

SURVEYING ADVISORY COMMITTEE MEETING – Meeting Notes
TEXAS BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

Via Webinar

April 13, 2021 – 9 a.m. - 12:00 p.m.

Attendees:

- Jon Hodde, RPLS – Chair
- Manny Carrizales, RPLS
- Mary Chruszczak, RPLS
- Paul Kwan, RPLS
- Stan Piper, RPLS, LSLS
- Heather Welch-Westfall, RPLS
- Lamberto Balli, PE – Board Liaison
- Coleen Johnson, RPLS – Board Liaison
- Mark Neugebauer, RPLS, LSLS – Board Liaison
- Lance Kinney, PhD, PE – TBPELS Executive Director
- Michael Sims, PE – TBPELS Director of Compliance & Enforcement
- Rick Strong, PE – TBPELS Director of Licensing & Registration

Absent: • Davey Edwards, PhD, RPLS, LSLS

1. Firm Branch Discussion

This item is related to the recent re-codification of the surveying rules regarding firms / firm registration from Chapters 661/663 to 136/138. TBPELS approved a change to the rules that moved from requiring all branches of a firm to be registered separately and that each branch have a unique RPLS to a requirement that a firm have a minimum of one RPLS and removing the unique RPLS per branch requirement.

This has raised some opposition from members of the surveying community. One concern raised was that the new rules seemed to possibly conflict with the portion of the statute related to firm registration. From their perspective, the statute required an RPLS at each branch. Previous surveying rules did as well. At a previous meeting about this rule, staff was tasked with having the rule and statute reviewed from a legal perspective to confirm there is no conflict.

Prior to this meeting TBPELS staff shared the concerns and statute / rule language with counsel. After review, we received feedback that they were not in conflict due to the broad language of the statute and the rule adopted by the board was acceptable in its current form.

Also, at a previous rule meeting on this issue, the Texas Society of Professional Surveyors (TSPS) informed the board that they polled the TSPS board who voted in opposition to the new rule language. Note that this was post adoption of the current rule.

The TSPS position was discussed at the current SAC meeting and TSPS members were asked what recommendations they had for potential changes or what changes they would recommend to the board, since TSPS is in opposition to the current firm branch rule. It was reported that TSPS does not have recommendations at this time. Mr. Piper said that there are upcoming TSPS Governmental Affairs Committee and board meetings and would take this question back to TSPS for them to charter a task force or committee to work on this issue. They would then report back to the SAC and TBPELS board. Mr. Piper also asked to include Ms. Welch-Westfall (and others) to help on this issue.

The SAC also discussed that one of the big concerns with the structure and requirements for firms and branch offices is focused on responsible charge, direct supervision, and oversight of surveying crews and their work. There is a legal and ethical responsibility for an RPLS to perform or supervise all surveying work. Another related concern is 'plan stamping', where non-surveyors do all the work and the registration holder simply applies their seal without any oversight or review. TBPELS staff and liaisons emphasized that responsible charge is very important and could be a violation of the Act regardless of the specific format of a firm or firm branches.

The committee discussed other ways to emphasize the supervision and oversight aspects of professional surveying practice, including: increase surveyor outreach on this issue, surveying specific TBPELS presentations, SAC reviewing / writing scenarios for outreach, coordinating with TSPS for articles on the topic, working with TSPS re: convention presentation topic, etc. It was also noted that TBPELS needs to make sure non-TSPS surveyors get the message.

This discussion lead to other thoughts on the TBPELS outreach program:

- Dr. Kinney reported that TBPELS will be doing an SIT / "how to get registered" webinar targeted at applicants / examinees. It was recommended that this be recorded. Mr. Neugebauer recommended that staff make smaller sections / scenarios (for YouTube, for example) on certain aspects of the application process – exams, experience documentation, SIT, etc.
- Mr. Piper discussed his experience with virtual study groups for the FS and RPLS exams.
- Ms. Welch-Westfall noted that in some other states they offer 0.5 hrs of CE credit for reading the newsletter and answering a brief 'quiz'. Dr. Kinney will follow up to get more detail on this topic.

2. Monumentation

Mr. Sims brought this issue to the SAC. Board rule 138.87 covers required monumentation and 138.95 includes monumentation for subdivisions. The current rule 138.87(b) notes that "an adequate quantity of monuments" is required when delineating a property or boundary line. The rule itself does not include any more specific timing as to when (at the time the work is submitted / sealed, etc.) or what exceptions there might be (corners vs. other boundary markers, etc.) or if not set / found, include in writing on survey documentation, etc. TBPELS staff has been receiving complaints from clients about

adequacy, 'missing' monumentation, etc. and wanted some guidance from the SAC on ways to make this rule more helpful and clear for clients and registrants.

It was generally agreed that monuments should be set at the time the survey is performed and noted on the signed / sealed surveying documents. Anything not set/found should be clearly indicated.

It was noted that in some other states, there is more clear language. Staff will inquire with Missouri and New Mexico for examples.

The SAC also discussed caps and other methods of indicating the firm or RPLS that set a monument. Some states are very stringent; TXDOT was an example of only wanting TXDOT markers, etc.

Staff will look at other state language for recommendations to enhance 138.87 if possible.

3. Subdivision Platting and Local Gov't Code

Mr. Sims brought this issue to the SAC. Recently, TBPELS had received inquiries and at least one complaint filed concerning a potential conflict in statute concerning platting by surveyors and/or engineers. Specifically, Local Government Code Chapter 232 related to County Regulation of Subdivisions. Subchapter A concerns general platting requirements and sets out very clearly that they are to be done by a registered surveyor. Subchapter B is related to platting requirements in a county near an international border. This section has some potentially ambiguous language where engineers are mentioned.

The specific section in question is 232.023 PLAT REQUIRED: (b) A plat required under this section must:

(1) be certified by a surveyor or engineer registered to practice in this state;

There are additional provisions and requirements in the subsection / paragraph, but this is the focus of the discussion. The SAC agrees that the surveying act requires all surveying boundary work to be done by an RPLS, as well as at least two of the other requirements in 232.023: (2) define the subdivision by metes and bounds; (3) locate the subdivision with respect to an original corner of the original survey of which it is a part;

Therefore, this section on the one hand says that surveying must be done for the plat (for which an RPLS is required); yet 232.023(b)(1) seems to say that the plat submission must be "certified" by either an engineer OR a surveyor. There are also provisions that must be completed by an engineer – for example 232.023(b)(7) have attached a document prepared by an engineer registered to practice in this state certifying that the water and sewer service facilities proposed under Subdivision (6) are in compliance with the model rules adopted under Section 16.343, Water Code, and a certified estimate of the cost to install water and sewer service facilities;

There was much discussion as to the intent and the structure of the statute. While the SAC agreed surveying should be done by surveyors and engineering should be done by engineers, the language is problematic and could be a hurdle in pursuing a complaint.

Staff had contacted local county administrators who hadn't heard of the provision or didn't generally allow this, but we have received questions about it and need to provide clear guidance.

The SAC agrees this needs to be cleared up and discussed how to approach it. Options include a board policy statement or possibly an AG Opinion Request. A long-term fix would be to address with a statutory change.

Staff was instructed to continue to look into this issue and gather additional information about the situation and report back to the SAC.

4. Bottlenecks for Registration

This discussion item is related to potential rule or statutory requirements for RPLS or SIT registration that could act as bottlenecks for the registration process. One brought up by another board member was the 2-year requirement to become an SIT with 2 additional years required after passing the FS and becoming an SIT. The SAC discussed, and it was brought up that this may not be unique to Texas; other states are believed to have a similar structure and may even have longer practice requirements. Staff will look at NCEES info and survey other state boards on this.

5. Exam Update

Mr. Strong reported on the upcoming RPLS and LSLS exams on April 16. TBPELS gave an in-person exam in October that was very safe and successful and will be using the same process for this April exam.

Dr. Kinney reported that the PAKS effort for the state-specific exam had been delayed with the pandemic but is re-starting and will be worked on over the summer. A meeting is scheduled with some subject matter experts and surveying exam workgroup members to move this process forward. With the process happening over the summer, TBPELS will most likely offer the RPLS exam in its current form at least one additional time in October 2021. However, no change to the NCEES PS exam will be made without a vote of the Board. TBPELS wants to make sure that all examinees (and exam preparatory programs) have enough time to prepare for any changes to the exams. Ms. Johnson reported that the NCEES PS in modular format continues to be worked on and is targeting the 2024 timeframe.

6. Legislative Update

The SAC discussed the status of HB 3420 concerning several changes to the surveying act as proposed by TSPS. The bill has some opposition at the Capitol and is on hold by TSPS and the sponsor. The agency and TSPS continue to monitor all bills and communicate as needed.

The meeting was adjourned at noon.