

**MINUTES
BOARD MEETING
HEARING ON PROPOSED RULES
TEXAS BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS
Via Videoconference
November 10, 2020-8:30 AM**

1. Call to Order

Dr. Sina K. Nejad, P.E., P.Eng., Presiding Officer, called the Hearing on Proposed Rules Board meeting of the Texas Board of Professional Engineers and Land Surveyors to order at 8:30 a.m. via Videoconference.

- **Roll Call**

The following Board members were present:

Dr. Sina K. Nejad, P.E., P.Eng.	Chair
Rolando Rubiano, P.E.	Secretary
Ademola Adejokun, P.E.	Member
Coleen Johnson, R.P.L.S.	Member
Mark Neugebauer, R.P.L.S., L.S.L.S.	Member
Catherine Norwood, P.E.	Member
Dr. Marguerite McClinton Stoglin	Public Member

The following staff members were present:

Lance Kinney, Ph.D., P.E.	Executive Director
Rick Strong, P.E.	Director of Licensing and Registration
Michael Sims, P.E.	Director of Compliance and Enforcement
Elissa Mazza	Staff Attorney
Mason Schoolfield	Lead Systems Developer
Rick Valdes	Supervising Investigator
Cristabel Bodden	Executive Assistant

- **Excuse Absent Board Members**

It was MOVED/SECONDED (Nejad/Rubiano) to excuse the absent Board members. A vote was taken and the MOTION PASSED.

- **Welcome Visitors**

The following visitors were present:

Steven J Freeman II, R.P.L.S.; Chris Freeman, R.P.L.S.; Mike McMinn, R.P.L.S., L.S.L.S; and Govind Nadkarni, P.E., Advisory Member, were present via Videoconference.

2. Public hearing to receive comments from interested persons concerning proposed rule changes under Texas Occupations Code §§1001.101 and 1001.202, which provides the Texas Board of Professional Engineers and Land Surveyors (TBPELS) with the authority to promulgate and adopt rules consistent with the Act governing its administration, including rule amendments, new rules, and rule

repeals of the following rule Chapters:

- **22 Tex. Admin. Code Chapter 138, Compliance and Professionalism for Surveyors (as published in the October 9, 2020, issue of the Texas Register)**
- **22 Tex. Admin. Code Chapter 139, Enforcement (as published in the October 9, 2020, issue of the Texas Register)**

Any interested person may appear and offer comments or statements, either orally or in writing; however, questioning of commenters will be reserved exclusively to the Texas Board of Professional Engineers and Land Surveyors or its staff as may be necessary to ensure a complete record. While any person with pertinent comments or statements will be granted an opportunity to present them during the hearing, TBPELS reserves the right to restrict statements in terms of time or repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views or similar comments through a representative member where possible.

Dr. Kinney stated that Chapter 138 and 139 rule changes were posted on the Texas Register and this is what the hearing is focused on.

Mr. Mike McMinn came before the Board. Mr. McMinn stated that he had provided Dr. Kinney a written statement and provided highlights to the Board from his written comments. On proposed rule §138.83, Mr. McMinn stated that it requires that survey instruments shall be made with the equipment and methods of practice capable of obtaining the accuracy and tolerances required by the professional land surveying services being performed.

Mr. McMinn believes that this rule should require that specific accuracies and tolerances be met as the previous 2013 rules required and recommended a revision to include the previous requirements.

Regarding proposed rule §138.87(b), Mr. McMinn also recommended the rule be returned to its prior verbiage as it read in 2012. He stated that it is important to be more clear about how and when monuments should be placed and that it would help with clarity and enforcement actions.

He opined that the problem is that boundary surveys are not generally performed for the benefit of future surveyors. They are performed for the benefit of the property owners so that they may be able to identify the limits of their property on the ground. It is important for that the client and the public to understand where the limits of their property are located on the ground.

Mr. McMinn stated that he believes that rule §138.87(d) should specify that the RPLS number or surveying firm registration number be embossed on survey caps. Too often, caps are only marked with two initials that can be very challenging to trace for a responsible surveyor.

In addition, he stated his opinion that if one interprets several rules together, that all monuments called for in a surveyor description should be in place on the ground prior to the surveyor signing and sealing the survey report. This issue has been addressed in a SOAH hearing. The findings was that the rules are not specific. He recommended that the rules be modified to require monuments to be in place on the ground prior to the surveyor signing, sealing, and releasing the surveyor report.

Mr. Steven J. Freeman came before the Board. Mr. Freeman reviewed comments he made at the October

14, 2020, rule hearing. Mr. Freeman stated that his comments were specific to rule §138.77. He stated that the proposed rules change the firm registration aspect of this rule where there should be a designated surveyor at each branch office.

Mr. Freeman stated he did research in adjoining states and it appears that they all require that a surveyor be designated for each branch office. He recommended that the Board consider this and asks that this Board not take lightly the comments of surveyors on this issue.

Dr. Nejad asked Mr. Freeman if he saw any abuse in this matter and asked why Mr. Freeman brought up this matter.

Mr. Freeman replied that a lot of it is to ensure that there is no abuse there. If there's not a surveyor in the branch office and someone from the public comes in and wants a survey and they find a surveyor is not there physically but that a surveyor at the principal office would oversee that branch is how the proposed rule is written right now. So, there is not a Surveyor that the public person can actually talk to or call on the phone in the branch office. He stated that he is aware of situations like this in his area of work and they have two or three branch offices and they only monitor one and have survey techs in the others.

Mr. Freeman stated that another instance that would require the registered surveyor to be in that location would be if you have a Midland office and have a registrant at that Midland office. There are several things that could go on in that Midland area. The oversight for actual responsible charge of a surveying firm dictates that there has to be a surveyor there just based on what land surveyors do versus what engineers do. The surveyor that is not from that area is not going to have the ability to protect the public in performing his profession in that area without being there.

Dr. Kinney wanted clarification and asked Mr. Freeman if the Board were to work up alternatives, is the recommendation to have an RPLS assigned to every branch or to physically be at every branch?

Mr. Freeman replied that his contention would be to keep the Board rule as currently written and would require to have a surveyor at each branch.

Dr. Nejad asked Mr. Freeman if the adjoining states always had this in their original rules or did, they modify them at some point? Mr. Freeman stated that it appears that it has been in place for several years now. Mr. Freeman offered to forward Dr. Kinney the information.

Dr. Nejad asked if when Mr. Freeman stated designate, do they have to have a mailing address there or let's say there are 10 RPLS' in Dallas and they would designate one for each branch but they are all still living in Dallas. How is this going to be handled?

Mr. Freeman replied that some states designate and some of them require them or have specifics that require that RPLS to be at that branch.

Mr. Nadkarni stated that his opinion was that assigned made more sense rather than physically at the location.

Ms. Johnson stated that the current rule does not require that they be physically in the assigned location.

Dr. McClinton Stoglin asked if costs would raise if you make this the new requirement or change the cost

of the project?

Mr. Freeman replied that this would depend but that it could possibly increase costs. He thanked Dr Nejad for his comments and he saw his point but he wants to make sure that the rule is clear if it goes in that direction that it does assign a specific land surveyor per branch office and not just one surveyor can oversee the principal and the branch office as one.

Mr. Rubiano stated that the costs would be at times prohibitive and in fact surveying would be unaccessible to a large portion of the rural areas of the state of Texas. If we as a Board demanded that an individual 1). be physically assigned and 2) whether an RPLS can be assigned to more than one physical office. Would this individual be also allowed to be the assigned surveyor at another office? He stated that the board should consider its options while the surveying profession are struggling with the roll count to protect the public by having them have access to licensed RPLS'.

Mr. Rubiano asked the Board to consider as we move forward to get some clarification on how many branches an individual RPLS could be assigned to.

Dr. Nejad asked where the Texas Society of Professional Surveyors (TSPS) stood on this issue.

Mr. Freeman stated that there is contention within TSPS as to how to interpret this. Mainly with respect to the designation of a single RPLS and making them physically at that location. As far as designating one Surveyor to the branch office and they still reside in another city, but they are in charge of the responsibility of that branch office, I do not think there is that much contention.

Dr. Kinney stated that this is the public hearing portion of the rule process and that these rules are on the agenda for the upcoming Board meeting. There will be a Surveying Advisory Committee meeting on Friday to discuss feedback. We will have their input and discuss options at that upcoming Board meeting

Mr. Chris Freeman came before the Board. He stated that he had two offices and neither office had licensed surveyors and they do not offer surveying out of those offices. This is a personal decision and he does not feel he can monitor activity from either crews or technicians out of those offices adequately. If he needs surveying done, he does it out of his main office so that he can have contact with his clients. This is where his company and I stand on this issue.

Dr. Nejad thank everyone for their comments and stated the issues will be discussed with our surveyor liaisons and then brought to the full Board.

3. Adjourn.

It was MOVED/SECONDED (Johnson/McClinton Stoglin) to adjourn the meeting at 9:00 a.m. A vote was taken and the MOTION PASSED.



Individuals needing auxiliary aids or services should contact the Texas Board of Professional Engineers and Land Surveyors at (512) 440-3051, in a timely manner.