

1 **MINUTES**
2 **TEXAS BOARD OF PROFESSIONAL LAND SURVEYING**
3 **12100 Park 35 Circle, Bldg. E, Rm. 201**
4 **Austin, Texas**
5 **December 21, 2017, 9:00 a.m.**

6 THIS MEETING IS BEING LIVE-STREAMED. VISIT [HTTP://WWW.TXLS.TEXAS.GOV](http://www.txls.texas.gov) TO ACCESS LINK.
7

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

9 The Chair called the meeting to order at 9:00 a.m. and a quorum was established. Present were Jon
10 Hodde, Chair, members Bill Merten, Jim Cheatham, Paul Kwan, Mary Chruszczak, Jerry Garcia and
11 Mark Neugebauer. Absent were members Dr. Davey Edwards and Drew Paxton. Also present were
12 Marcelino A. Estrada, Executive Director, Board staff Mike McMinn, Larry Billingsley, Julia Estrada,
13 Natalie Jackson and Assistant Attorney General Melissa Juarez.
14

15 The Chair then invited the public in attendance to introduce themselves and, afterwards, entertained
16 comments. No comments were offered.
17

18 **1. Excused Meeting Absences**

19 The Chair called for a motion to excuse Mr. Garcia's absence from the October 20, 2017 meeting. A
20 motion to excuse offered by Mr. Merten was seconded and approved.
21

22 **2. Approval of the October 20, 2017 Minutes**

23 The Chair called for a motion to approve the minutes of the previous Board meeting. Mr. Merten
24 offered a motion to approve the minutes. Ms. Chruszczak seconded the motion and the motion carried.
25

26 **3. Director's Report**

27 *a. Update on office staff*

28 Mr. Estrada informed the members that recent hiree, Marizela Gonzales, had resigned and that the
29 position for Complaint Administrator had been posted again. Mr. Estrada asked if the members would
30 ratify accepting Ms. Gonzales' resignation and the posting of the job description. Mr. Garcia asked
31 about the effect of the vacancy on the agency. He also asked if the position could be posted on the web
32 site. Mr. Estrada explained that the position had been posted to Work In Texas as well as the agency's
33 web site. Mr. Merten moved to ratify Mr. Estrada's actions. The motion was seconded and carried.
34

35 *b. Update on replacements for outgoing Board members*

36 Mr. Estrada spoke with David Zapata of the Governor's Office, Appointments, and the search continues
37 for a public member.
38

39 This concluded Mr. Estrada's report.
40

41 **4. Complaints**

42 *a. Closed or Dismissed Complaints*

43 *i. 17-15*

44 Complaint 17-15 was filed alleging that a board member had violated the Texas Ethics Commission
45 Advisory Opinion No. 492 when, regarding a lawsuit the complainant is involved in, the member signed
46 multiple affidavits, without providing his registration number.
47

48 In October 2010, the Texas Ethics Commission considered whether a member of the Texas Board of
49 Professional Land Surveying (TBPLS) may, as an expert witness in a court action, testify on whether a
person had committed a violation of laws, rules, or standards within the jurisdiction of the TBPLS.
Members of the TBPLS are often requested to serve as expert witnesses in court.

50 Government Code, section 572.051, states that a state officer or employee should not accept other
51 employment or compensation that could reasonably be expected to impair the officer's or employee's
52 independence of judgment in the performance of the officer's or employee's official duties. Gov't Code
53 § 572.051(3).

54
55 The Advisory Opinion determined that a member of the Texas Board of Professional Land Surveying
56 should not serve as an expert witness to testify on whether a person had committed a violation of laws,
57 rules, or standards within the jurisdiction of the board.

58
59 The board member was hired by a law firm to review a survey signed and seal by the complainant on
60 January 14, 2016. An analysis of nine documents, which includes the complainant's survey, was made
61 by the board member. An affidavit was signed by the board member on October 31, 2016, which
62 outlined issues he found in reviewing the complainant's survey. An opinion was given as to the
63 adequacy of the complainant's survey, but no specific rule violation was mentioned.

64
65 An investigation into the complaint determined that It is not within the Board's jurisdiction to determine
66 whether a Board member has violated an advisory opinion of the Texas Ethics Commission. Dismissal
67 of the complaint was recommended to the Complaint Review Panel who concurred. This complaint is
68 dismissed.

69 *ii. 17-43*

70 Complaint 17-43 was filed alleging that the firm agreed to perform a survey on property being
71 purchased by the complainant. An agreement was reached and payment for the survey was rendered to
72 the firm.

73
74 The following is a timeline presented by the complainant;

- 75 ● April 11, 2017, survey ordered.
- 76 ● April 12, 2017, paid for survey.
- 77 ● April 17, complainant was notified survey was in drafting.
- 78 ● April 25, 2017, complainant and lending institution were notified of an encroachment issue on the
79 survey.
- 80 ● April 27, 2017, closing date, no survey provided to the complainant.
- 81 ● May 1, 2017, complainant instructed title company to use another surveyor.
- 82 ● May 2, 2017, received survey from the new surveyor, and had not received any word from the
83 subject firm.
- 84 ● May 3 – 13th, the complainant had conversations with the firm to receive a refund for the survey
85 paid for but never received.

86
87 After several weeks and conversations, including threats to sue the firm, the complainant received a
88 check from the firm and deposited it, only to discover a few days later the firm had placed a stop
89 payment on the check. This complaint followed.

90
91 In response to the complaint, the firm stated that they learned that their bank account had been
92 compromised, resulting in stopping payment on the check issued to the complainant. On July 10, 2017,
93 the firm's attorney informed the complainant as to why the payment had been stopped, and a new
94 certified cashier's check was sent to the complainant.

95
96 In reviewing the firm's response to the complaint, it was determined that field work and research was
97 performed to survey the property in question. Upon finding what they perceived as an apparent
98 encroachment, the firm did not complete the survey by the necessary closing date, and the complainant
99 hired another surveyor to complete the survey to close on the property.

100 The investigation deemed this matter a contractual issue. The survey cost was returned to the
101 complainant and no violations were found. A recommendation to dismiss was made to the Complaint
102 Review Panel and they concurred.

103 *iii. 17-46*

104 Complaint 17-46 alleges that the subject surveyor left previously placed monuments in the ground which
105 he set for the north line of a 15-acre tract, which the complainant took to be the north line of a 10-acre
106 tract they purchased. Though the correct monuments were set prior to the complainant's purchase of the
107 property, they claim the correct monuments were set after their purchase. The complainant said they
108 purchased the property based on where they thought the north line was, not based on where it is.

109
110 The subject surveyor was hired by a developer on August 17, 2016, to do a boundary survey of 177.36
111 acres in Caldwell County. After completing the survey, his client proposed an idea of how the property
112 could be subdivided. The subject surveyor converted the rough draft into a subdivision plat, composed
113 of tracts larger than 10 acres. Lines were cleared in the rough terrain and corners were set on the tracts.
114 A few weeks later, the concept for the subdivision changed, affecting the size of the tracts. The subject
115 surveyor sent out his field crew to pull the monuments previously set for the larger tracts, stake out lines
116 to be cleared and corners set at the new locations desired. Field notes were prepared, signed, sealed and
117 delivered to the client on November 11, 2016.

118
119 In January, 2017, the subject surveyor walked the property in question, with the realtor selling the tracts.
120 All the corners were found, but the north line of the tract had not been cleared. The corners for the old
121 north line were still in ground, and the subject surveyor said he pulled them at that time. The old north
122 line was later cleared approximately 265 feet north of the correct location for the north line of the tract
123 The complainant purchased the tract on January 13 and, and apparently this was the correct location of
124 the property's north line.

125
126 The complainant paid for 10.02 acres and this was reflected on their survey. The misunderstanding is a
127 result of seeing cleared lines and assuming that it represented the north line of the 10.02-acre tract.
128 The investigation determined there were no violations and a recommendation to dismiss was made to the
129 Complaint Review Panel, who concurred.

130 *iv. 17-50*

131 The complaint was originally filed with the city Code Compliance office. Apparently Code Compliance
132 was less than satisfactory so the complaint was forwarded to the Board. The complaint alleges that a
133 neighbor was attempting to take a portion of a vacated alley belonging to the complainant by fencing it
134 in. According to the complainant, the neighbor who apparently owns a construction company produced a
135 survey supposedly completed by the respondents company. The individual is not an RPLS and the
136 construction company is not a registered firm, therefore they are not subject to board regulation. No
137 survey has been provided for review. No violations were found and the complaint was recommended
138 for dismissal. The Complaint Review Panel concurred with the recommendation.

139 *v. 17-51*

140 The complaint alleges that the surveyor was trespassing and caused damage to the complainant's
141 property. The complaint requests that the surveyor pay for damages caused by several holes that were
142 dug and trees that were cut down and removal of all the flags he put on the property. The surveyor in
143 question is a layout surveyor for a construction company. He is not an RPLS, was not performing
144 professional land surveying services and therefore is not subject to board regulation. No violations were
145 found and the complaint was recommended for dismissal. The Complaint Review Panel concurred with
146 the recommendation.

147 *vi. 18-14*

148 Mr. McMinn asked that this complaint be tabled as it needed further investigation. Mr. Garcia moved to
149 approve the dismissals and tabling of the complaints. The motion was seconded and approved.

150 *b. Request to Deem Frivolous*

151 *i. 06-57*

152 Mr. Estrada reported that a request was received concerning a survey performed in 1999, with a second
153 survey performed on the same property in 2003. A complaint had been filed in 2006 alleging that the
154 complaint performed in 2003 survey copied the 1999 survey. The board rules in place at the time of the
155 complaint did not address frivolous complaints. The statute allowed the director and the investigator,
156 with board approval, deem a complaint frivolous. The investigator and executive director at that time
157 did not take this action. Therefore, Mr. Estrada was recommending that the request to deem frivolous be
158 denied. Mr. Garcia moved to deny the request. The motion was seconded and passed unanimously.
159

160 This concluded the reports on complaints.
161

162 **5. Committee Reports**

163 *a. Executive Committee – Jon Hodde, Chair*

164 Mr. Hodde reported that there was no action taken, since the last board meeting.

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

166 *i. Appointment of Chair for Item Writers Committee*

167 Mr. Hodde asked that the item be stricken from the agenda. The term runs for six years and the person
168 does not need to be reappointed, nor does the board need to appoint a new person.

169 *ii. Surveyor in Training (SIT) Report*

170 Mr. Hodde reported that since October 2017, 22 SIT examinees sat for the exam with 8 passing.

171 *iii. Results of October 2017 RPLS Exam*

172 Mr. Hodde reported that, including reciprocal examinees, there were 60 sitting for the RPLS exam with
173 28 passing.

174 *iv. Confirmation of new RPLS*

175 Mr. Hodde called for a motion to confirm the individuals that successfully passed the exam. A motion
176 was offered and seconded. The motion carried unanimously.
177

178 This concluded Mr. Hodde's report.
179

180 *c. LSLs Examination Committee – Bill Merten, Chair*

181 *i. Report on the results of the October 2017 LSLs Exam*

182 Mr. Merten reported that three applicants sat for the exam with none passing. A debriefing with the
183 applicants will take place on January 26, 2018.
184

185 This concluded Mr. Merten's report.
186

187 *d. Continuing Education Committee – Paul Kwan, Chair*

188 *i. Approval of Courses*

189 Mr. Kwan reported there were very few applications, all were individual classes. Mr. Kwan recommended
190 approving as requested by the applicants. A motion to approve was made and seconded. The motion passed
191 unanimously.
192

193 This concluded Mr. Kwan's report.
194

195 Mr. Merten asked Mr. Kwan if there had been any feedback from the Red Vector issue mentioned at the last
196 meeting. Mr. Kwan said there had not been.
197

198 **6. Other Business**

199 *a. Application for licensure – Marcelino Estrada*

200 *i. K. C. Lust*

201 Mr. Estrada asked that this item be tabled until the next board meeting. After discussing the request with
202 the Assistant Attorney General, it was determined that the request needed to be handled differently and
203 would not be reported on today.
204

204 *b. License Renewal Requirements – Melissa Juarez*

205 The Chair stated that this item would be addressed in Executive Session.

206 *c. Policies on Continuing Education – Melissa Juarez*

207 The Chair stated that this item would be addressed in Executive Session.

208

209 Mr. Hodde noted that the Executive Session would be held at the end of the meeting. After the next
210 three agenda items, the Board would go into Executive Session before reconvening the regular meeting.

211

212 **7. Future Agenda Items**

213 No items were identified for the next meeting.

214

215 **8. Select next meeting date**

216 The next meeting was set for March 9, 2018 at 9:00 a.m.

217

218 **9. Comments from the Public**

219 The Chair then invited comments from the public. There were no comments offered.

220

221 The Chair then called for a break at 9:38 a.m.

222

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

224

225 At 10:10 a.m., the Chair stated that the Board would go into executive session pursuant to Government
226 Code section 551.071 to obtain the advice of legal counsel regarding agenda items 6(b) and 6(c). The
227 Board requested that non-board members leave the room with the exception of the Executive Director
228 and board staff.

229

230 The Chair reconvened the open meeting at 11:26 a.m. No official business was conducted during the
231 session.

232

233 The Chair asked that members review legal counsel's recommendations for rules in 22 TAC Chapter
234 664, Continuing Education. Any comments should be sent to Ms. Chruszczak who will compile all
235 comments and will review the rules for the next meeting.

236

237 **10. Adjourn**

238 There being no other business, the meeting was adjourned at 11:30 a.m.