

MINUTES
TEXAS BOARD OF PROFESSIONAL LAND SURVEYING
12100 Park 35 Circle, Bldg. E, Rm. 201
Austin, Texas
November 30, 2018, 9:00 a.m.

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

The Vice-Chair called the meeting to order at 9:22 a.m. and a quorum was established. Present were Jim Cheatham, Vice-Chair, members Bill Merten, Mark Neugebauer, Dr. Davey Edwards, Drew Paxton, Coleen Johnson, Jay Canine and Michael McCloskey. Also present were Marcelino A. Estrada, Executive Director, Board investigators Mike McMinn, Larry Billingsley, board staff and Assistant Attorney General Melissa Juarez. Absent was Jon Hodde.

The Chair then invited the public in attendance to introduce themselves and, afterwards, entertained comments. Josh Leamon, based on the Sunset Commission report, stated he contacted the board chair and urged the firing of the executive director and the investigator. He also noted that a complaint had been opened in retaliation against him the day after that call. Deward Karl Bowles said that the agency has been under a huge strain and does not blame the people in it. It does not have the resources to respond to complaints but is fighting to help the agency out and encouraged those in the audience to do the same.

2. Introduction of new appointees: RPLS members Jay Canine and Coleen Johnson, and Public member Mike McCloskey

The Vice-Chair then introduced the new board members.

3. Approval of the May 25, 2018 and August 24, 2018 Minutes

The Vice-Chair then called for a motion to approve the May 25, 2018 meeting minutes. Dr. Edwards moved to approve the minutes. The motion was seconded and approved.

The Vice-Chair then called for a motion to approve the August 24, 2018 meeting minutes. Mr. Merten moved to approve the minutes. The motion was seconded and approved. Dr. Edwards abstained from voting due to being absent at that meeting.

4. Director's Report

a. Discussion of SORM Risk Management Program Review results

Mr. Estrada informed the members that the agency had undergone its SORM Risk Management Review. Previous recommendations were closed. The SORM staff, while conducting their review, participated in a fire drill and recommends the agency find a different meeting location further away from the propane refilling area. They also recommended that TBPLS conduct a Threat and Hazard Identification and Risk Assessment to identify potential risks exposures. Finally, TBPLS include an Active Shooter/Attacker policy in its Risk Management Manual.

b. Discussion of Sunset Commission's staff recommendation and consideration of immediate corrections

Mr. Estrada presented the Sunset Commission staff recommendations for discussion, specifically focusing on Issue 2. After discussion the following were the board's recommendations.

Issue 2:

Overly restrictive licensure requirements create barriers to entry and reduce agency efficiency.

1. Subjective qualifications for licensure and registration

- Notarization of forms: Staff has been instructed to remove notarization requirements from application forms.
- Board members serving as references for LSLS: The board adopted a policy that no board members may serve as references as permitted under 22 TAC §661.43(b). The board will be initiating its rule review and will revise this rule at that time.
- GLO training for LSLS applicants: The TBPLS Candidate Guide states that a LSLS applicant “must” meet with the director of surveying at the General Land Office. This information is incorrect, and the board has changed the Guide to read that the board suggests that the applicant meet with the director of surveying at the GLO because it provides the applicant with beneficial education concerning the GLO and its functions.

2. Inefficient license and registration renewal process

- Biennial renewal: The board instructed staff to gather information on what would be required to move to biennial renewals. This information will be reviewed by the board for potentially amending its license renewal rules during its rule review process.
- Staggering license renewals: Staff was instructed to gather information on staggering renewals and recommend a system that could be efficiently implemented.

3. Agency exam development and administration create unnecessary burdens on staff and applicants.

- Unnecessary, inflexible, and time-consuming exam development: The board previously reviewed adopting the NCEES PS exam and determined it was not appropriate for Texas applicants. The board directed staff to gather information moving towards a computer-based test using the exam software currently in place. The software has a CBT component, but we need to identify exam locations and costs.
- Inappropriate board member involvement: Two board members and the GLO designee are involved in different aspects of the LSLS exam phases. Board members noted that the LSLS exam questions have changed little over the years other than to update case law and statutes. As a result, selection of LSLS questions can be performed by staff. The board authorized the LSLS Committee to form a subcommittee for reviewing the LSLS exam process and identifying LSLS licenses interested in serving on the advisory committee. All new members to the committee will sign a non-disclosure agreement.

4. Enforcement process

- Lack of enforcement policies: Board staff has begun reducing its enforcement procedures to writing. We are identifying non-jurisdictional, with merit/without merit and risk of harm. The board, during its rule review, will also be addressing board rules that require all complaints to be investigated.
- Conflict of interest: The board directed the executive director to draft a job description for a full-time investigator that includes the board’s policy on conflict of interest. The description has been drafted and should be posted after the beginning of the year.
- Lack of publicly available disciplinary information: Disciplinary information is currently published in the board’s minutes and available on the board’s web site. To assist the public, this disciplinary information will be moved to a separate tab on the web site and will be more easily accessible.

**Sunset Staff Recommendations
Statutory Changes**

2.1 Remove residency requirements: The board feels strongly that this requirement should not be removed from the statute. Occupations Code, section 1071.355. states that a LSLS is an agent of the state when acting in that official capacity. At its November 30 board meeting, members wondered if it were possible for a non-resident to be an agent of the state. It was also noted that LSLS take an oath to the state and work under the direction of the GLO. The Act defines a LSLS as “a surveyor licensed by the board to survey land in which the state or the permanent school fund has an interest or perform other original surveys for filing field notes in the General Land Office.” Enforcement against a non-resident may also be an issue.

2.3 Replace the board’s exam advisory committees with general statutory authority to establish advisory committees: The board has no opposition to amending the language in the Professional Land Surveying Practices Act that will broaden the board’s authority to establish advisory committees and not limit the board to only exam advisory committees.

*Note: The other items listed under **Statutory Changes and Management Action** are address in the first section above.*

The Vice-Chair called for a break at 10:30 a.m.

The meeting was reconvened at 10:40 a.m. The Vice-Chair was asked since name plaques were missing would the members introduce themselves.

c. Draft policy on identification of complaints

Mr. Estrada presented a draft policy to the members. This draft policy was to address the complaints backlog. The Vice-Chair noted that the current process was to investigate every complaint that was submitted to the board. A file is created, and a complaint number assigned. The investigator evaluates the substance of the complaint as it relates to the surveyor’s actions, compliance with rules, and decides a maximum fine or penalty if there is a violation. The report is sent to the subject surveyor who has the option of requesting an informal settlement conference or the State Office of Administrative Hearings. At an ISC, the members meet with the surveyor and an agreed order is drafted. The order, if signed, then goes to the board for approval. Once a complaint is opened and the investigator begins his review, several violations not related to the complaint allegation are identified. This all contributed to the backlog. The draft policy would help to reduce the backlog by preventing a complaint that was non-jurisdictional from being reviewed by the investigator. Mr. Estrada asked if a non-jurisdictional complaint could be deemed frivolous. Ms. Juarez informed the members they would address this issue under rule making. The rules have guidelines but could be amended to included effort a surveyor spent in responding to a complaint but being non-jurisdictional, the rules committee could address this issue there. Mr. Merten asked if a complaint was non-jurisdictional and it is not issued a complaint number, how would it be dismissed? Mr. McCloskey suggested that information be given up front explaining what is deemed non-jurisdictional to help prevent some of these complaints from being submitted. The Vice-Chair addressed boundary disputes and noted that if there was a question about compliance with the standards for the work product, this could be considered jurisdictional. Dr. Edwards stated that this discussion is for a committee to address. Mr. Merten said his committee was working on the complaint process but could role this into that committee. Mr. Juarez addressed “contractual issues” noted in the draft policy. She said this would help give the staff guidance on complaints coming before the board now where contractual issues lead to ethical concerns. The Vice-Chair provided some background on the types of complaints that are received that are non-jurisdictional because they are contractual. He noted that if the complaint involved ethics, that would make it jurisdictional. Dr. Edwards noted that we

get caught in a vicious cycle but at the same time there must be some type of review to determine jurisdictional v. non-jurisdictional and this is where we have an issue creating this policy. What can be done to show we are implementing these things now without having to send this to committee? The Vice-Chair suggested that the committee could produce a short list of ethical commandments for surveyors. Mr. Merten said he was going to report the committee's findings for resolution later in the meeting.

- d. Complaint regarding exam day procedures and ability to pay for exam same day
(Zach Petrus)

Mr. Estrada informed the members that an individual had applied to take the RPLS exam. He had been approved and notification was mailed to him requesting payment. It was determined that the address had a typo and the letter was not delivered. The individual was concerned about the board's exam procedures and wanted the board to review them. Mr. Estrada noted that the Candidate Guidelines stipulate that once approved, the individual will be notified and must submit payment not later than ten (10) days before the exam. Since the staff had not received payment, it was presumed he would not be sitting for the exam. The individual appeared on the day of the exam and expected the staff to accept his payment then and allow him to sit for the exam. However, staff was in the process of admitting examinees and were not able to take his payment and create seating for this individual. Mr. Merten noted that the individual had not written legibly which led to the mistake. He also provided members with the first and last page of the application and the third page from the Candidate's Guideline. The application states clearly "print legibly". The letter was not returned. The Guideline has a flowchart that shows the process and he believes that what we have is very clear. Mr. McCloskey noted that since the letter was not returned, staff would have no way of knowing the individual had not received the letter. No action was taken.

- e. Clarification of Rule 661.57(2) concerning "surveyor of record" and the location of same in relation to an office and branch office, and also its application to firms that do not have physical offices

Mr. Estrada told the members that the staff had been receiving questions regarding Rule 661.57(2) and was seeking guidance on how to respond to the question of whether a "surveyor of record" could be one and the same for the headquarters and branch office, and what happens if the company does not have a brick and mortar location. The Vice-Chair asked Mr. Merten to have the Rules Committee review this question.

- f. Identifying business entities with DBA on Board's licensing system

Mr. Estrada asked the members if the board's intent was for a firm to register both their incorporated name and their dba. If so, is the board requiring the company to pay for two registrations? Mr. Estrada said that one issue is Versa Registration does not allow the dba name to be searched in the company name field when it is not the first name listed. Versa also does not allow for one registration to be tied to two separate business names. The Vice-Chair felt that the company's main name should be registered. Dr. Edwards noted that board rules (663.19(b)) require the firm's registration number to appear on the survey drawing. Mr. Merten felt that the dba along with the company's main name registration would suffice. Ms. Juarez suggested that the board may want to make a small amendment to the board's rule with what the survey drawing should require regarding firm names. Dr. Edwards suggested this issue be sent to the Rules Committee.

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

Mr. Estrada shared copies of rules amendments that Ms. Chruszczak had drafted prior to leaving the board. Mr. Estrada suggested that the board state its intent to initiate its rule review and incorporate these rule amendments. Dr. Edwards moved that the board state its intent to initiate its four year rule review. The motion was seconded and passed.

This concluded Mr. Estrada's report.

5. Complaints

a. Closed or Dismissed Complaints

Mr. Estrada informed the members that the following complaints, with concurrence from the Complaint Review Panel, had been dismissed. No board action was necessary.

- i. 15-10
- ii. 15-36
- iii. 16-12
- iv. 16-35
- v. 16-46
- vi. 16-51
- vii. 17-03
- viii. 17-09
- ix. 17-32
- x. 18-51
- xi. 18-63
- xii. 18-64
- xiii. 18-65
- xiv. 18-66
- xv. 19-06

b. Informal Settlement Conferences

- i. 14-34
- ii. 16-52
- iii. 18-39

c. Request to Deem Frivolous

Mr. Estrada asked the Vice-Chair to table complaint 12-59 until the next meeting. Requests had been received for the remaining complaints asking that they be deemed frivolous. Mr. Estrada recommended that the board accept the requests for those complaints. The Vice-Chair asked for a motion

- i. 12-59
- ii. 17-26
- iii. 17-42
- iv. 18-38
- v. 18-63

d. Request for Reinvestigation

- i. 16-41

Mr. Estrada informed the members that this complaint had previously been dismissed. The complainant submitted a request for reinvestigation but no new information was presented. Mr. Estrada recommended that the request be denied. A motion was offered and seconded. The motion passed.

This concluded the report on complaints.

6. Committee Reports

a. Executive Committee – Jon Hodde, Chair

Mr. Estrada told the members that Mr. Hodde was disappointed he could not attend the meeting due to a previous engagement.

- i. Appointment of Rules Committee chair

ii. Appointment of Continuing Education chair

Mr. Estrada stated that Mr. Hodde recommended Mr. Merten to chair the Rules Committee and Dr. Edwards to chair Continuing Education. Mr. Paxton moved to appoint Mr. Merten to the Rules Committee. The motion was seconded and passed. Mr. Neugebauer moved to appoint Dr. Edwards chair of Continuing Education. The motion was seconded and passed.

iii. Recognition of out-going board members Mary Chruszczak, Jerry Garcia and Paul Kwan

The Vice-Chair took this opportunity to thank Mary Chruszczak, Jerry Garcia and Paul Kwan for their dedicated service over the years. A resolution was offered for each individual member and each was presented with a plaque and Texas flag.

This concluded the Executive Committee's report.

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

i. Report on SITs

The Vice-Chair reported that 43 examinees attempted the SIT exam and 14 were certified as SIT.

ii. Results of RPLS exam

The Vice-Chair reported that fifty-four examinees sat for the RPLS exam and 17 passed. Staff member Natalie Jackson read the names of those that passed the October 2018 exam.

iii. Confirmation of RPLS license

Mr. Merten moved to approve the individuals that passed the October 2018 exam. The motion was seconded and passed.

This concluded the RPLS/SIT Examination Committee's report.

c. LSLS Exam Committee - Bill Merten, Chair

i. Results of LSLS exam

Mr. Merten reported that one individual sat for the LSLS exam but did not pass. A debrief will be scheduled for January.

This concluded Mr. Merten's report.

d. Continuing Education Committee

i. Approval of Courses received by the Board through November 20, 2018

Dr. Edwards reported on the courses received and offered recommendations to the board. The recommendations offered by Dr. Edwards were seconded and approved. Mr. Neugebauer abstained from voting because he had an item (number 9) on the Course Approval list.

This concluded Dr. Edwards' report.

7. Other Business

a. Rules concerning monumentation of new easements – David Scott

Mr. Scott addressed the board and raised his concerns regarding monumentation of new easements. No board action was taken.

b. Report from task force concerning complaint process, including investigations – Bill Merten

Mr. Merten reported on the task force recommendation on the complaint process. Mr. Kwan and Ms. Chruszczak were part of the committee. Mr. Merten provided member with a handout.

The committee determined that complaint review should be limited to the issues outlined in the complaint filing. Items discovered during the review that cause no direct harm to the public should be resolved administratively. He noted that rule 661.62(b)(2) may need to be amended because it states that “all signed complaints will be investigated.”

The committee also recommended that if a complaint is found without merit or outside the board’s purview, notification will be sent to the complainant and subject firm/surveyor. If necessary, a Letter of Advisement may be sent at the same time.

For complaints that fall within the purview of the board, the complaint will be assigned a complaint number. The subject surveyor will have an opportunity to respond and the investigation will proceed as outline in rule 661.62(c).

Determination of violations should be done in accordance with rule 661.62(d).

It was noted that the investigators outline all violations and include multiples of the same violation in their reports to the executive director. The investigators must follow section Occupations code section 1071.452(b) when determining the recommended penalty and should base the determination on the seriousness of the violation and economic damage to the public. The maximum is a guideline and should not be utilized on every violation. Duplicate rule violations are single actions and cannot be considered multiple violations.

The committee recommends that the executive director seek a recommendation from the Complaint Review Panel to determine an appropriate penalty prior to notifying the subject firm/surveyor. The determination of disciplinary action, penalty and fine is the sole responsibility of the executive director and Complaint Review Panel. This action should minimize the number of contested case hearings and informal settlement conferences.

In coordination with the general counsel, this policy will need to be fined tuned.

Mr. Estrada cautioned creating another panel considering that the Sunset Commission did not like the use of the Complaint Review Panel.

Ms. Juarez reserved her comments until such time that she works with the committee and felt that what Mr. Merten recommended in addition with what was discussed earlier in the meeting could be combined into one policy.

The Vice-Chair called for volunteers to assist Mr. Merten. Dr. Edwards, Ms. Johnson and Mr. Canine volunteered to assist.

This concluded Mr. Merten’s report.

Mr. McCloskey moved to table item 7c until the completion of agenda item 10. The motion was seconded and approved.

- c. Roles and responsibilities of agency investigators – Bill Merten
- d. Use of volunteers to handle backlog of complaints

Mr. Estrada informed the board that a recommendation had been made to use former board members as volunteers to assist with the backlog of complaints. He informed members that he was working with general counsel to ensure all hurdles were cleared before moving forward.

8. Future Agenda Items

Mr. McCloskey stated that there was a need to explore a possible MOU with TCEQ, TFC and other necessary state agencies to facilitate the implementation of various agency operations.

Dr. Edwards noted that the Sunset Commission public hearing was coming up and thought it necessary to have discussions or motions based on their comments.

9. Select next meeting date

Members selected January 25, 2019 as the date for its next regular meeting.

10. Comments from the Public

The Vice-Chair then opened the floor to public comments.

Miguel Escobar wanted to remind the board that TSPS has a Canon of Ethics for surveyors.

Deward Karl Bowles stated that the rules had been stripped of discrepancies. This is an issue because we are here to protect the public. Language should be put back into the rules saying surveyors should inform their clients when they find discrepancies.

Hearing no other comments from the public, the Vice-Chair called for a break at 12:31 p.m.

At 12:40 p.m., the Vice-Chair reconvened the open session and announced the board would go into closed session pursuant to Government Code section 551.074 to discuss personnel matters under agenda item 7c regarding the board's investigators. All non-board members except for the board's legal counsel were asked to leave the room. The executive director and investigators were asked to remain nearby so they may be called in as needed.

The Vice-Chair stated the closed session at 1:54 p.m. No action was taken in the closed session.

The open session was reconvened to address item 7c. A motion was offered by Ms. Johnson to authorize the chair to communicate and work with the executive director to address the conflicts of interest and any other concerns raised by Sunset in investigation. The motion was seconded and approved.

11. Adjourn

Mr. McCloskey moved to adjourn the meeting. The motion was seconded and the meeting adjourned at 1:55 p.m.