

MINUTES
TEXAS BOARD OF PROFESSIONAL LAND SURVEYING
12100 Park 35 Circle, Bldg. E, Rm. 201
Austin, Texas
October 20, 2017, 9:00 a.m.

THIS MEETING IS BEING LIVE-STREAMED. VISIT [HTTP://WWW.TXLS.TEXAS.GOV](http://www.txls.texas.gov) TO ACCESS LINK.

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

The Chair called the meeting to order at 9:06 a.m. and a quorum was established. Present were Jon Hodde, Chair, members Dr. Davey Edwards, Paul Kwan, Bill Merten, Jim Cheatham, Mary Chruszczak, and Drew Paxton. Absent were member Jerry Garcia and GLO representative Mark Neugebauer. Also present were Marcelino A. Estrada, Executive Director, Board staff Marizela Gonzales, Mike McMinn, Larry Billingsley, Julia Estrada and Natalie Jackson. Also present was Assistant Attorney General Melissa Juarez.

The Chair then invited the public in attendance to introduce themselves and, afterwards, entertained comments. No comments were offered.

1. Excused Meeting Absences

Mr. Estrada told the members that a motion was needed to excuse Ms. Chruszczak's absence from the July 21, 2017 meeting and to excuse the GLO Commissioner and his representative's absence from today's meeting. A motion was offered, seconded and approved.

2. Approval of the July 21, 2017 Minutes

The Chair called for a motion to approve the minutes of the previous Board meeting. Dr. Edwards offered a motion and Mr. Estrada noted that case summaries had not been included. Dr. Edwards then amended his motion to include the summaries. Mr. Merten seconded the motion and noted that there was an error on item 3. "October 14, 2016" should be "May 19, 2017". There being no other additions or corrections, a vote was taken and the motion carried.

3. Director's Report

a. Update on office staff

Mr. Estrada informed the members that after a lengthy period without a complaint administrator, the position had finally been filled. Marizela Gonzales was hired for the position and comes from the Texas Board of Pardon and Paroles. She is also a military veteran. Mr. Estrada also informed the members that Betty Sharpe tendered her resignation and that a job announcement would be posted. In the interim, Natalie Jackson is handling the duties related to firm registration and payment processing.

Mr. Estrada also informed the Board that in accordance with section 1071.102 of the Act, members would need to ratify the executive director's actions in hiring Ms. Gonzales. Mr. Kwan moved to ratify the actions. The motion was seconded and approved.

b. Update on replacements for outgoing Board members

Mr. Estrada spoke with David Zapata of the Governor's Office, Appointments, and was informed that they had two viable licensed individuals but had not found a public member. The Governor would not be appointing the replacements until a public member was found. Mr. Estrada told the members that he had offered the name of an individual possibly interested in serving and hoped to hear from Mr. Zapata before the next Board meeting.

c. Performance measures for FY2017

Mr. Estrada provided statistics for the members on the number of firms registered, RPLS licenses issued, LSLS licenses issued and SITs added in Fiscal Year 2017.

	FY 2014	FY 2015	FY 2016	FY 2017
FIRM	1537	1564	1580	1554
RPLS	2862	2899	2871	2823
LSLS	66	63	65	64
SIT				
(New)	-	50	44	47

d. Sunset Review Self-Audit update

Mr. Estrada reported that the Self-evaluation Report had been submitted to the Sunset Commission. Policy Analyst Darren McDivitt informed Mr. Estrada that the Board has tentatively been scheduled for review during the months of August to mid-November 2018. Between now and then the Commission will likely interview staff, board members and stakeholders. Once their report is drafted, the Board will have the opportunity to respond. If the board has any questions, they may contact Mr. McDivitt.

e. Potential waiver from Continuing Education Audit for victims of Hurricane Harvey.

Mr. Estrada informed the members that he had attended a meeting held by the Governor's Office where agencies were asked to explain what they were doing to assist Hurricane Harvey victims. Mr. Estrada cited the Texas Department of License and Regulation's action of issuing emergency temporary licenses to out-of-state tow truck drivers to assist in the removal of damaged vehicles from the affected areas in Texas. After reviewing the Act and Rules, Mr. Estrada suggested exempting SITs and RPLS/LSLS who were directly affected by Hurricane Harvey from the continuing education audit. They could be allowed extra time to complete their continuing education and submit proof to the board.

Mr. Kwan stated that surveyors had time to attend to their continuing education as there were still three months left. However, he understood that those in the afflicted areas may be under financial hardship and suggested waiving the fee to take the board's continuing education courses. After discussion, Mr. Kwan moved to allow surveyors in disaster areas, as declared by the Governor, to have their continuing education deadline for the current year extended to February 1, 2018 with the option to take the board's continuing education courses for free. The motion was seconded and passed unanimously.

f. Request for staff guidance on requirements to re-establish expired license.

Mr. Estrada explained that the staff was seeking guidance from members concerning applications from individuals whose licenses have lapsed, or expired. Ms. Juarez informed the board that this matter could be address in closed session as she would be able to offer legal counsel to the Board at that time. Mr. Hodde stated that this item would be moved to the end of the meeting when the Board would go into Executive Session to discuss the upcoming examination materials.

This concluded Mr. Estrada's report.

4. Complaints

a. Closed or Dismissed Complaints

i. 16-20

Complaint 16-20 was filed alleging that the survey was incorrect and the surveyor had not responded to the complainant's request to correct it. He said the survey should have indicated that his corners were 90° angles and that one of the sides, based on flags found, did not indicate this. The complainant stated that the last time he contacted the surveyor was December 1, 2015, and that the surveyor hung up the phone during the call. The complainant stated that adequate relief would be a refund of his fees associated with the cost of the survey.

The surveyor responded to the complaint on February 1, 2016. He said the property involved is in an unrecorded subdivision in Liberty County. He indicated that he didn't want to survey the property, but

was persuaded by the realtor who contacted him to do so. He indicated in his report what evidence he found in the field and how he determined where the boundary of the property is. After signing and sealing the survey and giving it to his client, he said his quality control person running the survey in Auto-cad, determined that a 10° angular mistake had been by the crew chief in setting out one of the back-corner locations. The surveyor said he sent the crew back to correct the mistake in the field, signed and seal a corrected survey plat, and sent it to his client.

On January 12, 2016, the surveyor sent a letter, along with a check refunding the cost of the survey, to the complainant. He apologized for not responding to the complainant's requests in a timely manner. No violations were found. A recommendation to dismiss was made to the Complaint Review panel, who concurred.

ii. 16-28

Complaint 16-28 was filed alleging that the survey performed by the subject surveyor caused the subject surveyor's client to remove a ¾" iron Pipe and build a fence on the complainant's property, the adjoining property owner.

The area in question involves the common boundary line of the complainant's 1.27 acre tract and an adjacent 310.58 acre tract. The complainant's property was purchased by his father by deed dated December 10, 1979. The property is triangular shaped and the deed calls for ¾" iron pipes set at each of the three corners. The complainant submitted a survey of his property, prepared in 1972, which did not follow his deed's description. It only called for 1.01 acres and did not follow the deed calls for two of the sides.

The subject surveyor surveyed the adjoining property in June of 2009. As part of his research preparing for this survey, he acquired deeds to adjoining properties, including the complainant's property. His on the ground research included finding and holding a ¾" Iron Pipe at the north corner of the complainant's property. He also found a 5/8" Iron Rod that is located 7.6 feet south of the southwest corner of the complainant's property corner. He determined that the iron rod had no record dignity and did not fit the complainant's deed. Therefore, he did not hold it for the corner. The complainant believes this is his corner and has been mowing and maintaining the area between this iron rod and the actual corner. Based on found monument of record dignity, along with additional evidence found in the field, the surveyor made a professional opinion as to the location of the boundary in question.

The surveyor and his client made numerous attempts to meet with the complainant to resolve the issue, but no agreement was reached. In March 2015, an Original Petition For Declaratory Judgement was filed in District Court, Brazoria County. It acknowledged that the survey prepared by the subject surveyor correctly located the boundary line in question.

No violations were found. A recommendation to dismiss was made to the Complaint Review Panel and they concurred.

iii. 16-34

The complaint alleges that the surveyor failed to stake the boundaries of the lots in a two lot subdivision. The allegations include delays in the process caused by unprecedented rain falls and issues getting the plat approved by the governments agencies. After receipt of the complaint, the surveyor met the complainant and her husband on the ground and located the monuments. The complainant was satisfied that the monuments had been set. No violations were found. A recommendation to dismiss was made to the Complaint Review Panel and they concurred.

iv. 17-13

This complaint was listed in error and will not be addressed.

v. 17-38

Complaint alleged that the surveyor, while serving as his homeowner's association (HOA) President, was involved in some apparent HOA Officer Elections irregularities. The subject matter of this

complaint is beyond the purview of the board and a recommendation to dismiss was made to the Complaint Review Panel. The panel agreed and this complaint was dismissed.

b. Informal Settlement Conferences

i. 15-24

Mr. Merten reported to the members that an Informal Settlement Conference was held regarding Complaint 15-24. Complaint 15-24 was filed alleging that the survey performed by subject surveyor on the property adjacent to the complainant was in error and resulted in the complainant losing 40 to 50 feet of her property.

The complainant's property was purchased March 3, 1955 and recorded. The description in the deed is a bounds description, and calls for her south line to be bounded by the J.H. Walker, Jr. property. The J. H. Walker Jr. property was purchased January 15, 1953, recorded in said deed records. The metes and bounds call for cardinal directions and four sides each 200.00 feet long.

The subject surveyor explained how he established the boundaries of the Walker property. He indicated that an adjoining deed, conveyed to the McLeod Independent School district, purchased January 7, 1953, calls for the south line of the tract to be the north R.O.W. line of the highway. The Walker deed calls to begin at the S.E. corner of the school tract, which would be in the north R.O.W. of the highway. He then says that the north line of the Walker tract and the south line of the complainant's tract should be 200 feet north of the north line of the highway. However, based on additional evidence found in the field, he placed the common line of the Walker/Complainant tract 207.18 feet north of the highway on the west side of Walker, and approximately 194 feet north of the highway on the east side. This results in the complainant's mobile home encroaching into the Walker tract by approximately 49 square feet. In addition, an old building, used by the complainant as a beauty shop, was not shown on the survey by the subject surveyor and would apparently encroach more into the Walker tract than the mobile home.

Violations noted included:

§§663.16(2), (3)(A) and (4), Boundary Construction:

- failing to follow the original surveyor who set out a four-sided figure measuring 200.00 feet on each side.
- failing to follow the deed that created the tract being surveyed in 1953. The description in this deed did not call for an angle point in the east line of the tract.
- failing to follow the intent of the 1953 deed, which calls for 90-degree angles at each corner of the tract surveyed.

§663.19(a) and (d), Survey Drawing/Written /Description/Report.

- failing to indicate on his plat the measured bearings and distances versus the record bearings and distances.
- failing to indicate on his plat the firm's registration number.

The subject surveyor agreed to a reprimand, an administrative penalty of \$7,500 and eight-hours of continuing education in the form of the Board's home study course titled "The Act and Rules". Mr. Kwan moved to accept Mr. Merten's recommendation. The motion was seconded and carried. The subject surveyor was James L. Knox, RPLS #4214. Mr. Merten and Mr. Paxton, members of the Information Settlement Conference committee, abstained from voting.

ii. 16-57

Mr. Estrada asked Investigator McMinn to give the members background on the complaint.

The complaint alleges that the subject surveyor prepared incorrect elevation certificate that complainant used in making her decision to purchase the subject home. According to said elevation certificate, the finished floor elevation of the subject home was located 1.07 feet above the 100 year flood plain. Recent flooding apparently impacted the house extensively. A subsequent elevation certificate, prepared by another surveyor, indicates that the finished floor of the house is in fact 3.3 feet below the 100 year flood plain elevation.

In his response, the subject surveyor acknowledged that he checked the 60d nail he had used for a bench mark and found it to be off by several feet.

The subject surveyor was found to have violated §663.15, Precision and Accuracy, by not using methods of practice capable of obtaining the tolerances required for the professional land surveying services and by not properly verifying the bench mark he used to complete the elevation certificate in question.

The recommended penalty includes a reprimand, an administrative penalty of \$1,500.00, and reimbursement of the \$887.65 fees paid by the complainant to the subject surveyor.

Mr. Estrada informed the members that a notice of violations was sent to the subject surveyor. The subject surveyor agreed with the violations and penalties and signed the agreed order now before the members. No Informal Settlement Conference was held.

Mr. Merten moved to accept the agreed order. The motion was seconded and carried. The subject surveyor was Stephen Stafford, RPLS #4901

iii. 17-06

Mr. Estrada explained that the conference that was scheduled had to be postponed due to illness.

iv. 17-45

Mr. Estrada explained that all information mailed to the subject individual in this complaint had been returned as undeliverable even though it was mailed to a valid address. He will be speaking with general counsel to determine next course of action.

c. Request to Deem Frivolous

i. 16-32

Mr. Estrada told the members that this complaint had been previously dismissed by the Board. Mr. Billingsley provided the members with background on the complaint. Mr. Estrada stated that the surveyor provided information that the complaint had been filed for harassment purposes and as a litigation tactic. Mr. Estrada discussed the information with the investigator and both he and the investigator recommend approving the request. Dr. Edwards moved to approve the request. The motion was seconded and carried.

ii. 16-39

Mr. Billingsley provided members with the background on this previously dismissed complaint. Mr. Estrada stated that the surveyor had reiterated what he had mentioned in his response to the complaint. The surveyor also provided a copy of a written statement he gave to the constable investigating the matter between the property owners. After discussing the information provided with the investigator, Mr. Estrada recommends approving the request to deem this complaint frivolous. Mr. Kwan moved to approve the request. The motion was seconded and carried.

iii. 17-19

Mr. McMinn provided members with background on this previously dismissed complaint. Mr. Estrada said he had received information from the surveyor and recommends approving the request to deem frivolous. Dr. Edwards moved to accept the request. The motion was seconded and carried.

This concluded the reports on complaints.

5. Committee Reports

a. Executive Committee –Jon Hodde, Chair

Mr. Hodde reported that there was no action taken, nothing to report.

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

Mr. Hodde reported that since May 2017, 50 SIT examinees sat for the exam with 18 passing.

i. Selection of future examination dates

Members reviewed the following calendars and selected the following dates for the RPLS exam: for 2018, April 20 and October 19; for 2019, April 20 and October 18; and for 2020, April 17 and October 16. Mr. Paxton moved to approved these dates. The motion was seconded and carried.

ii. October 2017 exam – review of exam question selection and action

Mr. Hodde stated that the review of exam questions would be done in closed session following the last item on the agenda. Mr. Kwan inquired as to the number of examinees and Ms. Jackson responded that there were a little over 60.

This concluded Mr. Hodde’s report.

c. LSLS Examination Committee – Bill Merten, Chair

i. Report on the number of applicants sitting for the LSLS exam in October

Mr. Merten reported that three examinees would be taking the LSLS exam.

This concluded Mr. Merten’s report.

Dr. Edward’s asked how many of the RPLS examinees were reciprocals. Ms. Jackson responded there were 15.

d. Rules Committee – Mary Chruszczak, Chair

i. Update on drafting language to improve definition of “surveying” and including use of drones as tools

Ms. Chruszczak reported that she had been asked to update the definition of “surveying” and was tasked with reviewing the Act and rules definition for any conflicts in relation to the use of drones for collecting photography and topography; to evaluate other state’s definitions for the addition of this technology into their professional surveying definitions; and provide recommendations for revision, if needed. Ms. Chruszczak provided the following evaluation to the members:

“As like other tools, Geographic Information Systems (GIS), Geographic Positioning Systems (GPS), drones are now used by surveyors and the public for many products, outside of our definition of Professional Surveying.

1. Texas’ definition of “Professional Surveying” includes the location of sites, points, elevations, natural features, and existing man-made works in the air, on the earth’s surface, and on the beds of bodies of water to determine areas and volumes that are sometimes used to determine a boundary. Using a drone with proper surveying procedures, that meets survey accuracy requirements, could potentially be used to determine the physical location of one or more of these items.

2. With a review of the current “Professional Surveying Definitions” of other U.S. States and Territories, the following States have included or disclaimed in their “Professional Surveying Definition” wording of the utilization of these measurement tools and the expertise requirements to use these tools:

Georgia and Maryland

-The utilization of measurement devices or systems, such as aerial photogrammetry, geodetic positioning systems, land information systems, or similar technology for evaluation or location of property, easement, or right of way boundaries.

Minnesota –

Disclaimer-

Nothing contained in this section, shall prohibit a licensed professional engineer, architect, landscape architect, or professional geoscientist from doing any work included in the practice of

engineering, architecture, landscape architecture, and professional geoscience, if the work does not involve the establishment or re-establishment of property corners or property lines.

South Carolina –

The practice of Tier A surveying consists of three separate disciplines: land surveying, photogrammetry, and geographic information systems. A surveyor may be licensed in one or more of the disciplines and practice is restricted to only the discipline or disciplines for which the land surveyor is licensed.

3. The rules chairman respectfully suggests the consideration of the following for review and future inclusion to the “Professional Land Surveying” definition for new technology:

“ (iv) the utilization of measurement devices or systems, such as aerial photogrammetry, imaging products and tools, geodetic positioning systems, land information systems, or similar technology for evaluation or location of property, easement, or right of way boundaries; and”

If the Board plans a revision to the Occupations Code, The Rules Committee recommends the Board review the findings and recommendations of the 2017 TBPLS Sunset Review, prior to finalizing of the revision.”

This concluded Ms. Chruszczak’s report.

Mr. Hodde believes our definition is a good but it doesn’t address staking and imposes limits on the Board. Ms. Chruszczak believes that technology is evolving and the rules should be flexible to incorporate the new technology as a tool.

Mr. Hodde agreed that the Board should wait until after the Sunset Review and thanked Ms. Chruszczak for her work.

e. Continuing Education Committee – Paul Kwan, Chair

i. Approval of Courses

Mr. Kwan presented continuing education courses for approval. See the Attached Exhibit A for courses recommended for approval or rejection. Mr. Kwan noted that he investigated the courses submitted by McKissock 100% Education. He contacted the person listed as the instructor and discovered that the individual had no knowledge he had been listed as the instructor, had not written course materials or questions. Mr. Kwan recommended that the McKissock class submittals be reviewed more closely in the future.

Dr. Edwards asked if the Board could send a stern message to the course sponsor because this was misleading the public. Mr. Hodde stated that the rejection letter to McKissock should caution them about this incident and that we are aware of what they did.

Mr. Merten moved to accept Mr. Kwan’s recommendations for approval and denials. The motion was seconded and carried.

This concluded Mr. Kwan’s report.

ii. Review and approval of the TBPLS Continuing Education Policy and Staff Guidelines. – Paul Kwan / Mary Chruszczak

Ms. Chruszczak recommended formalizing the guidelines that were previously presented by Mr. Kwan. The motion was seconded and passed unanimously.

This concluded Ms. Chruszczak’s report.

6. Other Business

a. Application for licensure – Marcelino Estrada

i. K. C. Lust

Mr. Estrada asked that this item be tabled until the next board meeting.

- b. Alternate path to licensure – Drew Paxton / Davey Edwards/Philip Adams/Dr. Jeffress

Dr. Edwards reported that this ad hoc committee created at the last meeting had been charged with researching possible alternate paths to licensure that will increase the number of professional land surveyors in the state of Texas while protecting the public. Three objectives were identified:

1. What other professions allow similar paths in this state? What is the pass rate of non-degree applicants vs. degreed applicants? What is the amount of disciplinary actions against non-degree professionals vs. degreed professionals?
2. What is the success rate of degreed applicants from a four-year geomatics program (ie. U.T. Tyler and TAMU-CC) vs. any other degree with the 32 hours of board approved courses? Can this be compared to prior examinations when degrees were optional?
3. Could non-degree seeking applicants have a path to accreditation through our board that would support our professionals such as paralegals, nurse practitioners, and the like? This would be separate from the SIT in that they would not be able to obtain a license without first being degreed.

The information compiled by the ad hoc committee is being analyzed.

This concluded Dr. Edwards report.

7. Future Agenda Items

No items were identified for the next meeting.

8. Select next meeting date

- a. December 8, 2017

(NOTE: While the members agreed on this date, it was determined afterwards that room 201 was unavailable on December 8. The meeting is now scheduled for December 15.)

9. Comments from the Public

Michael Brannon spoke regarding the individual course approval he submitted that the members rejected. He stated that it was two 8-hour courses that included 2-hours on ethics. Mr. Kwan noted that the course was more applicable to engineering than surveying.

The Chair then called for a break at 10:28 a.m.

The Chair reconvened the open meeting at 10:55 a.m.

Considering Mr. Brannon's public comments, Mr. Paxton moved to reconsider Mr. Brannon's individual course request, *Continuing Education Classes at Navarro College*. The motion was seconded and carried. Mr. Paxton then moved to approve Mr. Brannon's request for four hours. The motion was seconded and carried.

At 10:56 a.m., the Chair stated that the Board would go into executive session to discuss the staff's request for guidance on requirements for re-establishing an expired license and to review the October exams.

The Chair reconvened the open meeting at 11:57 a.m. No official business was conducted during the session.

The Chair called for a motion to approve the exams except for the two items that should be replaced. Mr. Merten moved to approve the exams. The motion was seconded and carried.

10. Adjourn

There being no other business, the meeting was adjourned at 11:58 a.m.