

MINUTES
TEXAS BOARD OF PROFESSIONAL LAND SURVEYING
12100 Park 35 Circle, Bldg. E, Rm. 201
Austin, Texas
March 9, 2018, 9:00 a.m.

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

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

The Chair called the meeting to order at 9:10 a.m. and a quorum was established. Present were Jon Hodde, Chair, members Bill Merten, Jim Cheatham, Paul Kwan, Mary Chruszczak, Jerry Garcia, Mark Neugebauer, Dr. Davey Edwards and Drew Paxton. Also present were Marcelino A. Estrada, Executive Director, Board staff Mike McMinn, Larry Billingsley, Julia Estrada, Natalie Jackson, Albertina Romain, Vidal Guerra and Assistant Attorney General Melissa Juarez.

The Chair then invited the public in attendance to introduce themselves and, afterwards, entertained comments. Paul Carey suggested that the Board consider clarifying the rule requiring monuments to bear adequate information be clarified to require registration numbers on caps. Mr. Carey also raised concern that RPLS using contract field crews do not have authority, by laws concerning independent contractors, to exercise direction and control over those individuals and thus are violating Board rules. Finally, Mr. Carey felt that the NCEES Fundamentals of Surveying exam was obsolete and did not serve the citizens of Texas.

2. Excused Meeting Absences

Mr. Garcia offered a motion to excuse the absence of Dr. Edwards and Mr. Paxton from the December 21, 2017 meeting. The motion was seconded and approved. Dr. Edwards and Mr. Paxton abstained from voting.

3. Approval of the December 21, 2017 Minutes

The Chair called for a motion to approve the minutes of the previous Board meeting. Mr. Garcia offered a motion to approve the minutes which was seconded by Mr. Merten. The motion passed. Dr. Edwards and Mr. Paxton abstained from voting.

4. Director's Report

a. Update on office staff

Mr. Estrada informed the members that the two vacant positions had been filled and introduced new staff members Albertina Romain and Vidal Guerra.

b. Update on replacements for outgoing Board members

Mr. Estrada did not have good news for the out-going members. He informed the members that the Governor's Appointment office had found an individual for the public member position on the Board, but upon reflection, the individual was not able to commit. Mr. Zapata of the Governor's Appointment office is continuing the search.

c. Budget process begins for FY2020-2021

Mr. Estrada informed the members that the budget process for the next biennium had begun. Currently, he was working on the Department of Information Resources Information Resources Deployment Review. He was also completing the Small State Agency Risk Assessment for the State Auditor's Office.

The Sunset Advisory Committee was holding their meeting on March 19, 2018 and would be approving the agency review schedule. Mr. Garcia asked if the Board had had a review last year. Mr. Estrada

explained that occurs every seven years but that it was the Self-Evaluation Report to which Mr. Garcia was referring. Mr. Estrada stated that the Sunset Review Commission would begin a review of this agency in August and that agency employees and stakeholders would be called on for comments. Mr. Garcia said that he would like to have input in the review process because it was important that this agency remain a stand-alone agency.

This concluded Mr. Estrada's report.

5. Complaints

a. Closed or Dismissed Complaints

i. 14-49

This complaint was originally received by the Board on August 18, 2014. The complaint alleges that the subject surveyor violated OCCUPATIONS CODE; TITLE 6.; SUBTITLE C.; CHAPTER 1071.: SUBCHAPTER A., Sec. 1071.360. DISCOVERY OF UNDISCLOSED LAND.

The above citation is regarding the reporting requirements of a Licensed State Land Surveyor who discovers an undisclosed tract of public land. The tract of land in question is not undisclosed public land and is therefore not subject to that section of the statute.

The surveyor prepared Plat of a Well Location on a lease tract. The complainant was of the impression that his tract of land should be included in the lease.

A revised version of said Plat of a Well Location shows that the subject tract was in fact not a portion of the lease tract.

In a phone interview, the complainant indicated that there was apparently some confusion as to which tract was his. The issues have apparently since been addressed and he understands that he is not included in the lease.

No violations were found and Complaint No. 14-49 was recommended for dismissal. The Complaint Review Panel concurred and the complaint was dismissed

ii. 18-15

This complaint was filed alleging that the City of Keene had violated Board rules by preparing a legal description for annexation purposes that did not comply with §663.18(c), Certification, and §663.21, Descriptions for Political Subdivisions.

The investigation was unable to confirm that the document in question had been prepared by a registered professional land surveyor as required by §663.18(c). Rule §663.21 does not specify that the document in question had to be prepared by a registrant.

A recommendation for dismissal was brought before the Complaint Review Panel who concurred. Complaint 18-15 is dismissed.

b. Informal Settlement Conferences

i. 15-26

ii. 15-27

Mr. Estrada informed the members that one individual was the respondent in both of the complaints listed above. A tentative date was set for an Informal Settlement Conference but the respondent did not confirm the date.

iii. 15-31

An Informal Settlement Conference had been set for this complaint but had to be rescheduled and would take place after the Board meeting.

iv. 16-02

An Informal Settlement Conference was held for this complaint but the ISC committee did not have an agreed order to present to the members today.

Mr. Estrada asked that these items be tabled until the next meeting.

6. Committee Reports

a. *RPLS/SIT Examination Committee* – Jon Hodde, Chair

i. Appointment of Item Writing Committee member

Members had information concerning the appointment of Rene Silvas to the Item Writing Committee. Mr. Merten moved to nominate Mr. Silvas and recommended his acceptance. The motion was seconded and carried.

This concluded Mr. Hodde's report.

b. *LSLS Exam Committee* - Bill Merten, Chair

i. Report on exam debrief held January 26th

Mr. Merten reported that a debrief was held for the two applicants that did pass the exam.

ii. Report on completion of phase 2 of the review and update of the LSLS Exam.

Mr. Merten reported that the first part of the LSLS exam is being updated and phase 2 has been completed.

iii. Report on the number of examinees taking the LSLS exam this April and the exam selection by the committee.

Five examinees have been scheduled to take the LSLS exam and the committee will be selecting the final exam this afternoon.

This concluded Mr. Merten's report.

c. *Continuing Education Committee* – Paul Kwan, Chair

i. Approval of Courses

Mr. Kwan presented his recommendations for course approval. Dr. Edwards moved to accept Mr. Kwan's recommendation. The motion was seconded and carried.

This concluded Mr. Kwan's report.

d. *Rules Committee* – Mary Chruszczak

i. Incorporating Continuing Education policy in rules

Ms. Chruszczak presented a draft of the continuing education policies into the board rules. Ms. Juarez assisted with this endeavor. Mr. Chruszczak noted that rule 664.4(b)(1) authorizes a maximum of 16 hours of collegiate coursework credit. The rule combines all RPLS, LSLS, and SIT into the requirement. The SIT requirement will likely need to be separated and worded appropriately. Under 664.4(13), the maximum hours for attendance at equipment vendor training seminars have been limited to actual hours attended for a maximum of four hours. Rule 664.5(5) would change the review of courses approved from two years to three years. Ms. Juarez mentioned that the current rules do not allow credit for attending board meetings, and the proposed rule would allow this but if credit were to be offered for viewing live-streamed meetings, that would need to be incorporated as well. Ms. Chruszczak thanked Ms. Juarez for her assistance in drafting the proposed rules and asked members to review the proposed rules for the next meeting.

This concluded Ms. Chruszczak's report.

Mr. Estrada mentioned, while on the topic of continuing education, that the continuing education audit was underway. He stated that 145 letters had been mailed out to the randomly chosen licensees.

- e. Licensure Ad Hoc Committee – Dr. Davey Edwards
 - i. Update on alternate path to licensure research

Dr. Edwards reported that the committee was still working and that TSPS had a similar committee that has reached out to the Ad Hoc committee to compare notes.

This concluded Dr. Edwards report.

7. Other Business

- a. *Application for licensure* – Marcelino Estrada
 - i. K. C. Lust

Mr. Merten presented a request for reinstatement of a previously revoked license. The cause of revocation was due to incarceration for a felony. Mr. Lust attended an Informal Settlement Conference (ISC) and presented his reasons why the license should be reinstated. The ISC committee was comprised of Mr. Merten, Mr. Cheatham, Mr. Estrada, Mr. McMinn and Ms. Juarez. After the ISC, the former employer that was the victim of the crime that led to the incarceration provided a written response concerning the request for reinstatement. Mr. Cheatham noted that the crime was against a family business; that there was no trial but Mr. Lust admitted to the crime; that Mr. Lust has, since his release, been working in the surveying field; that Mr. Lust has been upfront with recent employers about his past; and that Mr. Lust presented references that offered glowing reports regarding his abilities to work in surveying. Mr. Cheatham noted that Mr. Lust had paid his dues, and had demonstrated remorse. Our rules provide some guidance concerning reinstatement of a revoked license and the ISC committee offers the following for the member's approval: Mr. Lust would have his license reinstated within 90 days of approval by the majority of the board; the reinstatement would be contingent upon completing an express number of continuing education and ethics hours; and the reinstatement would be suspended, with the suspension being probated for one year, during which time Mr. Lust would have periodic interaction with the board; and Mr. Lust would have an obligation to provide written notice to any future employer of his past criminal activity. Upon complying with these recommendations, the suspension would be lifted after one year. The Chair invited Mr. Lust to offer comments. Mr. Lust stated he found this embarrassing but appreciated the board's consideration and promised to make good decisions with integrity and to protect the public in work he provided. Mr. Garcia moved to approve the recommendation of the ISC committee. The motion was seconded. Mr. Kwan asked if the former employer was accepting of the reinstatement. Mr. Merten stated that the former employer opposes the reinstatement and their letter outlined four key points: the nature of the crime, the relationship of the crime to the practice of surveying, the extent to which the registrant may offer an opportunity to engage in criminal activity of the same type; and the relationship of the crime to the ability, capacity, or fitness required to perform the duties of a land surveyor. The surveying product was not the issue or central to the crime at the time. Ms. Juarez made a clarification that the rules require a minimum of six members voting in favor of reinstatement for approval of the ISC committee's recommendation. Hearing no further discussion, the Chair called for a vote by show of hand. Six members voted in favor, with no members voting against reinstatement. Mr. Merten and Mr. Cheatham abstained from voting.

- b. *Request for guidance* – Marcelino Estrada
 - i. Handling of complaints where surveyor corrects issue

Mr. Estrada asked the members to provide guidance on handling complaints where the subject surveyor takes action to correct the error upon learning a complaint had been filed or during the time the complainant was preparing to file a complaint. As a result, the error is no longer a violation. Mr. McMinn stated that often the surveyor was not aware of the issue until the received notice of the

complaint. Another situation is where the complainant contacts the surveyor and the surveyor does correct the error. Mr. McMinn felt that when the surveyor acts promptly to correct the error, that should be taken into consideration. Mr. Kwan stated that the first issue is whether the public has been harmed. If time had passed from when the error occurred and was found, title problems or boundary issues may have occurred. Each scenario should be considered. Mr. Cheatham suggested that for those companies that do shoddy work, they will consider fixing the issue a cost of doing business. The Chair agreed with Mr. Kwan's comments and all complaints should be considered equally. Mr. Chruszczak noted that if an individual makes an effort to correct the error and all paperwork, that should be considered but the amount of neglect overall would be considered for a pattern. Dr. Edwards asked what brought this matter to the board. Mr. McMinn noted that several complaints had been filed concerning minor issues that had the complainant contacted the surveyor, the issues would have been worked out. Mr. Cheatham asked if the idea was to find a way for the investigator to cut through administrative process when the investigator has reached a conclusion that the error was minor and fixed. Mr. Paxton asked if the investigators could bring this to a review committee and ask for dismissal? Dr. Edwards asked if the complainant could withdraw a complaint, aren't there procedures already in place? Mr. Cheatham felt that there was nothing more we could do to improve upon what we already have. Board members concurred.

ii. Use of Letter of Advisement

Mr. Estrada told members that our rules determine whether there are violations or not. However, there are instances where the surveyor may have been operating close to violating the rules or Act and the investigators felt that a warning would be appropriate. Our rules and Act do not provide for something in between. In the past an Assurance of Voluntary Compliance (AVC) has been issued which involves the Board taking formal action. After speaking with Ms. Juarez, she suggested that we consider something that other agencies use called a "letter of advisement". Mr. Cheatham asked if there was authority for this type of letter and Mr. Estrada said there was not but it would be acceptable because it would be a strong warning issued by staff as opposed to the AVC. Mr. Estrada explained that he was seeking the members approval to establish using the letter of advisement as a policy but eventually incorporate this into a rule. The Chair asked if the letter would go into the surveyor's record. Mr. Estrada stated it would. Dr. Edwards moved to approve establishing a written policy and the motion was seconded. Brief discussion ensued and a vote was taken. The motion passed unanimously. Mr. Estrada will bring a draft of the policy to the next Board meeting.

iii. Use of mailbox store addresses

Mr. Estrada asked members to clarify if the Board rules were satisfied using a post office box address rather than a physical address. He noted that several surveyors have only post office boxes. This creates a problem for the client if the surveyor will not return phone calls or respond to letters. By having only a post office box, the client does not have the option of visiting the place of business. Dr. Edwards noted that the firm registration form requests a physical address but the RPLS exam application does not. Dr. Edwards asked if the RPLS exam could be modified to require a physical address in addition to the post office box. Mr. Garcia stated that he could not understand how something as central to a transaction would be a PO box. He felt it violated every standard in real estate development and the Board needs to be able to address the situation where a public member could go to speak with the surveyor. Mr. Estrada noted that rule 661.55(b) does not specify whether the address is to be physical or a PO box. Dr. Edwards stated that he preferred to receive certain mail in a secure box but understands the need to have a physical address. Mr. Garcia asked if the rule could be amended to address the lack of physical address. Mr. Kwan noted that the firm registration requires both and the public should be able to contact the surveyor at the physical address. The PO box would be for correspondence from the Board. He also noted that in the past, RPLS applications had been rejected because the applicant failed to list a physical address. If you work out of your home, the public should have the right to come to your home during

normal business hours. The Chair felt that the rule should include both a physical and PO Box and should be amended. Dr. Edwards clarified that this correction would apply to both firms and RPLS. Mr. Kwan moved that the RPLS and firm must have physical address on report and letterhead and correspondence. The motion was seconded. Hearing no further discussion, the motion carried unanimously. Mr. Estrada asked if the change would be going to the rule committee. The Chair stated it would.

c. *Response to monumentation of easements questions* – Marcelino Estrada, Mike McMinn

Mr. Estrada presented a response drafted by Mr. McMinn concerning a response to monumentation of easements. Mr. McMinn read his draft response to the members. Mr. Kwan asked if Mr. McMinn was asking for all easements to be monumented because there were so many types of easements that would have to be specified. Mr. Cheatham asked if there was a lack of clarity or conflict in the rules whether the corners should be marked or simply tied into the corners of the tract. Mr. McMinn stated that this issue comes up when you are creating an easement. He believes the rules cover it but on a cursory review, it is not clear getting there. Dr. Edwards was reviewing a lawsuit concerning a pipeline easement where the pipeline was placed outside the easement. The rules reference a reasonably permanent nature representing the property corners. Are surveyors allowed to say what is described is an easement or boundary because if we say it is a particular easement on a survey, when it becomes a survey of record, it becomes a fee tract. Did the surveyor follow the rules as stated? Can the surveyor make this decision? Mr. Cheatham responded that a valid easement must be adequately described. He stated that he would like to see the rule require a rod be placed but when you consider a pipeline easement, this may not be practical. The Chair stated that in the real world, after the utility is installed the monumentation will be gone. Mr. Garcia felt that this suggestion would create unnecessary paperwork. Mr. Cheatham discussed the rule requirement that any easement that impacts a particular tract be tied back to the monuments of the tract. However, if a surveyor was hired and asked to stake the easement, do the rules require the monumentation of the corners of the easement? If you are being asked to create or describe an easement, then it should be monumented under the rules. Mr. Billingsley stated that in previous experience, if you are asked to stake a monument on the ground and create a metes and bounds, it must be monumented. Mr. Billingsley related a phone call from a property owner who asked a surveyor to return to mark the easement on the ground and the surveyor refused because he had tied it to the corners. The property owner stated she could not see the corner monumentation and had nothing to measure with. Mr. McMinn mentioned that this topic would be good for an FAQ page on the web site. The Chair called for a motion to allow the use of the document proposed by Mr. McMinn. Ms. Chruszczak offered the motion and it was seconded. Dr. Edwards asked if a future Board had a different opinion, should there be a time reference placed on the document. Mr. Kwan asked if the document should state exceptions. Mr. Garcia disagreed with exceptions because something might be left out. The Chair suggested included a statement saying the document is intended for general purpose and it is understood that there could be extenuating circumstances. The Chair asked that Mr. McMinn add this information and bring it back to the Board. Ms. Chruszczak rescinded her motion.

The Chair then called for a break at 10:48 a.m.

The meeting was reconvened at 11:13 a.m.

d. *Continuing education credit for viewing live-streamed board meetings* – Marcelino Estrada

Mr. Estrada asked the members if they would consider permitting licensees to obtain continuing education credit by watching live-streamed meetings. If they chose to do so, board rules concerning continuing education would have to be amended. The company that currently live-streams the board

meetings offers a service where the licensee could log in and pay a small fee to obtain the credit. The system has a monitoring feature to ensure that the licensee is watching the meeting. Mr. Paxton thought this would be a benefit to licensees across the state. Mr. Kwan and Mr. Garcia were concerned that this was referring business to the live-streaming company. Mr. Garcia wondered if the board could receive part of the fee that would be collected. Mr. Estrada indicated that if the board were to collect a fee, another current fee would have to be equally reduced. Ms. Chruszczak felt that the service, without a fee, would be a good service to those individuals for which attendance is not feasible. Dr. Edwards wondered if the fee we pay for live-streaming our meetings could be reduced by the amount collected from the licensees wanting to earn continuing education. Mr. Estrada said he would research what other agencies might be doing. Mr. Merten wondered if another company took over live-streaming, would they offer the same service. The Chair instructed Mr. Estrada to gather more information and bring it to the next meeting.

8. Future Agenda Items

9. Select next meeting date

The Board's next meeting was set for May 25, 2018 at 9:00 a.m.

10. Comments from the Public

The Chair invited the public to offer comments. Todd Blevins suggested that the Board be more progressive and streamline continuing education requirements. He suggested that the Board permit licensees to receive continuing education credit by watching archived meetings.

Randy McLennan raised offered require physical addresses from licensees at the time of renewal. He also offered that the Board require companies to list their surveyor(s) on their web sites.

11. Adjourn

Having heard all business, a motion to adjourn was offered and seconded. The Board adjourned at 11:55 a.m.