TEXAS SOCIETY OF PROFESSIONAL SURVEYORS

ANNUAL BUSINESS MEETING
October 8, 2020
Denton, Texas

LEGAL COUNSEL'S ANNUAL REPORT

Below is a status report regarding pending issues and significant developments/activities which have occurred since the October 2019 Annual Meeting.

(1) **Sales Tax** – As you know, TSPS has been working with the Tax Policy Division, Texas Comptroller of Public Accounts, since November, 2008 in an effort to finalize a revised "Tax Bulletin on Surveying Services" which would list "taxable" and "non-taxable" services based upon the TSPS Sales Tax Definitions which were prepared in October, 2013. In July, 2019, the Tax Policy Division advised TSPS that the draft has been finalized and will likely be published for comment at the end of September, 2019. On October 10, 2019, the Tax Policy Division advised TSPS that "we believe we can have the rule published within the next 60 days" . . . however, to date that has not occurred. Accordingly, on March 17, 2020, TSPS Governmental Affairs Committee Chair Steven Freeman and TSPS Legal Counsel Mark Hanna met via telephone conference call with Ms. Teresa G. Bostick, Director, Tax Policy Division, Texas Comptroller of Public Accounts, to discuss “next steps” and an anticipated timetable for the conclusion of this project. Ms. Bostick advised us that she will make this project a priority and will complete her review by the end of March . . . and that her goal is to have the draft rule to TSPS and other advisory groups by the end of April. In response to a follow-up inquiry from TSPS on June 12, 2020, Ms. Bostick advised us that the Comptroller’s office is “likely still a few weeks away from sending out [the draft rule] for informal comment.” However, in response to another follow-up inquiry from TSPS on September 10, 2020, Ms. Bostick advised us that the draft rule is with Executive Management to approve . . . and that she will “bring the rule review to their attention to try to get the review completed.” We will keep you informed.

(2) **Notarization Requirement** – It appears that some cities are requiring surveyor seals and signatures to be notarized. The TSPS Governmental Affairs Committee discussed this issue at its January, 2020 meeting and determined that further action is not required at this time.

(3) **Survey No-Change Affidavit** – It appears that some title companies are promoting the use of a “Survey No-Change Affidavit” in order to close large land transactions without a new survey. The TSPS Governmental Affairs Committee discussed this issue at its January, 2020 meeting. Accordingly, it was...
determined that Robert Keys, TSPS Chairman of the TLTA Liaison Committee, should contact TLTA and arrange a joint meeting between the two (2) groups to discuss this issue and take corrective action as may be appropriate.

(4) **Title Insurance** – We have received numerous complaints regarding Procedural Rule P-2, the Amendment of Exception to Area and Boundaries, and the improper use of Form T-47, the Residential Real Property Affidavit. The TSPS Governmental Affairs Committee discussed this issue at its January, 2020 meeting. Accordingly, it was determined that Robert Keys, TSPS Chairman of the TLTA Liaison Committee, should contact TLTA and arrange a joint meeting between the two (2) groups to discuss this issue and take corrective action as may be appropriate.

(5) **Texas Board of Professional Engineers & Land Surveyors** – As you know, HB 1523, the TBPLS Sunset Bill, included “waiver” provisions as set out in Section 1071.254(c) regarding the waiver of the requirement that an applicant for registration as a registered professional land surveyor have a bachelor’s degree under certain circumstances. Via correspondence dated October 17, 2019, TSPS President Trisha Lund, RPLS and TSPS Secretary/Treasurer and Governmental Affair Committee Chair, Steven J. Freeman, II, RPLS, CFM, encouraged the TBPELS and the Surveyor Advisory Committee to consider specific TSPS recommendations for purposes of accepting Section 1071.254(c) waiver applications from associate degree applicants to satisfy the requirement that the applicant possesses sufficient qualifications to justify the waiver in lieu of a bachelor’s degree. On November 4, 2019, President Lund, Secretary/ Treasurer Freeman, and several other TSPS representatives met with TBPELS Executive Director, Lance Kinney, Ph.D, PE, and Board President, Daniel O. Wong, Ph.D, PE, to discuss the waiver and related issues. The TSPS Governmental Affairs considered this issue at its January, 2020 meeting. At the meeting, TSPS President Trisha Lund announced that TSPS will have a Task Force deal with this issue.

On August 7, 2020, the TBPELS proposed numerous amendments to the current Board rules regulating the practice of land surveying in Texas (see 45 TexReg 5472-5501). On September 17, 2020, TSPS requested that the TBPELS hold a public hearing on the following proposed rules: §371.7(f); §131.15; §131.101; §134.61; §134.73; and §136.1.

(6) **Eighty-Sixth Legislature** – The Speaker of the Texas House of Representatives and the Lieutenant Governor of Texas have issued Interim Charges to the House and Senate Committees directing them to study/investigate certain issues during the 2020 Interim. TSPS will monitor these activities and keep the TSPS members informed.

(7) **2020 Elections for Texas House of Representatives and Texas Senate** – The filing deadline for all candidates was December 9, 2019. The Primary Election
was held on March 3, 2020, the Primary Election Runoff Election was held on July 14, 2020, and the General Election will be held on November 3, 2020. TSPS and SURPAC have monitored these elections and SURPAC has contributed SURPAC funds to officeholders and candidates who hold key committee assignments and who have provided or offered to provide support for the surveying profession going forward.

(8) **Texas Veterans Land Board** – On April 30, 2020, the General Land Office advised a TSPS member that the Texas Veterans Land Board (VLB) (1) cannot accept a survey that contains a copyright; and (2) the survey cannot be restricted for future use by the VLB (see attachments). On June 23, 2020, TSPS met with the VLB to discuss the issue regarding copyrighted survey plats. It was agreed that TSPS and the VLB will work together in an effort to ultimately have the VLB (1) accept standardized certification language for field notes or survey plats prepared for and used in any VLB transaction; and (2) list the standard certification in the VLB Survey Requirements. The draft standardized certification language was considered and approved at the last TSPS Governmental Affairs Committee meeting which was held on August 1, 2020.

(9) **The COVID-19 Pandemic** – On March 19, 2020 Governor Abbott issued Executive Order GA-08 mandating certain obligations for Texans in accordance with the President’s Coronavirus Guidelines for America, as promulgated by President Donald J. Trump and the Centers for Disease Control and Prevention (CDC) on March 16, 2020, which called upon Americans to take actions to slow the spread of COVID-19 for 15 days. On March 19, 2020 the U.S. Department of Homeland Security Cybersecurity & Infrastructure Security Agency (CISA) issued a document entitled “Guidance on the Essential Critical Workforce: Ensuring Community and National Resilience in COVID-19 Response, Version 1.1.” Soon thereafter, beginning with the City of Dallas, other city and county officials began adopting Declarations of Local Disaster which mandated “Stay Home – Work Safe” requirements except for “Essential Activities”, “Essential Governmental Functions”, or to operate “Essential Businesses.” Subsequently, on March 31, 2020, Governor Abbott issued Executive Order No. GA-14 relating to statewide continuity of essential services and activities during the COVID-19 disaster, which superseded any conflicting order issued by local officials in response to the COVID-19 disaster, but only to the extent that such local order restricts essential services or allows gatherings permitted by Executive Order No. GA-14. Throughout this fast moving process, TSPS has monitored all developments and kept the membership informed. We are pleased to report that to date, it is the opinion of TSPS and TSPS Legal Counsel that the surveying profession is an essential service during the COVID-19 disaster.

(10) **Midland County Subdivision Regulations** – In August, 2020, it was brought to our attention that there are two (2) Sections of the current Midland County Subdivision Regulations that do not comply with applicable Texas law. Specifically, these two (2) Sections require that a subdivision plat be prepared, or
its accuracy certified to, by a "licensed engineer or licensed land surveyor." Accordingly, via correspondence dated September 21, 2020, TSPS contacted Russell Malm, Midland County Attorney, and advised him that pursuant to Texas law, a licensed engineer is not authorized to prepare a subdivision plat, nor is the engineer authorized to certify as to the accuracy of the plat, both of which constitute "professional surveying." Additionally, TSPS requested that the Midland County Commissioners Court reconsider these two (2) Sections and amend them so as to delete the incorrect references to "a licensed engineer" and a "registered professional engineer" (see attached). We will keep you informed.

For additional information regarding the foregoing, contact TSPS Legal Counsel Mark J. Hanna, 2414 Exposition Boulevard, Suite A-1, Austin, Texas 78703; telephone: (512) 477-6200; facsimile: (512) 477-1188; electronic mail: mhanna@markjhanna.com.

Respectfully submitted,

Mark J. Hanna

Attachment
VIA FIRST CLASS MAIL,
AND FACSIMILE 432-688-4931

Mr. Russell Malm
County Attorney
Midland County
500 North Loraine Street
Suite 1100
Midland, Texas 79701

Re: Midland County Subdivision Regulations

Dear Mr. Malm:

I represent the Texas Society of Professional Surveyors (TSPS). It has been brought to our attention that there are two (2) Sections of the Midland County Subdivision Regulations (Regulations) that do not comply with applicable Texas law. These two (2) Sections are listed below:

“Section 1.04. The plat shall be prepared by a licensed engineer or licensed land surveyor and shall be based on a scale of not more than two hundred (200) feet per inch and certified to as to accuracy by the engineer or surveyor preparing the plat of the subdivision, showing in reasonable detail the location of and width of existing streets, lots, and alleys and similar details regarding all property immediately adjacent thereto.”

“Section 1.06. The subdivision plat must be made from an actual survey on the ground by or under the supervision of either a registered professional engineer or a licensed land
surveyor, and his certificate to that effect much appear on said plat."

Accordingly, we offer the following information and comments for your consideration.

(1) **Professional Land Surveying Practices Act** – In Texas, land surveyors are regulated by the Professional Land Surveying Practices Act, Chapter 1071, Occupations Code. Pursuant to §1071.002 of the Act, “Land Surveyor” means a registered professional land surveyor or licensed state land surveyor. "Professional surveying" means the practice of land, boundary, or property surveying or other similar practices, including in part, platting and laying out land and subdivisions of land and consulting, investigating, evaluating, analyzing, planning, and providing an expert surveying opinion or testimony (see Exhibit 1). Per §1071.251 of the Act, a person may not engage in the practice of professional surveying unless the person is registered, licensed, or certified as provided by this chapter (see Exhibit 2). Also, it is important to note that there are no exemptions to the foregoing requirements of the Act, except that pursuant to §1071.004, this chapter does not require the use of a registered professional land surveyor to establish an easement or construction estimate that does not involve the monumentation, delineation, or preparation of a metes and bounds description (see Exhibit 3).

(2) **The Texas Engineering Practice Act** – In Texas, engineers are regulated by the Texas Engineering Practices Act, Chapter 1001, Occupations Code. Per §1001.002 of the Act, “Engineer” means a person licensed to engage in the practice of engineering in this state (see Exhibit 4). The “practice of engineering” is defined in §1001.003 of the Act, which includes performing an “engineering survey.” However, per §1001.003(2), performing an “engineering survey” does not include the surveying of real property or other activity regulated under Chapter 1071, which is the Professional Land Surveying Practices Act referenced above (see Exhibit 5). Accordingly, the “practice of engineering” does not include “professional surveying” as defined above.

(3) **Summary** – Based on the foregoing, Texas law is clear. A Texas licensed engineer is hot authorized by Texas law to prepare a subdivision plat, nor is the engineer authorized to certify as to the accuracy of the plat, both of which constitute “professional surveying.”
(4) **Request** – Therefore, TSPS respectfully requests that the Midland County Commissioners Court reconsider Sections 1.04 and 1.06 of the Regulations and amend them per the following proposed revisions:

"**Section 1.04.** The plat shall be prepared by a licensed engineer or licensed land surveyor and shall be based on a scale of not more than two hundred (200) feet per inch and certified to as to accuracy by the engineer or surveyor preparing the plat of the subdivision, showing in reasonable detail the location of and width of existing streets, lots, and alleys and similar details regarding all property immediately adjacent thereto."

"**Section 1.06.** The subdivision plat must be made from an actual survey on the ground by or under the supervision of either a registered professional engineer or a licensed land surveyor, and his certificate to that effect must appear on said plat."

Please let me know if you have questions or require additional information at this time. Also, please respond at your earliest convenience. Thank you.

Sincerely,

Mark J. Hanna
TSPS Legal and Legislative Counsel

Attachments
§ 1071.002. Definitions

V.T.C.A., Occupations Code § 1071.002

Effective: September 1, 2019
Currentness

In this chapter:

(1) “Board” means the Texas Board of Professional Engineers and Land Surveyors.

(2) “Commissioner” means the commissioner of the General Land Office.

(3) “Delegated responsible charge” means the direct control of professional surveying work performed under the supervision of a registered professional land surveyor.

(4) “Land surveyor” means a registered professional land surveyor or licensed state land surveyor.

(5) “Licensed state land surveyor” means 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 the purpose of filing field notes in the General Land Office.

(6) “Professional surveying” means the practice of land, boundary, or property surveying or other similar professional practices. The term includes:
(A) performing any service or work the adequate performance of which involves applying special knowledge of the principles of geodesy, mathematics, related applied and physical sciences, and relevant laws to the measurement or location of sites, points, lines, angles, elevations, natural features, and existing man-made works in the air, on the earth's surface, within underground workings, and on the beds of bodies of water to determine areas and volumes for:

(i) locating real property boundaries;

(ii) platting and laying out land and subdivisions of land; or

(iii) preparing and perpetuating maps, record plats, field note records, easements, and real property descriptions that represent those surveys; and

(B) consulting, investigating, evaluating, analyzing, planning, providing an expert surveying opinion or testimony, acquiring survey data, preparing technical reports, and mapping to the extent those acts are performed in connection with acts described by this subdivision.

(7) “Registered professional land surveyor” means a person registered by the board as a registered professional land surveyor.

(8) “State land surveying” means the science or practice of land measurement according to established and recognized methods engaged in as a profession or service for the public for compensation and consisting of the following activities conducted when the resulting field notes or maps are to be filed with the General Land Office:

(A) determining by survey the location or relocation of original land grant boundaries and corners;

(B) calculating area and preparing field note descriptions of surveyed and unsurveyed land or land in which the state or the permanent school fund has an interest; and

(C) preparing maps showing the survey results.
Credits

Editors' Notes

REVISOR'S NOTE

2012 Main Volume

(1) Section 2(3), V.A.C.S. Article 5282c, refers to methods of land surveying "engaged in and practiced as" a profession or service. The revised law omits the reference to "practiced as" because that phrase is included in the meaning of "engaged in."

(2) Sections 2(3) and (4), V.A.C.S. Article 5282c, refer to the "public free school fund." The revised law substitutes a reference to the "permanent school fund" because under the Texas Constitution and other state law, that name is the most commonly used of the several different names used for this fund. In Article VII, Texas Constitution, Section 2 refers to the "perpetual school fund" and "perpetual public school fund," Section 4 refers to the "Public Free School fund," and Section 5 refers to the "permanent school fund." The Education Code uses the term "permanent school fund." (See Section 43.001, Education Code.) Also, "permanent school fund" is the name used for that fund by the comptroller. The revised law is drafted accordingly.

(3) Section 2(5), V.A.C.S. Article 5282c, refers to the Texas Board of Professional Land Surveying "created by this Act." The revised law omits the reference to the board being "created by this Act" as executed law.

(4) Section 2(8), V.A.C.S. Article 5282c, defines "director" as the board's executive director. The revised law omits the definition of "director" as unnecessary and substitutes "executive director" each time "director" appears in the law being revised in this chapter because that law uses both "director" and "executive director" interchangeably and it is clear in each instance that the person being referred to is the board's executive director. The omitted law reads:

(8) "Director" means the executive director of the board as herein provided.
Vernon's Texas Statutes and Codes Annotated
Occupations Code (Refs & Annos)
Title 6. Regulation of Engineering, Architecture, Land Surveying, and Related Practices (Refs & Annos)
Subtitle C. Regulation of Land Surveying and Related Practices
Chapter 1071. Land Surveyors (Refs & Annos)
Subchapter F. Registration, Licensing, and Certification Requirements

V.T.C.A., Occupations Code § 1071.251

§ 1071.251. Registration, License, or Certificate Required

Effective: June 1, 2003

(a) In this section, "offer to practice" means to represent by verbal claim, sign, letterhead, card, or other method that a person is registered or licensed to perform professional surveying in this state.

(b) A person may not engage in the practice of professional surveying unless the person is registered, licensed, or certified as provided by this chapter.

(c) A person may not offer to practice professional surveying in this state unless the person is registered or licensed as provided by this chapter.

(d) A person may not use in connection with the person's name or use or advertise a title or description that tends to convey the impression that the person is a professional land surveyor unless the person is registered or licensed under this chapter.

Credits
Added by Acts 2001, 77th Leg., ch. 1421, § 1, eff. June 1, 2003.

Editors' Notes

REVISOR'S NOTE
2012 Main Volume

(1) Sections 2(11), 3, and 15(a), V.A.C.S. Article 5282c, refer to “professional land surveying.” The revised law substitutes “professional surveying” for “professional land surveying” because Section 2(1), V.A.C.S. Article 5282c (revised in Section 1071.002), defines “professional surveying” for purposes of this chapter as “the practice of land, boundary, or property surveying....”

(2) Section 2(11), V.A.C.S. Article 5282c, defines the term “practice or offer to practice” with respect to professional surveying and Section 3 of that article makes it unlawful for a person to “practice or offer to practice” professional surveying unless the person is registered or licensed under Article 5282c. Section 15(a), V.A.C.S. Article 5282c, also makes the practice of professional surveying unlawful unless the person is certified, registered, or licensed under Article 5282c. Because a person certified under that article may “practice” professional surveying but not “offer to practice” professional surveying as defined by Section 2(11), the revised law defines “offer to practice” for purposes of restricting that activity to persons registered or licensed under the statute and separately prohibits a person from “engaging in the practice” of professional surveying unless registered, licensed, or certified under the revised law.

V. T. C. A., Occupations Code § 1071.251, TX OCC § 1071.251
Current through the end of the 2019 Regular Session of the 86th Legislature
EXHIBIT 3
SECTION 1071.004
V.T.C.A., Occupations Code § 1071.004

§ 1071.004. Application of Chapter

Effective: June 1, 2003
Currentness

This chapter does not require the use of a registered professional land surveyor to establish an easement or a construction estimate that does not involve the monumentation, delineation, or preparation of a metes and bounds description.

Credits
Added by Acts 2001, 77th Leg., ch. 1421, § 1, eff. June 1, 2003.

Editors' Notes

REVISOR'S NOTE

2012 Main Volume

Section 3A, V.A.C.S. Article 5282c, refers to a "registered land surveyor." The revised law substitutes the phrase "registered professional land surveyor" because that is the correct title for that profession.

V. T. C. A., Occupations Code § 1071.004, TX OCC § 1071.004

Current through the end of the 2019 Regular Session of the 86th Legislature
Vernon's Texas Statutes and Codes Annotated
Occupations Code (Refs & Annos)
Subtitle A. Regulation of Engineering and Related Practices (Refs & Annos)
Chapter 1001. Texas Board of Professional Engineers and Land Surveyors (Refs & Annos)
Subchapter A. General Provisions

V.T.C.A., Occupations Code § 1001.002

§ 1001.002. Definitions

Effective: September 1, 2019
Currentness

In this chapter:

(1) “Board” means the Texas Board of Professional Engineers and Land Surveyors.

(2) “Engineer” means a person licensed to engage in the practice of engineering in this state.

(3) “Land surveyor,” “licensed state land surveyor,” “professional surveying,” “registered professional land surveyor,” and “state land surveying” have the meanings assigned by Section 1071.002.

Credits

Editors’ Notes

REVISOR'S NOTE
2012 Main Volume

(1) Section 2(2), V.A.C.S. Article 3271a, defines “certificate of registration.” The revised law omits this definition because the defined term is used only once in the law being revised and in the revision (Section 21, Article 3271a, revised as Section 1001.311) and is used in those places with a different meaning in that it refers to a certificate of registration issued by another state or jurisdiction. The omitted law reads:

(2) “Certificate of Registration” shall mean a license issued by the State of Texas granting its licensee the privilege of practicing engineering in accordance with the provisions of this Act.

(2) Section 2(3), V.A.C.S. Article 3271a, refers to an “[e]ngineer,” “professional engineer,” “registered engineer,” “registered professional engineer,” “licensed professional engineer,” and “licensed engineer.” Other provisions throughout Article 3271a use these terms and variants of these terms to mean a person licensed to engage in the practice of engineering in this state. For consistency, the revised law substitutes “engineer,” which is defined in this section as a person licensed to engage in the practice of engineering in this state, for each of the other terms used synonymously in the law being revised throughout this chapter.

(3) Section 2(3), V.A.C.S. Article 3271a, refers to a person licensed “by the Board.” The revised law omits the quoted language as unnecessary because the board is the only entity authorized to issue licenses under this chapter.

V. T. C. A., Occupations Code § 1001.002, TX OCC § 1001.002
Current through the end of the 2019 Regular Session of the 86th Legislature
(a) In this section:

(1) "Design coordination" includes the review and coordination of technical submissions prepared by others, including the work of other professionals working with or under the direction of an engineer with professional regard for the ability of each professional involved in a multidisciplinary effort.

(2) "Engineering survey" includes any survey activity required to support the sound conception, planning, design, construction, maintenance, or operation of an engineered project. The term does not include the surveying of real property or other activity regulated under Chapter 1071.

(b) In this chapter, "practice of engineering" means the performance of or an offer or attempt to perform any public or private service or creative work, the adequate performance of which requires engineering education, training, and experience in applying special knowledge or judgment of the mathematical, physical, or engineering sciences to that service or creative work.

(c) The practice of engineering includes:
(1) consultation, investigation, evaluation, analysis, planning, engineering for program management, providing an expert engineering opinion or testimony, engineering for testing or evaluating materials for construction or other engineering use, and mapping;

(2) design, conceptual design, or conceptual design coordination of engineering works or systems;

(3) development or optimization of plans and specifications for engineering works or systems;

(4) planning the use or alteration of land or water or the design or analysis of works or systems for the use or alteration of land or water;

(5) responsible charge of engineering teaching or the teaching of engineering;

(6) performing an engineering survey or study;

(7) engineering for construction, alteration, or repair of real property;

(8) engineering for preparation of an operating or maintenance manual;

(9) engineering for review of the construction or installation of engineered works to monitor compliance with drawings or specifications;

(10) a service, design, analysis, or other work performed for a public or private entity in connection with a utility, structure, building, machine, equipment, process, system, work, project, or industrial or consumer product or equipment of a mechanical, electrical, electronic, chemical, hydraulic, pneumatic, geotechnical, or thermal nature;

(11) providing an engineering opinion or analysis related to a certificate of merit under Chapter 150, Civil Practice and Remedies Code; or
(12) any other professional service necessary for the planning, progress, or completion of an engineering service.

Credits

Editors’ Notes

REVISOR’S NOTE

2012 Main Volume

Section 2(4), V.A.C.S. Article 3271a, defines “practice of engineering” and “practice of professional engineering” as identical, and the terms are used interchangeably throughout Article 3271a. The revision therefore omits as unnecessary “practice of professional engineering” from the definition in Section 2(4), revised as Section 1001.003, and uses the term “practice of engineering” in this section and, for consistency and clarity, throughout this chapter.

Notes of Decisions (9)

V. T. C. A., Occupations Code § 1001.003, TX OCC § 1001.003
Current through the end of the 2019 Regular Session of the 86th Legislature