complainant feels that the fences used were not the fences mentioned in the deeds. The complainant had filed suit against the surveyor and that matter had been resolved. Mr. Merten moved that this request be tabled until the new information be received by the Board. The motion was seconded and carried unanimously.

c. Request to Deem Frivolous

i. 12-43

This complaint concerned a contractual issue and was previously dismissed. Mr. Garcia moved to approve the request. The motion was seconded and passed unanimously.

ii. 16-11

The surveyor in this complaint has filed a request to deem this complaint frivolous claiming that the complaint served no purpose but to harass. The investigation found that the basis of the complaint was contractual and was previously dismissed. Mr. Garcia moved to approve the request. The motion was seconded and passed unanimously.

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

i. 12-41

- ii. 12-50
- iii. 14-41
- iv. 15-22
- v. 16-16
- vi. 16-21

Mr. Estrada reported that ISCs for complaints listed above had been held but the agreed orders had not been returned to the Board. Mr. Merten moved to table these complaints until the next meeting. The motion was seconded and passed unanimously.

- vii. 16-47

Mr. Cheatham reported that the complaint was filed claiming the subject surveyor had performed survey on neighbor's property and improperly marked the common boundary. Complainant said they never saw anyone come to perform measurements. Review of the survey found concerns. The surveyor stated that another surveyor found his error and brought it to his attention. After confirming the information, he corrected his error and issued a corrected survey. The complainant did not pay the other surveyor that found the error so the subject surveyor agreed to pay half her fee. Three violations were noted: rule 663.19 when subject surveyor failed to indicate basis of bearing on survey plat, 663.19(d) when subject surveyor did not list his firm's registration on the plat, and 663.19(e) when subject surveyor prepared a four-corner survey plat and did not indicated monuments relied on to establish those corners. The subject surveyor was fined \$2,000 and required to take additional continuing education on the Board's rules within 60 days of acceptance of the agreed order by the Board. A motion was made to accept the agreed order and passed. Mr. Cheatham and Ms. Chruszczak, who served on the ISC, abstained from voting. The subject surveyor was John A. Grant, III, RPLS #4151.

e. Complaints to be Referred to the Office of the Attorney General

- i. Directing the Executive Director to request legal representation before SOAH
 - 1. 13-16
 - 2. 16-13

Mr. Estrada explained that the subject surveyor had been notified of the complaints filed against him but he did not respond. He was then notified of an informal settlement conference date being set but the subject surveyor did not attend. Mr. Estrada now asked the members to direct that these complaints be taken to SOAH. Mr. Garcia moved to send these complaints to SOAH. Mr. Merten and Mr. Paxton abstained from voting because they reviewed the complaint file. The motion was seconded and passed.

- ii. Directing the Executive Director to request legal representation for the purpose of seeking an injunction
 - 1. 15-13
 - 2. 16-14

Mr. Estrada explained that there were two unlicensed individuals practicing surveying and he was asking that the Board direct him to request legal representation from the Attorney General's office to seek an injunction against the two individuals. Mr. Cheatham asked if we had sent a cease and desist letter to these individuals. Mr. Estrada stated that he had not because he figured the letter would be ignored. There was another individual that had been sent a cease and desist letter and the individual simply changed the name of his company. Mr. Gordon said he was not familiar with the Board's authority to issue a cease and desist letter and would like to review the Board's statute. Mr. Billingsley pointed out that this individual was practicing in an area where the property owners do not have the knowledge that what they are receiving is inadequate. Dr. Edwards moved to ask the Attorney General's office to begin the injunction process but to also consider whether sending cease and desist letters before legal representation is appropriate. The motion was seconded and passed unanimously.

f. Complaints 10 Years or Older

- i. To consider whether the following complaints have substantial harm to the public and recommend investigation:
 - 1. Complaint filed by Shawn Demaree

2. Complaint filed by Steven Horne

Mr. Estrada reminded the members that at a previous meeting, the members discussed complaints regarding surveys that were over 10 years old. The Board instructed Mr. Estrada to bring these complaints to the Board to determine if there was substantial harm to the public so that the office could investigate. In the first complaint, the property owner had their property surveyed in April 2006. In February 2016, the next door neighbor had their property surveyed and spoke to the owner of the property who filed the complaint. There appeared to have been an error on their elevation certificate and the flood insurance premium was higher than it should have been. In July 2016, the owner talked to the insurance company and the title insurance company and learned they had no recourse to recoup the amount of money that was overpaid. The complaint was filed after the passing of 10 years. Mr. Garcia recollected that anything that was over 10 years would not be investigated. He did not believe we could retroactively go back and open different windows of 10 years. Mr. Cheatham agreed with Mr. Garcia. Mr. Hodde stated that members would have to wait to the next board meeting to decide on whether complaints over 10 years be investigated. Mr. Garcia moved that since the first complaint was 10 years and older, that it be disregarded. The property owners had other remedies that the Board could not offer anyway. The motion was seconded and passed unanimously.

Mr. McMinn addressed the second complaint. The complaint concerned a survey performed in 1999. In 2000, the 30 acre tract was subdivided into smaller lots. There appears to be a problem with the boundary line between the smaller tracts and the larger tract that the owner retained. The owner of a smaller tract on the opposite side of the tract has also engaged the services of a surveyor and is wanting to erect a fence. Mr. Kwan noted that the complaint is over 17 years old, and the Board does not know if the boundary issue was created by prescriptive rights or not. He also felt that that was not a decision for the Board to make and moved that the Board not investigate this complaint. Mr. Garcia seconded the motion and the motion carried.

- g. Opening a complaint in the name of the Board
 - i. 13-26

Mr. Estrada told members that he was not ready to present this complaint and asked that the complaint be tabled.

The Chair then called for a break at 10:20 a.m.

The Chair reconvened the meeting at 10:42 a.m.

The Chair noted that on the agenda, under item 3a, Roman numeral v should be 16-16. Under 3d, Roman numeral v should be 16-10. These items were reversed.

4. Committee Reports

- a. Executive Committee –Jon Hodde, Chair

The Chair noted that no action had been taken by the Executive Committee since the last meeting.

- b. Rules Committee – Mary Chruszczak, Chair

- i. Update on revising definition of surveying to incorporate use of drones as tools

Ms. Chruszczak informed members that she is still working on this matter. The Chair noted that under the definition of surveying, the definition is good but the preamble negates what is listed in the definition. He asked Ms. Chruszczak to look at this as well.

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

- i. October 2016 RPLS Exam results

Mr. Hodde reported that 34 SIT examinees attempted the last exam with 10 passing. Twenty-five examinees had a passing score on the RPLS/Reciprocal exam. Mr. Garcia moved to register the individuals that passed the exam. The motion was seconded and passed unanimously.

Mr. Estrada informed members that a joint exam committee meeting was being planned for February and that Board input was being solicited.

FIRE ALARM sounded at 10:45 and the Board meeting was interrupted while the building was evacuated.

The Chair reconvened the meeting at 11:00 a.m.

d. LSLs Examination Committee – Bill Merten, Chair

i. October 2016 LSLs Exam results

Mr. Merten reported that three examinees took the exam but none passed. A debriefing will take place in January. This concluded Mr. Merten's report.

e. Continuing Education Committee – Paul Kwan, Chair

i. Approval of Courses

Mr. Kwan reported that he was recommending approval of the following:

- TSPS Chap. 5 submitted three classes;
- TSPS course "Before you hang your shingle", requesting two hours towards Board rules. (Mr. Kwan agrees with the two hours but does not agree with applying them towards Board rules.)

Mr. Kwan does not recommend approving the following course:

- Half Moon course titled Roadway Design (this is more on engineering and not surveying)

Mr. Garcia moved to accept the recommendations offered by Mr. Kwan. The motion was seconded and passed unanimously. This concluded Mr. Kwan's report.

5. Other Business

a. Update from Committee formed to rewrite reference waiver – Bill Merten, Paul Kwan

Mr. Merten reported that he and Mr. Kwan had reviewed paragraph 7b of the Reference Waiver because it was confusing. The language reads, "State your professional opinion of the applicant's percentage of delegated responsible charge time in topographic surveying or construction surveying during said time period." This is an inappropriate, confusing statement and suggests that it be removed. Mr. Merten and Mr. Kwan would like to add a definition for "delegated responsible charge" and "professional surveying" so that the individual completing the form will have clear understanding of what is being requested. This concluded Mr. Merten's report.

b. Update on Red River lawsuit – Tony Estrada

Mr. Estrada reported that he had sent a letter to the Office of the Attorney General asking for their assistance in representing the Board in the form of writing an amicus curiae brief. Dr. Edwards informed the members that a bill is moving through the Senate; also the court had allowed the BLM to trespass on the Texas side to complete their survey. Mr. Gordon stated that there would likely be motions for summary judgment filed in March. This completed Mr. Estrada's report.

c. Registration for firms, and the application of the registration statute on sole proprietorships – Tony Estrada

Mr. Estrada said that he had been speaking with Mr. Gordon and was asking that the Board table this discussion.

d. Improper surveying concern regarding oil and gas wells – Kerry Hoefner

Mr. Hoefner presented an oil and gas well survey. The Texas Railroad Commission has rules that require tying well locations to property boundaries, the survey must be performed by surveying company, and the survey must be signed and certified. The Board's Act and rules (section 1071.002 and

rule 661.31) explain what a survey is. The TRC requires sealing and signing which, based on the Board's rules, makes the drawing a survey. The drawings being used for well locations are essentially surveys, yet the drawings lack information as required by the Board for survey drawings. Mr. Kwan asked Mr. Hoefner what the remedy would be. Mr. Hoefner said enforcement would be an issue for the Board that perhaps a reminder to surveyors to comply with the rules and having surveyors aware of these surveys file a complaint that the Board could then investigate. Dr. Edwards stated he believed it was up to the licensees to police this matter and file complaints with the Board. Mr. Kwan said that a reminder in the form of a mail out (a newsletter) would be beneficial. Mr. Hoefner wondered if the Board could send correspondence to the TRC and let them know what is supposed to be found on a basic survey. Mr. Cheatham suggested that a guide to follow when TRC staff is reviewing oil and gas well plats might be helpful. Ms. Chruszczak thought the checklist that we use when reviewing applications might be useful as well. Mr. Kwan thought the best place to start was with the TRC. Mr. Garcia agreed that a letter with an invitation for discussion would be a good start. Mr. Hodde asked Mr. Neugebauer if he would assist in contacting the TRC. Ms. Chruszczak will assist.

e. Discussion on why boundary experience required for RPLS status begins after obtaining Surveyor in Training certificate – Brady M. Stanford

Mr. Stanford was unable to attend the Board meeting and this item was tabled until the next meeting.

6. Future Agenda Items – Select next meeting date

The next meeting was scheduled for February 24, 2017 at 9:00 a.m.

7. Comments from the Public

Phillip Adams noted that the TSPS Symposium was being held on February 24 and would be in conflict with the Board's next meeting. Based on this information, members agreed to move the Board meeting to March 3. Mr. Estrada noted that the ISC scheduled for February 23 would be moved to March 2 instead.

No further comments were offered by the public.

8. Adjourn

Having no further business, Mr. Garcia moved to adjourn and the motion was seconded and passed unanimously. The meeting was adjourned at 11:50 a.m.