

Texas Board of Professional Land Surveying
Board Meeting Minutes
December 7 , 2007
12100 Park 35 Circle, Suite 156
Austin Texas

Present: Board Members: Doug Turner, Greg Smyth, Jon Hodde, Nedra Foster, Paul Kwan, Tony Trevino and Bill O'Hara, representing the General Land Office, Executive Director Sandy Smith, Attorney General's Representative Jeb Boyt and visitors

Absent: Ty Runyan and Kelley Neumann

Mr. Turner called the Board Meeting to order at 9:08.

Mr. Turner welcomed new member Jon Hodde and presented him with a lapel pen inscribed with the Board's seal.

Mr. Smyth moved that the Board appoint Art Osborn as the formal liaison to the oil and gas community. Ms. Foster seconded the motion and it carried unanimously. Mr. Osborn accepted the position.

Mr. Turner next recognized Dr. Stacey Lyle. Dr. Lyle presented information regarding the Masters of Science in Geospatial Surveying Engineering degree. The degree was developed to grow their program in two directions;

- 1) To grow the research. Research at the Conrad Institute has grown to approximately two million dollars a year and graduates are needed to support the research.
- 2) Education is needed to further studies in surveying.

This program is offered both in-class and on-line. One week before the semester begins all students gather for 8 hours a day, Monday through Friday for lectures. At the end of the week they return to their homes and complete on-line labs. This constitutes a 12 hour semester. After 2 semesters the student takes research hours or a group project toward the master thesis. The current group project involves students contacting all cities in Texas to gather horizontal/vertical control that is not found in the NGS data base and building a data base with this control information. Dr. Lyle initially requested that the Board approve the courses taught be acceptable for the 32 semester hours required under section 1071.253 (2) (A). Dr. Lyle amended his request to pre-approve the main 24 hours of course work. Mr. Kwan moved to approve the 24 hours as meeting the education requirement of 1071.253 (3) and (4). Mr. Smyth seconded the motion and it carried unanimously.

Pat Presley next presented information regarding Complaint 06-55 which he filed. Mr. Presley was interested in purchasing this property and contacted the surveyor who had surveyed the property, the subject surveyor in Complaint 06-55. When the Board initially reviewed this complaint, they found 6 violations and recommended penalty fees of \$9,000 and 2 years probation. After receiving a copy of a letter from the client explaining the circumstances surrounding the survey; the complaint was dismissed with a warning. Mr. Presley thinks that the original decision should stand. Mr. Smyth moved that the Board reconsider this matter. Mr. Trevino seconded the motion and it carried unanimously.

Mr. O'Hara moved to approve the October 12, 2007 minutes as presented. Mr. Smyth seconded the motion and it carried unanimously.

Director's Report

- The Executive Director informed the Board that the application has been modified to ask questions regarding citizenship and INS status.
- The out-of-state travel cap has been increased, therefore additional members can attend the National Council of Examiners for Engineering and Surveying (NCEES) meetings. The Director asked members to let her know if they would like to attend the Southern Zone meeting which will be held May 1-3.
- NCEES has identified 2 examinees of possible collusion. The Board will conduct an investigation and additional information will be forthcoming.
- Speaker Craddick has released charges to House Committees, several of these could impact the Board.

Complaints

Mr. O'Hara briefed the Board on an Informal Settlement Conference held with the individual who provides ExpressMaps and the surveyor (with attorney) who provides an accompanying Survey Report. The surveyor was notified that the Report was in violation of Board Rule 663.10 (3) and possibly other rules. The Board is also concerned with how this is presented to the buyer. All three pages together appear to be a survey. ExpressMap is an aerial photo with lines, distances and appears to be a survey. The survey report lacks critical information.

The fee for this service is listed as a survey on the settlement statement. The buyer is given a choice; the ExpressMap and Survey Report or a Survey. The Board requested that a complaint be opened against the company preparing the ExpressMap, Residential Land Services (RLS).

RPLS Examination Committee

Mr. Turner reported the following examination statistics,

34 applicants took the Legal Exam, 24 passed = a 71% passed

48 applicants took the Analytical Exam, 18 passed = 38% passed

15 applicants took the Reciprocal Exam, 14 passed = 93% passed

A total of 31 applications have passed the appropriate sections of the exam to be registered. Mr. Trevino moved to register these applicants. Mr. Smyth seconded the motion and it carried unanimously.

A total of 37 applicants passed the NCEES Fundamentals of Surveying exam. Ms. Foster moved to certify these applicants as Surveyors-In-Training. Mr. Smyth seconded the motion and it carried unanimously.

LSLS Examination Committee

Mr. Smyth reported that 3 applicants took the Licensed State Land Surveyor (LSLS) examination and no one passed.

Continuing Education

Mr. Kwan presented continuing education courses for review. The report is attached as Exhibit A.

Oil and Gas Issues

Art Osborn reported that as of the first of December, 21,044 permits have been filed with the Rail Road Commission and 20,464 have been approved. It is estimated that a total of 23,000 permits will be approved for the year. Everyone recognizes that construction will destroy monuments left to mark the pad. Mr. Osborn suggests that the surveyor move 600 feet off-site and set 2 control points.

Rules Committee

Ms. Foster next discussed a policy letter to Political Subdivisions. The letter addresses the counties requirement that all corners of a subdivision be set when the initial plat is filed. Many times these corner monuments are lost in the construction of infrastructure. The Board and many surveyors have worked on a

rule to address this concern, however the Board feels that the policy letter is a better route to take. The letter states why it is not necessary to have all corners set prior to filing the plat. The letter includes the use of amending plats. Members have received comments against the use of an amending plat. Preparation and filing of amending plats can be very difficult. The Board discussed deleting references to amending plats. Mr. Boyt said that in discussions he has had with Texas Municipal League it was noted that what was needed was a statement from the Board that they could take to their councils and county commissioners to educate them regarding their requirements. Ms. Foster asked Mr. Boyt what effect a policy letter would have. Mr. Boyt said it is a statement of interpretation of statute or rule and how it relates to issues. Mr. Boyt said that a policy regarding these matters would be very appropriate. Local governments are setting up the surveyor to fail, to force them into non-compliance with the Act and Rules. Mr. Boyt also noted that we must remove the phrase “with the approval of the Office of the Attorney General”. Use of such a statement would require a great deal of consultation with the AG. Mr. Turner asked all Board members to review this for additional discussion at the next meeting. A copy of the policy letter is attached.

The Board next discussed a rule definition for full time employee. The Board will continue work on a rule that will not conflict with other government regulations and addresses adequate supervision.

The Board next discussed amendments to Rule 661.99 which amends the rule to include recently adopted rules 661.55 and 661.57 and the deletion of Rule 661.121 (which is now included as 661.55 (f)). Ms. Foster moved to propose the amendment. Mr. Smyth seconded the motion and it carried unanimously.

Amendments to 661.99

<u>Citation</u>	<u>Violation</u>	<u>Sanction on a First Offense</u>
661.55 (a)	Failure to register firm	Injunction/1500
661.55 (b)	Failure of RPLS/LSLS to ensure firm registration	Reprimand/1500
661.55 (c)	Failure to notify the Board within 5 business days prior to leaving employment or no later than 24 hours after leaving employment (I received a verbal comment – too little time)	Reprimand/500

<u>Citation</u>	<u>Violation</u>	<u>Sanction on a First Offense</u>
661.55 (d)	Violation of this chapter	Revocation/1500
661.55 (f)	Failure of firm to have full-time RPLS employee	Revocation/1500
661.57 (a)	Failure to register firm	Injunction/1500
661.57 (b)	Failure of firm to provide one full-time RPLS and for RPLS to supervise surveying work	Firm-Injunction/1500 RPLSReprimand/1500
661.57 (d)	Failure to file a current certificate of registration	Injunction/1500
661.57 (e)	Failure to file or renew firm registration	Suspend/1500
661.57 (f)	Submitting fraudulent or misleading information or lack of employee relationship with the designated professional surveyor	Revocation/1500
661.57 (h)	For violations of the Board's Act or Rules	Refuse to Issue or Revoke Registration/1500
661.60	Failure to respond to Board inquiries/orders	RPLS-Reprimand/1500 Firm-Suspend*/1500

Delete reference to violation of 661.121 (included as 661.55 (f))

The Board next discussed an amendment to Rule 663.19, which adds (10), Mr. Smyth moved to propose amending Rule 663.19 by adding (10). Mr. O'Hara seconded the motion and it carried unanimously.

Proposed Amendment to Rule 663.19 (10) If a surveyor provides a written narrative in lieu of a Plat/sketch/drawing to report the results of a survey, the written narrative shall contain sufficient information to demonstrate the survey was conducted in compliance with the Act and rules of the Board.

The Board next discussed amending rule 663.19. Mr. Smyth moved to amend Rule 663.19 by replacing "separate narratives" with "written narratives", "For the purposes of these rules the word "report" shall mean any or all of the following survey plat, descriptions, or ~~separate~~ written narratives." Mr. O'Hara seconded the motion and it carried unanimously."

Correspondence

C & C Technologies requests a waiver from the requirements contained in Section 1071.352 (a), which requires any firm offering land surveying services must employ a full-time land surveyor at the location from which services are offered. Ronald Eugene Prather, representing C & C Technologies was notified that the Board cannot waive any portion of the Act. C & C Technologies is a Louisiana firm that offers land surveying services in Texas. Mr. Prather stated that all surveying services are offered out of the Louisiana office. Mr. Prather will remove the offer from phone books and place a statement on their web site, until such time as they hire a surveyor for their Houston office.

Other Business

The Board next discussed electronic signatures. A surveyor was asked by a title company to provide a metes and bounds description as a word document so it could be inserted into the title commitment. The surveyor refused, stating that he had to sign all surveying products. Rule 663.11 requires a seal and signature. Is sending a word document without a seal and signature a violation? The consensus of the Board is yes it is a violation. It is a violation for the surveyor to release the work without the signature and seal, however once out of the surveyor's control, the title company may remove the signature and seal. Other options suggested was to prepare a preliminary document pursuant to Board Rule 663.18 (c) and retain a signed and seal copy of the work.

The Board scheduled the next meeting on February 15, 2008. Examinations are scheduled April 11 and 12, 2008.

The Board adjourned at 12:30 pm.

Doug Turner, Board Chair

ATTEST:

Sandy Smith, Executive Director

TO POLITICAL SUBDIVISIONS OF THE STATE OF TEXAS

It has come to the attention of The Texas Board of Professional Land Surveying (the “Board”) that many Political Subdivisions are placing Registered Professional Land Surveyors and their clients, the land developer, in a situation resulting in violation of Texas State law.

The situation arises when a Registered Professional Land Surveyor is asked to certify that all interior lot corners are set prior to the recordation of a Subdivision Plat.

The Land Surveying Practices Act and the Rules adopted by The Texas Board of Professional Land Surveying require all statements made by a Registered Professional Land Surveyor be true and correct on the date the certification is made.

The setting of interior Lot corners prior to the completion of infrastructure improvements for a Subdivision is pointless since many, if not all, interior Lot corners are destroyed during the construction phase of the Subdivision. The setting of interior Lot corners can be very costly. A cost the land developer wants to avoid having to duplicate.

In some cases the land developer places great pressure on the Registered Professional Land Surveyor to certify a Subdivision Plat but not set the Lot corners since construction has not been completed and based on the assurance that the land developer will have the Lot corners set after the construction phase.

Should the Registered Professional Land Surveyor comply with the developer’s request and not have set the Lot corners on or prior to the date of the certification both this Board and the Office of the Attorney General deem such action to be in violation of State Law; Title 22, Part 29, Chapter 663.17 of the Professional Land Surveying Practices Act of Texas by the Surveyor.

The Civil Penalty for the violation of this Chapter is \$ 1500.00 for each occurrence. For example 300 interior Lot corners not set, $300 \times \$1500.00 = \$ 450,000.00$.

As said earlier, the setting of interior lot corners prior to construction is of little or no value to the public interest or safety. However, it is of great value to the public to have Lot corners set prior to the release of the Lots to builders or homeowners for construction . This Board believes the setting of interior Lot corners , at the appropriate time, is of such importance to the public that the financial guarantee to insure the setting of interior Lot corners should be part of the developer’s agreement with the supervising political authority.

This Board recommends, with the approval of the Office of the Attorney General, the following procedure be adopted as a minimum requirement in your Subdivision Rules and Regulations.

1. Monuments for the exterior corners of a subdivision shall be set by the Registered Professional Land Surveyor (the “Surveyor”) who certifies the Plat of the Subdivision prior to recordation of the Subdivision Plat (the “Original Plat”).
2. It is the responsibility of the subdivision developer/owner to ensure that the setting of interior subdivision corners commences within thirty (30)

days of completion of the construction of the Subdivision infrastructure improvements and completed within 6 months of the commencement date (of what?).

3. The Surveyor (or should this be Subdivision developer/owner?) may extend the 6 months completion time period required under paragraph 2 above for good cause as approved by the local authority for a period not to exceed (?).
4. The Surveyor certifying the Original Plat shall be responsible for notifying the subdivision developer/owner of the requirement set forth in paragraph 2 above by either including a statement regarding this obligation in (a) the executed contract for services the Surveyor may enter with the Subdivision developer/owner or (b) a letter sent certified mail, return receipt requested to the Subdivision developer/owner.
5. If the Surveyor who certified the Original Plat is not available to set the interior Lot corners, the Surveyor who sets the interior corners shall file an Amending Plat per V.T.C.A. Local Government Code 212.016
6. Should the subdivision be developed in phases, the interior corners of each phase may be set by separate Surveyors, provided the above stated time limits are met and an Amended Plat per V.T.C.A. Local Government Code 212.016 is filed (is this right?).
7. Under this section, it is the responsibility of each Surveyor who sets the interior corners of a subdivision to record an affidavit with the county clerk. Said affidavit shall be signed and sealed by the Surveyor and shall contain at least the following:
 - Subdivision name as shown on the Original Plat.
 - All recording information for the Original Plat and any previously filed Amended Plat.
 - Name and address of subdivision developer/owner.
 - Type of monuments set.
 - In the event the Surveyor is setting monuments in only a phase of the subdivision, the geographic limits of responsibility.
 - In the event the Surveyor is required to record an Amending Plat of the Subdivision the affidavit may be included on said plat.

The above is the very minimum we recommend. However, many Registered Professional Land Surveyors throughout Texas believe the minimum should require all Block corners and points of curvature or tangency also be set. The setting of block corners and the points of curvature or tangency will insure the public infrastructure improvements are constructed in accordance the platted easements and dedications.

Local Officials should consult with local Registered Professional Land Surveyors to determine if additional requirements are necessary in addition to paragraphs 1-7 above to insure the best interest and safety of their local municipality.

Additional Note: the proposed letter to the political subdivision states that the setting of interior lots corners is of such importance that it suggests a financial guarantee but there is no further discussion or suggested language for the contract to impose a financial guarantee.