

MINUTES
TEXAS BOARD OF PROFESSIONAL LAND SURVEYING
12100 Park 35 Circle, Bldg. E, Rm. 201
Austin, Texas
January 25, 2019, 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 9:02 a.m. and a Quorum was established. Present was Jon Hodde, Chair, members Bill Merten, Jim Cheatham, Drew Paxton, Dr. Davey Edwards, Michael McCloskey, Coleen Johnson and Mark Neugebauer. Absent was Jay Canine. Also present was Marcelino A. Estrada, Executive Director, Board staff Julia Estrada, Natalie Jackson, LeAnn Catron and investigators Larry Billingsley and Mike McMinn.

The Chair then invited the public in attendance to introduce themselves and afterwards called for comments from the public. No comments from the public were made.

2. Excused Meeting Absences

Mr. Estrada noted that a motion was needed to excuse members Dr. Edwards and Chair Hodde for being absent from the August 24, 2018 and November 30, 2018 board meetings, respectively. Mr. McCloskey moved to excuse the members. The motion was seconded and carried. Dr. Edwards and Mr. Hodde abstained from voting.

3. Approval of the November 30, 2018

The Chair called for a motion to approve the minutes of the previous board meeting. Dr. Edwards offered a motion to approve the minutes. The motion was seconded by Mr. Neugebauer and carried. Mr. Hodde abstained from voting.

4. Director's Report

a. Sunset Commission Adopted Recommendations on Issue 2: Management Actions

i. Review of application requirements to conform with current policy and statute

Mr. Estrada reported on the Sunset staff recommendations. References to having the application form notarized have been removed. However, section 4 of the application should be modified as it still allows the applicant to list additional references under the heading "Reference of Character and Qualifications". Section 1071.252(b) of the Occupations Code gives the board authority to obtain at least three references from each applicant who have "personal knowledge of the applicant's experience". However, it does not address the applicant's character. Mr. Estrada suggested that section 4 of the

application simply be titled “References”. Mr. Estrada noted that Mr. Merten had concerns of not being able to obtain comments concerning an applicant’s character or fitness to become a surveyor. Mr. Merten reiterated his concern, explaining why comments regarding fitness were important.

ii. Staggered renewal system for licenses and registrations

Mr. Estrada told the members that he had contact Health Professions Council and was informed that it is indeed possible to stagger the license renewals like some of the other agencies on Versa Regulation. HPC stated that this may be something that can be without having to pay a fee for programming. They will investigate this more once the legislative session is over. Mr. Estrada recommended that the staggered terms, based on the birthdate of the licensee, begin in 2020 since licensees have renewed their license through 2019. Initially, that will mean that some individuals will receive a few months of licensure in 2020 before they would be required to pay the renewal fee.

iii. Comprehensive analysis of adopting NCEES PS exam and corresponding state exam

Mr. Estrada presented members with information from the February 2016 board meeting where the board had analyzed moving towards the NCEES PS exam. At that meeting, members drew the conclusion that the move would not be acceptable. A more in-depth analysis is desired by Sunset, but this analysis will be a good start.

Regarding the state exam, Mr. Estrada explained that the board had the ability to move towards a computer-based exam using FastTest but suggested that a committee be established to determine how well the exam will lend itself to being taken on the computer. Presently, examinees are provided a diagram of a survey project on a paper and will mark up the diagram with information provided in the exam question. Mr. Estrada wondered how this would be handled on a computer.

He also indicated that a cost analysis would need to be conducted to determine what the true cost for administering an exam would be to an examinee. FastTest has the capability to create a computer-based test but the board would need to locate test centers and determine what their fee would be. On average, 60 individuals sit for each our exams.

The analysis should also consider what the true benefit would be to offer the exam as a computer-based exam.

iv. Publication of disciplinary history on web site

Mr. Estrada informed the members that he had asked Ms. Catron to duplicate and modify her complaint spreadsheet so that disciplinary action could be placed on the web site. This information lists dismissed complaints that have exceeded the date to have the complaint deemed frivolous and lists those that have reached an agreed order. Mr. Estrada asked Ms. Jackson to create a drop-down box over the “Complaint” tab. Clicking on “Disciplinary Action” will open the spreadsheet. Since the spreadsheet will provide minimal

information, we will need to figure out how to link a document (namely, the agreed order) so that a person seeking this information can click on the link and read the order. Consideration was also given to linking to the appropriate meeting minutes that contain the complaint details, but this would require the individual to search through the minutes. A link to the document itself would be more user friendly.

b. Draft policy on identification of complaints

Mr. Estrada asked the Chair to table this item as it would be addressed later in the meeting under item 7b.

c. Use of volunteers to handle backlog of complaints

After multiple discussions with our general counsel, we have concluded that it may be possible to use volunteers to assist with complaint investigation. There is one item of concern, section 1071.401, Disciplinary Proceedings. Subsection (b) reads, in part, “The board may **employ** investigators and inspectors is necessary to properly enforce this chapter.” On its face, this would seem to prohibit the use of volunteers. However, section 1071.102, Personnel, offers a bit of an out. Subsection (b) reads, “The board may accept services necessary to perform the board’s work under this chapter that are provided by private sources at no cost to the board.” One thing that needs to be addressed with this is what a volunteer position would look like. Based on conflict of interest concerns raised by the Sunset staff, a volunteer would likely need to be retired but still holding an active license. Guidelines should also be established, similar to what the current investigators follow, to ensure that the volunteer is not conducting any investigation against someone they once may have worked with and with whom they may have had some difficulty. Mr. McCloskey raised concerns about disciplinary actions the volunteers might recommend. Mr. Hodde clarified the volunteer would only do the investigation and the Board members would make actions or approvals. Mr. Hodde stated he believes Sunset’s opinion is board members be excluded from investigations.

d. Intent to initiate rule review of Board rules in 22 TAC Chapters 661 through 665

Mr. Estrada instructed members that a motion would be necessary at this meeting to initiate the rule review of board rules. The review would need to be completed within 6 months of this date. The rule review would entail reading through the rules to confirm that the rules are still necessary and at that point any amendments would be made. Amended rules would be published and the board would go through the standard publishing procedure. Mr. Estrada reminded members that any rules that were to be published with amendments would first need to be sent to the Governor’s office.

Mr. McCloskey moved to initiate the rule review. The motion was seconded and carried.

This concluded Mr. Estrada’s report.

5. Complaints

a. Closed or Dismissed Complaints

Mr. Estrada reported that the following complaints had been closed or dismissed:

- i. 15-29
- ii. 16-03
- iii. 17-04
- iv. 17-21
- v. 17-22
- vi. 17-35
- vii. 17-39
- viii. 17-44
- ix. 17-55
- x. 18-09
- xi. 18-16
- xii. 18-20
- xiii. 18-44
- xiv. 18-48
- xv. 18-60
- xvi. 18-62
- xvii. 19-01
- xviii. 19-12
- xix. 19-13

b. Informal Settlement Conferences

Mr. Estrada reported that informal settlement conferences had been held for the following complaints.

- i. 13-41

Mr. Merten and Mr. Cheatham were members of the Informal Settlement Conference Committee. Mr. Merten reported the results of the ISC and moved that the board accept the Agreed Order signed by the respondent surveyor. The motion was seconded and passed. Mr. Merten and Mr. Cheatham abstained from voting. The respondent surveyor was Barry Rhodes, RPLS # 3691.

- ii. 16-36

Ms. Johnson and Mr. McCloskey were members of the Informal Settlement Conference Committee. Ms. Johnson reported the results of the ISC and moved that the board accept the Agreed Order signed by the respondent surveyor. The motion was seconded and passed. Ms. Johnson and Mr. McCloskey abstained from voting. The respondent surveyor was Jimmy Janecek, RPLS #5868.

- iii. 17-53

Mr. Merten and Mr. Cheatham were members of the Informal Settlement Conference Committee. Mr. Merten reported the results of the ISC and moved that the board accept the Agreed Order signed by the respondent surveyor. The motion was seconded and passed. Mr. Merten and Mr. Cheatham abstained from voting. The respondent surveyor was Robert Paul, RPLS # 4984.

iv. 18-22

Mr. Merten and Mr. Cheatham were members of the Informal Settlement Conference Committee. Mr. Merten reported the results of the ISC and moved that the board accept the Agreed Order signed by the respondent surveyor. The motion was seconded and passed. Mr. Merten and Mr. Cheatham abstained from voting. The respondent surveyor was Robert Paul, RPLS # 4984.

v. 18-37

Mr. Merten and Mr. Cheatham were members of the Informal Settlement Conference Committee. Mr. Merten reported the results of the ISC and moved that the board accept the Agreed Order signed by the respondent surveyor. The motion was seconded and passed. Mr. Merten and Mr. Cheatham abstained from voting. The respondent surveyor was Robert Paul, RPLS # 4984.

c. Request to Deem Frivolous

Mr. Estrada reported that the following complaints had been previously dismissed. The respondent surveyor of each complaint listed below was now requesting that the complaint be deemed frivolous due to the complaint being made for the purpose of harassment and not demonstrating harm to any person. After reviewing the request, the investigator and Mr. Estrada recommend the request to deem frivolous be granted:

- i. 12-59
- ii. 16-41
- iii. 16-46
- iv. 17-09
- v. 17-18
- vi. 17-44
- vii. 18-21
- viii. 19-12
- ix. 19-13

Mr. McCloskey moved that the requests made to deem the listed complaints be granted. The motion was seconded and passed.

This concluded the report on complaints.

6. Committee Reports

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

i. Report on SITs

Mr. Hodde reported that 20 individuals sat for the SIT exam. Of those six passed the exam.

ii. Appointment of Item Writers Committee Chair

Mr. Hodde stated that with Colleen Johnson having been named to the board, a replacement for Item Writers Committee chair was necessary. Mr. Hodde asked for a motion to appoint Billy Bernsen chair. Mr. Merten so moved. The motion was seconded and passed unanimously.

iii. Appointment of Item Writers Committee Vice-Chair

Mr. Hodde asked for a motion to appoint Kevin Meals to the Item Writers Committee as vice-chair. Ms. Johnson moved that Kevin Meals be appointed. The motion was seconded and passed unanimously.

This concluded Mr. Hodde's report.

b. LSLs Examination Committee – Bill Merten, Chair

i. Update on debriefing of October 2018 LSLs examinees

Mr. Merten reported that a debriefing would be held after the conclusion of today's meeting to debrief the one individual who sat for the LSLs exam in October.

ii. Update on April 2019 exam

Mr. Merten reported two people would be sitting for the LSLs exam.

iii. Update on LSLs Examination Subcommittee

Mr. Merten informed the board the subcommittee was finishing up final details and will be publishing for applications soon.

This concluded Mr. Merten's report.

c. Continuing Education Committee

i. Approval of Continuing Education Course received by the Board through January 13, 2019

Committee Chair Dr. Edwards offered his recommendation on courses to be approved. A question was raised concerning a course being offered by recent former board member, Paul Kwan. It was decided that this course would be tabled until information could be obtained from general council concerning a board member's ability to offer classes after having recently left the board.

7. Other Business

a. Request to reinstate expired license – Samuel Hanna

Mr. Estrada informed the members that Mr. Hanna was unable to attend. However, he had sent a letter and was hoping the board would consider his request. Mr. Hanna received his license in December 2016. However, he neglected to renew his license by the end of 2017 and then took no action before December 2018. Mr. Hanna stated that he had not received a renewal notice and between his wife giving birth to their first child and the holidays, he forgot to renew his RPLS license. He is currently working with a company that does construction staking. Mr. Estrada noted that the Land Surveying Practices Act does not give the board the authority to reinstate an expired license. Mr. Estrada then pointed out concerns such as, if Mr. Hanna were told to start over by applying for SIT, would he have to retake the FS exam? NCEES would not require that an individual who has passed the FS once, repeat the exam. If we accept the score, and he is given his SIT certificate, would his previous experience count? Mr. Estrada also noted that Mr. Hanna's SIT certificate was valid until 2020. If we recognize that, this would get him to being able to apply for the RPLS exam and retaking the exam. Mr. Hanna was hoping to avoid taking the exam again. Mr. Hodde asked if general counsel could review the Act and advise the board at its next meeting.

b. Complaint Policy – Bill Merten

Mr. Merten told the members that he and his subcommittee had drafted a policy. However, Mr. Estrada had drafted a guideline for the purpose of identifying jurisdictional and non-jurisdictional complaints. Mr. Merten noted that the guideline was well drafted and should be adopted as policy instead of what his committee wrote. Mr. Merten then asked Mr. Estrada to review the guideline with the members. At the conclusion of Mr. Estrada's review, a motion was made to adopt the guidelines as policy by Mr. Merten. The motion was seconded and passed unanimously.

The Chair called for a break at 10:44 a.m.

The Chair reconvened the meeting at 11:07 a.m.

Mr. Hodde called for a return to tabled item (6)(c)(i) for course approval.

Dr. Edwards discussed Paul Kwan's continuing education course with general council. Attention was brought to Mr. Kwan being a previous board member, and if there were any issues with him being able to provide continuing education. In 2010, the Ethics Advisory opinion number 492 stated it is a direct conflict of interest of current board members to provide continuing education within their industry. Dr. Edwards questioned if this opinion relates to a former board member. He also questions if Mr. Kwan is within the one-year timeframe to participate with any board activities. The decision on Mr. Kwan's continuing education request will be tabled until the next board meeting to give general council time to review the opinions and if the 12-month timeframe is a part of that opinion and if Mr. Kwan will be able to provide the continuing education. Mr. Hodde noted Mr. Neugebauer requested to abstain from voting on the Texas General Land Office item as he is a representative of the GLO. A motion concerning the remaining courses was made by Dr. Edwards and the motion was seconded and passed.

This concluded Dr. Edwards report.

c. Matters related to TBPLS review by the Sunset Commission

Mr. Estrada noted that Ms. Juarez, general counsel, had suggested this agenda item. However, this topic was addressed under the Director's Report. Members did not have any other comments or discussion.

d. Legislative issues

Mr. Estrada informed members that with the Legislative session beginning, budget hearings would also be starting. The first hearing is before the Senate Finance Committee on February 4, 2019. The email Mr. Estrada received did not provide a time or room number.

e. Board Policies and Procedures, including those related to employment, conflicts of interest for board members and staff, licensing requirements, examination requirements, and administrative record-keeping and reporting

Mr. Estrada told the members that Ms. Juarez had put this item on the agenda but did not know what she intended to discuss. Mr. Hodde believed this item was already discussed in Mr. Mertens report.

f. Four-Year Rule Review – 22 TAC Chapters 661 to 665

Mr. Hodde noted that this item had been addressed under Director's Report.

g. Personnel Matters

Mr. Hodde informed the members that this item would be discussed in closed session. So that audience members did not have to wait, he said this would be tabled until after "Comments from the Public".

8. Future Agenda Items

Mr. Hodde called for future items from the members.

- a. Tabled item regarding Paul Kwan's continuing education course
- b. Reinstatement issue of Samuel Hanna
- c. For Continuing Education Committee
 - i. One hour continuing education process
 - ii. Online continuing education processes and how to expedite and simplify.

9. Select next meeting date

The next meeting was scheduled for March 22, 2019 at 9:00 a.m.

10. Comments from the Public

The Chair invited the public in attendance to step forward and offer any comments.

Curtis Strong thanks the board members for their dedication and service. He suggested a “3 strikes and you’re out” suspension method of penalty for repeat offenders.

Mike Romans, involved with Chapter 11, San Antonio branch of TSPS. He is requesting a clarification and policy statement online of how many times per year the Board has meetings as four hours of continuing education is issued for attending the meetings. He also would like to know if attending board meetings when the board is merged with the engineering board if continuing education will still be issued.

‘Name not clearly stated’ Believes if Mr. Hanna has met the qualifications to be an RPLS, he would be able to go to any state and take their jurisdictional exam. Other states offer a path of reinstatement that requires a fee and a background check, if a license has expired. He would like the board to address a similar path.

The Chair then stated that the Board would go into closed session to address item (7)(g)(2), Personnel Matters at 11:27 a.m.

The Chair reconvened the meeting in open session at 1:44 p.m. No action was taken in closed session.

Mr. Hodde reported that during closed session a discussion on personnel matters including Mr. Estrada’s resignation, the need to appoint an Interim Executive Director and the guidelines for replacement of the Executive Director and other staff. Mr. Hodde asked for a motion on the matter of an Interim Executive Director. Mr. McCloskey moved to appoint LeAnn Catron as Interim Executive Director until such time the board is able to hire a permanent Executive Director. Mr. Paxton seconded the motion and it carried. Mr. Cheatham made a motion for the Executive Director to post the position with an amendment to clarify that the position may not be limited to a temporary position pending legislative action and start efforts to get Workforce involved in hiring a temporary Executive Director while the position is posted. The motion was seconded and carried. Mr. Cheatham moved to direct the Executive Director to contact Workforce to hire a temporary Investigator. Ms. Johnson seconded the motion. Discussion ensued, and Mr. Estrada requested clarification on which agency to contact for the temporary positions. Dr. Edwards commented that the investigator does not need to be industry specific, but someone with investigative experience. The motion carried. Mr. Hodde, as board Chair, appointed an Employment Committee to include Mr. McCloskey, Ms. Johnson, and Mr. Neugebauer that will oversee the office, conduct employment interviews, seek out individuals to fill the positions and provide support to the office staff.

Adjourn

Having no further business, the Chair calls for a motion to adjourn. Mr. Hodde moves that the board adjourn. The motion is seconded, and the meeting is adjourned at 1:50 p.m.