

MINUTES
REGULAR QUARTERLY BOARD MEETING
TEXAS BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS
VIA VIDEOCONFERENCE
August 26, 2021—11:00 AM

Discuss and Possibly Act on the Following Agenda Items:

1. Preliminary Matters:

A. Call to Order

Dr. Sina K. Nejad, P.E., P.Eng., Chair, called the Regular quarterly Board meeting of the Texas Board of Professional Engineers and Land Surveyors to order at 11:05 a.m. via Videoconference. (NOTE: all votes are unanimous unless noted.)

B. Recitation of the Pledge of Allegiance

Dr. Nejad led the recitation of the Pledge of Allegiance.

C. Roll Call

Ms Bodden called the roll. It was noted for the record that a quorum was present.

The following Board members were present:

Dr. Sina K. Nejad, P.E., P.Eng.	Chair
Lamberto Ballí, P.E.	Vice-Chair
Rolando Rubiano, P.E.	Secretary
Albert Cheng	Treasurer
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
Kiran Shah	Public Member
Dr. Marguerite McClinton Stoglin	Public Member

Melissa Juarez, Assistant Attorney General and General Counsel for the Board, was present to provide legal counsel to the Board.

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
Jeff Mutscher	Chief Financial Officer
Janet Sobieski	Director of Operations

Mason Schoolfield
Cristabel Bodden

Lead Systems Developer
Executive Assistant

D. Excuse absent Board members

All Board members were present.

E. Welcome Visitors

Kahshay Aminabadi; Jason Danowski, Legal Counsel for Mr. Aminabadi; Kim Thomas Doyle, R.P.L.S., L.S.L.S.; Leslie Enriquez; William Flanagan, Law Clerk, Office of the Attorney General; Robert Alan Hansen, R.P.L.S., L.S.L.S.; Jon Hodde, R.P.L.S., Advisory Member; Joe Allen Mattox, R.P.L.S., L.S.L.S.; Govind Nadkarni, P.E., Advisory Member; Stephanie Standord, Texas Society of Professional Engineers; Johnnie Almaguer Terrazas, P.E.; R. Kyle Womack, P.E., Retired, Advisory Member; Heather Westfall; Surveyor Advisory Committee; and Sarah Wolfe, Assistant Attorney General, were present.

F. Public Comment

There were no public comments.

2. Consent Agenda*

(The following items may be acted upon under **Consent Agenda** and are highlighted in blue on the Regular Quarterly Board Meeting Agenda)

- May 26, 2021 Policy Advisory Opinion Committee Meeting Minutes (See agenda item #3)
- May 26, 2021 Legislative Issues Committee Meeting Minutes (See agenda item #4)
- May 26, 2021 Licensing Committee Meeting Minutes (See agenda item #5)
- May 27, 2021 Regular Quarterly Board Meeting Minutes (See agenda item #6)
- June 15, 2021 Special Board Meeting Minutes (See agenda item #7)
- June 30, 2021 Special Board Meeting Minutes (See agenda item #8)
- Administrative Reports, Outstanding Administrative Penalties, Default Judgment, Dismissed Cases, Violation Terminated Cases, Voluntary Compliance Cases (See agenda item #19)
- Licensing and Registration Applications – Engineering and Land Surveying (See agenda item #24)
- Calendar Year 2022 Board Meeting Schedule (See agenda item #25)

It was MOVED/SECONDED (Ballí/Shah) to approve item # 3 as amended and items 4-8, 19, 24, and 25 as presented in the **Consent Agenda**. A vote was taken and the MOTION PASSED.

Board and Committee Meeting Minutes:

3. (Consent Agenda) May 26, 2021 Policy Advisory Opinion Committee Meeting Minutes

4. **(Consent Agenda)** May 26, 2021 Legislative Issues Committee Meeting Minutes
5. **(Consent Agenda)** May 26, 2021 Licensing Committee Meeting Minutes
6. **(Consent Agenda)** May 27, 2021 Regular Quarterly Board Meeting Minutes
7. **(Consent Agenda)** June 15, 2021 Special Board Meeting Minutes
8. **(Consent Agenda)** June 30, 2021 Special Board Meeting Minutes

Agenda items 3-8 were approved under **Consent Agenda**, see above.

Board and Advisory Members' Quarterly Activity Update:

9. **Board Members' Quarterly Activity Update, including conferences and meetings attended and presentations given:**

- **Adejokun**
- **Ballí**
- **Cheng**
- **Johnson**
- **Nejad**
- **Neugebauer**
- **Norwood**
- **Rubiano**
- **Shah**
- **McClinton Stoglin**

10. **Advisory Members' Quarterly Activity Update, including conferences and meetings attended and presentations given:**

- **Edwards**
- **Gonzalez**
- **Hodde**
- **Nadkarni**
- **Womack**

No action was taken on agenda items 9-10.

Finance and Budget Matters:

11. Finance and Budget

- **FY21 3rd Quarter Budget Report**

Mr. Mutscher reviewed the 3rd Quarter Budget report with the Board. The report reflected income and expenses for the agency for both engineers and land surveyors through the end of May 2021.

Mr. Mutscher added that the revenue and expenses that were reported in May were used to project our ending fund balance. This has also been modeled for the final two months of the fiscal year.

No action was required on this agenda item.

- **FY22 Budget and Fees**

Mr. Mutscher reviewed the FY22 Budget and Fees report with the Board. The report shows the proposed budget revenues and expenses for FY22 as compared to the current FY21 budget.

Mr. Mutscher stated that the report projects an estimated ending fund balance of approximately \$2 million dollars for Fiscal Year 2021 (FY21). This figure will be dependent on the number of PE renewals that happen in August so it may change.

Mr. Mutscher stated that expenses are locked in for the month of August and at the end of next year based on this budget, the fund balance could come down to about \$1.5 million.

Mr. Mutscher stated that the details of the fund balance is in the report. The balance is somewhat higher than in the past, which in these uncertain times provides some cushion if needed. We have been managing well over the last year with the pandemic and how we handle our business and serve our customers.

Mr. Mutscher also announced that due to the fund balance staff is proposing to propose the reduction of some of the fees. The primary fee reduction is reducing the RPLS renewal fee from \$100 to \$40. This fee will now be in line with the PE renewal fees.

Mr. Mutscher stated that the staff is also proposing to reduce application fees down eighty to seventy-five dollars both for Professional Surveyors and Professional Engineers. Lastly, the Surveyor-In-Training application fee is proposed to go down to fifteen dollars and will match the EIT application fee.

Mr. Mutscher discussed the line item expenses and the differences between FY22 and FY21.

The budget also proposes increases in salary items to fill vacant positions. The agency workload has continued to significantly increase and we have been managing but it we need to fill the vacancies which has been difficult to do over the last year and a half.

Mr. Mutscher stated that the original building expansion plan has been on hold during the pandemic but there are some security and improvements, as well as other operational changes that could be made in the coming year.

Mr. Mutscher stated that as part of the process, the chairman of the board did an annual performance evaluation for the executive director and requested that there be a merit increase and is included in the report.

Mr. Mutscher discussed the fee history with the Board and provided in the report.

It was MOVED/SECONDED (Norwood/Johnson) to approve the FY22 Budget & Fees schedule as presented. A vote was taken and the MOTION PASSED.

Note: Agenda Item #23 was presented out of order during the meeting but is reported in the order it appears on the agenda.

Dr. Nejad announced that staff would go into Executive Session to discuss agenda item #23 at 11:44 a.m. Non-critical staff and public members stayed in the current Zoom meeting and Board members, legal counsel, and critical staff joined a separate Zoom meeting for the discussion on agenda item #23 and would rejoin the Zoom Board meeting once the session concluded.

The meeting reconvened at 12:25 p.m.

All Board members were present.

No action was taken during the closed session.

Committee Matters:

**12. Licensing and Registration Committee Meeting Summary
(August 26, 2021)**

- **Applications for Licensure**
 - **Personal Interviews Cases:**
 - **Zandi, Firooz**

Ms. Norwood reported that the Committee had met and discussed the personal interviews cases.

Ms. Norwood stated the Committee recommends that Mr. Zandi's application be placed on hold until completion of his probation.

It was MOVED/SECONDED (Norwood/Ballí) to hold Mr. Zandi's application for licensure until he has successfully completed his probation in Indiana. A vote was taken, and the MOTION PASSED.

- **Aminabadi, Kahshay tabled discussion. Propose motion for Licensure.**

Ms. Norwood stated that the Committee had tabled the discussion on Mr. Aminabadi concerning his application for licensure to seek legal counsel and asked the Presiding Officer to call for an Executive Session to discuss this agenda item.

Dr. Nejad announced that staff would go into Executive Session to discuss agenda item #12, Aminabadi, Kahshay tabled discussion. Propose motion for Licensure at 12:30 p.m. Non-critical staff and public members stayed in the current Zoom meeting and Board members, legal counsel, and critical staff joined a separate Zoom meeting for the discussion and would rejoin the Zoom Board meeting once the session concluded.

The meeting reconvened at 1:08 p.m.

All Board members were present.

No action was taken during the closed session.

Board members discussed the proposed application for licensure.

During discussion, Mr. Rubiano suggested that Mr. Aminabadi provide an additional statement from a risk manager and asked Mr. Aminabadi what specific type of consulting he does, what he technically does, what are the inputs other engineers bring him, and his specific responses, and to provide a sampling of his work to the Board.

It was MOVED/SECONDED (Rubiano/Norwood) that the candidate be afforded an opportunity for licensing once he completes an additional one and a half years of engineering experience that will include in his SER, an additional PE reference statement, and 10 hours of continuing education units over the year and a half of engineering experience relative to the design discipline or area of practice that he wishes to participate in and sanctioned from entities that are reference standard authors. A vote was taken, and the MOTION PASSED.

- **Propose Amendments to 22 Tex. Admin. Code Chapter 133, Subchapter H – Review Process of Applications and License Issuance**

- **§133.83 Executive Director Review, Evaluation, and Processing of Applications**
- **§133.85 Board Review of and Action on Applications**
- **§133.87 Final Action on Applications**
- **§133.89 Processing of Administratively Withdrawn Applications**
- **Propose Amendment to 22 Tex. Admin. Code Chapter 134, Subchapter H – Review Process of Applications and Registration Issuance**
 - **§134.83 Executive Director Review, Evaluation, and Processing of Applications**
 - **§133.85 Board Review of and Action on Applications**
 - **§134.87 Final Action on Applications**
 - **§134.89 Processing of Administratively Withdrawn Applications**

Dr. Kinney stated that Chapter 133, Subchapter H and Chapter 134, Subchapter H rules were a continuation from the last Board meeting and were to adjust part of the application review process and include SOAH appeals and include a rule that was inadvertently left out of the packet.

These rules were pending review by the Office of the Attorney General’s office as well as review by the Governor’s Office for additional feedback. The Board exhibits include commentary from Ms. Juarez and the Governor’s Office.

It was MOVED/SECONDED (Norwood/Cheng) to post Chapter 133, Subchapter H and Chapter 134, Subchapter H rules as proposed to the Texas Register subject to legal review and non-substantive change and corrections. A vote was taken and the MOTION PASSED.

- **Texas Board of Professional Engineers and Land Surveyors’ Land Surveying Exam Update**

Mr. Strong stated he had provided an update on the exam to the Committee.

No action was required on this agenda item.

- **Licensing Director’s Report**
 - **Engineer Results and Statistics: Licensing Application and Examination Report**
 - **Surveyor Results and Statistics: Registration Application and Examination Report**

Ms. Norwood stated Mr. Strong had discussed the Director’s Report with the Committee.

No action was required on this agenda item.

13. Policy Advisory Opinion Committee Meeting Summary (August 26, 2021)

- **Policy Advisory Opinion Request Regarding Professional Engineers Not Licensed in Texas Providing Expert Reports for Texas Court Cases (Policy Advisory Request No. 58)**

Mr. Rubiano stated that the Committee had received one new policy advisory request and asked Mr. Sims to present it to the Board.

Mr. Sims stated that the policy advisory request involved individuals giving testimony in court cases and if they are licensed out of state how to properly identify themselves.

Mr. Sims stated that the existing rules address those situations and prepared a draft response laying out the rules and answering the questions. The response has been prepared to send to the requestor and will not require the formal policy advisory opinion process due to the current rules already addressing the issues.

It was MOVED/SECONDED (Rubiano/Shah) to accept staff's recommendation on Policy Advisory Requests 58 and send the response letter to the requestor and post on the TBPELS website. A vote was taken, and the MOTION PASSED.

14. Legislative Issues Committee Meeting Summary (August 26, 2021)

- **Update and Information Related to the 87th Legislative Session – Special Sessions**

Mr. Cheng stated that the Committee had met and discussed the status of the Special Sessions.

Mr. Cheng stated that the one issue to continue to watch is the issue of electric reliability.

No action was required on this agenda item.

- **Update on bills relating to the Texas Board of Professional Engineers and Land Surveyors**

Mr. Cheng stated staff had provided an update on the bills that affect the agency.

No action was required on this agenda item.

15. Nominating Committee Meeting Summary (August 26, 2021)

- **Nomination of Board Officers for Fiscal Year 2022**

It was MOVED/SECONDED (McClinton Stoglin/Shah) to approve the following Board members as Board Officers for Fiscal Year 2022:

Catherine Norwood, P.E. – Vice-Chair

Ademola Adejokun, P.E. – Secretary
Kiran Shah – Treasurer

A vote was taken and the MOTION PASSED.

- **Renewal Contract of Current Advisory Board Members for Fiscal Year 2022**

It was MOVED/SECONDED (Rubiano/Ballí) to approve the following Advisory Board Member contracts for Fiscal Year 2022:

- William Edwards, Ph.D., R.P.L.S., L.S.L.S.
- Edmundo Gonzalez, P.E., R.P.L.S.
- Jon Hodde, R.P.L.S.
- Govind Nadkarni, P.E.
- R. Kyle Womack, P.E., Retired

Executive Matters:

16. Executive Director Activities and Reports

- **Quarterly Meeting Activity Update, including conferences and meetings attended and presentations given**

Dr. Kinney stated his report is provided as an exhibit.

No action was required on this agenda item.

- **Agency Operations/COVID-19 Report**

Dr. Kinney stated his report is provided as an exhibit.

Dr. Kinney stated that with the resurgence of the virus, TBPELS has put the return to office plan on hold and staff are in the office on an as needed basis.

No action was required on this agenda item.

- **Texas Board of Professional Engineers and Land Surveyors' Strategic Planning Meeting – October 2021**

Dr. Kinney stated that staff are working on an in-person strategic planning meeting and has been set for late October in Houston, TX.

No action was required on this agenda item.

- **National Council of Examiners for Engineering and Surveying (NCEES) – Meeting and Activity Update**

- **NCEES Annual Meeting – September 2021**

Dr. Kinney stated that the in-person NCEES Annual Meeting in New Orleans was canceled

and rescheduled to be held virtually.

No action was required on this agenda item.

- **Texas Board of Professional Engineers and Land Surveyors' Regional Advisory Meeting – Corpus Christi – Fall 2021**

Dr. Kinney reported that staff continue plans for the next Regional Advisory Meeting in Corpus Christi but that it would very likely be moved to spring 2022.

No action was required on this agenda item.

- **Outreach Report**

Dr. Kinney reported that travel for the outreach program has picked up but requests for virtual presentations also continue to rise. The team is doing an excellent job of providing outreach presentations remotely.

No action was required on this agenda item.

- **Kudos Report**

Dr. Kinney reported that staff continue to receive kudos for the virtual webinar presentations and thanked the team for their hard work during this challenging time.

No action was required on this agenda item.

Dr. McClinton Stoglin was excused from the Board meeting at 2:05 p.m.

17. Licensed State Land Surveyor (LSLS) New License Recognition:

- **Doyle, Kim Thomas, R.P.L.S., L.S.L.S.**
- **Hansen, Robert Alan, R.P.L.S., L.S.L.S.**
- **Mattox, Joe Allen, R.P.L.S., L.S.L.S.**

Mr. Neugebauer provided history and background information on the Licensed State Land Surveyor license process.

Dr. Nejad congratulated Mr. Doyle, Mr. Hansen, and Mr. Mattox for their achievement.

No action was required on this agenda item.

Enforcement/Disciplinary Matters:

18. Compliance and Enforcement Report

- **Update on Compliance and Enforcement Department**

Mr. Sims stated the department had hired a new investigator. There is still an open investigator position.

No action was required on this agenda item.

- **Status of Compliance and Enforcement caseload**

Mr. Sims presented the compliance and enforcement statistics.

Mr. Sims stated that the caseload continues at a high level and staff is working hard to reduce the number of pending cases.

No action was required on this agenda item.

- **Status of Continuing Education audit(s)**

Mr. Sims stated that staff are wrapping up the continuing education audits for June and the September audits will start in a couple of weeks.

No action was required on this agenda item.

19. (Consent Agenda) Administrative Reports, Outstanding Administrative Penalties, Default Judgment, Dismissed Cases, Violation Terminated Cases, Voluntary Compliance Cases

This agenda item was approved under the Consent Agenda, see agenda item #2.

20. Agreed Board Orders

Mr. Sims presented the Agreed Board Orders and relayed which Board members would be recused.

Engineering

1. Richard Daniel Tomlinson, P.E. – D-37772 (Cheng – recused)

It was MOVED/SECONDED (Ballí/Johnson) to approve Agreed Board Order #1 as submitted. A vote was taken and the MOTION PASSED.

2. Clifford Jason Clinton, P.E. – D-38300 (Rubiano – recused)

It was MOVED/SECONDED (Ballí/Norwood) to approve Agreed Board Order #2 as submitted. A vote was taken and the MOTION PASSED.

3. Thomas Allen Maloney, P.E. – D-40394 (McClinton Stoglin – recused)

It was MOVED/SECONDED (Ballí/Norwood) to approve Agreed Board Order #3 as submitted. A vote was taken and the MOTION PASSED.

Informal Reprimands

4. D-40398 (Rubiano – recused)

It was MOVED/SECONDED (Ballí/Norwood) to approve Agreed Board Order #4 as submitted. A vote was taken and the MOTION PASSED.

Surveying

5. Michael Cleo Billingsley, RPLS - D-40774 (Johnson – recused)

It was MOVED/SECONDED (Ballí/Norwood) to approve Agreed Board Order #5 as submitted. A vote was taken and the MOTION PASSED.

21.Consent Orders

Engineering

- 1. Durham Contractors, LLC - B-40803**
- 2. David Ballard - B-40934**
- 3. Green Star Engineering LLC - B-41094**
- 4. Mark Benjamin, P.E. - D-38614**
- 5. Thomas Allan LaLonde, Jr., P.E. - D-38713**

Surveying

- 6. Louis Carranza - B-40360**
- 7. William Victor Perry, RPLS - D-38737**
- 8. Victor Silvas Medina, RPLS - D-40631**

Mr. Sims presented the Consent Orders and relayed they were the result from an agreement between Board staff and the respondent to settle pending enforcement cases.

It was MOVED/SECONDED (Ballí/Norwood) to approve Consent Orders 1-8 as submitted. A vote was taken and the MOTION PASSED.

22.Johnnie Almaguer Terrazas, P.E. – D-38282, Request for an extension to complete ethics course

Mr. Sims stated that the Board had adopted a consent order to resolve the case with Mr. Terrazas. As part of the order, Mr. Terrazas was given a one-year probated suspension, an administrative penalty, and the requirement to complete the Texas Tech University Engineering ethics basic course within six months from the date of the order.

Based on the original order, the ethics course was to be completed by May 19, 2021. On April 19, 2021, Mr. Terrazas was given a courtesy reminder about the due date, and he responded by requesting an extension to complete the course as indicated by his letter. His extension to August

15, 2021, was granted by the Board at the May 2021 Board meeting.

On August 3, 2021, Mr. Terrazas reached out to request an additional extension and provided details of recent hardships he has encountered that necessitate an additional extension. Mr. Terrazas has completed the first assignment and partially completed assignments two, three, and four of the total seven. Based on conversations with Mr. Terrazas, he has indicated that he had now completed five of the seven assignments.

Mr. Sims stated that Mr. Terrazas license was suspended on August 16, 2021, for failing to complete the course by the August 15, 2021, deadline. The suspension was communicated to Mr. Terrazas.

Mr. Sims relayed that the Board may vote to grant Mr. Terrazas an additional extension to revert his license back to a probated suspension rather than an active suspension or some combination of these two. If the Board takes no action, Mr. Terrazas' license will continue to be suspended until November 18, 2021. If he fails to complete the course, he will also have a renewal bar placed on his license until such time that he completes the course. His next renewal is scheduled for March 31, 2022.

Per the Murdoch Center, Mr. Terrazas has until February 15, 2022, to complete the course before he would need to re-enroll in the course.

Mr. Terrazas addressed the Board and provided information for his request for an additional extension.

It was MOVED/SECONDED (Nejad/Ballí) to allow Mr. Terrazas an extension until November 17, 2021, to complete the ethics course, reinstate his license from actively suspended to probation status and extend his probation to May 19, 2022. A vote was taken and the MOTION PASSED.

23. Litigation involving Manuel J. Montemayor, including:

- a *Manuel J. Montemayor vs. Texas Board of Professional Engineers & Land Surveyors; Cause No. 2021-DCL-03117; In the 138th Judicial District Court; Cameron County, Texas.***
- b *Manuel J. Montemayor vs. Texas Board of Professional Engineers & Land Surveyors; Cause No. 2021-DCL-04695; In the 197th Judicial District Court; Cameron County, Texas***

No action was taken on this agenda item.

Licensing and Registration Application Matters:

24. (Consent Agenda) Licensing and Registration Applications – Engineering and Land Surveying

- Professional Surveyor Registration:**

- **Firms Approved**
- **Licensed State Land Surveyors (LSLS) Approved**
- **Registered Professional Land Surveyors (RPLS) Approved**
- **Surveyor-In-Training (SIT) Approved**

- **Professional Engineer Licensing:**
 - **Licensure/Registration Status Counts**
 - **Approved for Exams**
 - **Approved for Licensure**
 - **Firms Approved**
 - **Waivers – Fundamentals of Engineering Examination**
 - **Waivers – Professional Engineering Examination**
 - **Waivers – Both**
 - **Not Approved for Licensure**

This agenda item was approved under Consent Agenda, see agenda item #2.

Miscellaneous Matters:

25. (Consent Agenda) Calendar Year 2022 Board Meeting Schedule

This agenda item was approved under Consent Agenda, see agenda item #2.

26. Request for an Attorney General Opinion on Potential Conflict Between the Professional Land Surveying Practices Act, the Texas Engineering Practice Act, and Local Government Code Regarding Platting Subdivision Near An International Border

Mr. Sims stated that staff request the Board to approve submitting a request for an Attorney General opinion regarding surveying near the Texas-Mexico border. Over the past year, several enforcement cases have been filed regarding engineers possibly practicing surveying in these areas. Upon additional review of guiding statutes, it appears that there may be a conflict between the requirements of the Texas Professional Land Surveying Practices Act and provisions in local government code.

After consulting with members of the survey advisory committee and the Board’s general counsel about the potential conflict, Mr. Sims is requesting approval from the Board to request an Attorney General opinion about the potential conflict and seeks guidance on how to resolve this conflict.

It was MOVED/SECONDED (Ballí/Shah) to approve staff’s request to seek an Attorney General’s opinion. A vote was taken and the MOTION PASSED.

27. Issues for consideration for the next scheduled Board meeting of the Texas Board of Professional Engineers and Land Surveyors

No issues were presented or addressed for future consideration at the next Board meeting.

28. Adjourn

It was MOVED/SECONDED (Norwood/Johnson) to adjourn the meeting at 2:38 p.m. A vote was taken and the MOTION PASSED.

Date Board approved the minutes as submitted:

November 18, 2021