

BOARD OF EXAMINERS FOR LAND SURVEYORS

September 23, 2021

The Board of Examiners for Land Surveyors (Board) convened at 9:00 a.m. at 555 N. Cotner Blvd., Lower Level, Lincoln, NE with the following members present:

Dennis L. Whitfield, Chair
Mary L. Pro, Vice Chair
Virlyn S. Bolte
Jerry G. Hain
James W. Hawks
Casey Sherlock, Ex Officio Secretary of the Board

Others present
Jerry Penry, Deputy State Surveyor
Jeremy Feusner, Kearney, President of Professional Surveyors Association of
Nebraska (PSAN)
Brian Foral, Brainard
Rex Heiden, Waco
Tom Tremel, Columbus
Tyler Weers, Lincoln
Gerri Monahan

Public notice of this meeting was given by publication in the *Lincoln Journal Star* on September 13, 2021.

The Chair stated that this meeting was being held in compliance with the updated Nebraska Open Meetings Act (Act) and that a current copy of the Act was available on the table.

Public was asked to reserve a time to speak on a specific agenda item.

All items voted on were done so in the form of a roll call vote.

Hawks moved and Bolte seconded that the July 15, 2021 Board meeting minutes be approved.

Voting Aye: Hain, Hawks, Pro, Whitfield, Bolte.

Motion carried.

Hain moved and Pro seconded that the July and August expense vouchers be approved:

BELS Rent, FY 21-22	2120.00
Comfort Suites, Hawks, May lodging	81.00
DAS Accounting, Accounting Assmt. FY 21-22	111.00
DAS Building Div., June parking	15.00
DAS Materiel, June postage (credit of 32.50 due)	62.01
DAS IMServices, June web hosting	28.00
General Fund Reimbursement, 4 th Qtr. FY 20-21	1605.41
Hain, Jerry, July Board Meeting mileage	35.84
Hawk, James, July Board Meeting travel	277.80
Lincoln Journal Star, July meeting notice	9.04
Whitfield, Dennis, July Board Meeting mileage	<u>56.00</u>
July Total	\$4,467.20

General Fund Reimbursement, FY 21-22	6678.72
DAS IMServices, July web hosting	28.00
DAS Materiel, Purchasing Assmt, FY 21-22	8.00
DAS Materiel, July postage (credit applied)	50.40
Office Supplies, June	<u>23.66</u>
August Total	\$6,788.78

Voting Aye: Hawks, Pro, Whitfield, Bolte, Hain.

Motion carried.

The National Council of Examiners for Engineering and Surveying (NCEES) Annual Meeting was virtual. Bolte and Sherlock represented Nebraska LS and reported on motions passed. The joint 2022 Central/Southern Zone meeting will be held in Oklahoma City.

Board members asked about filing annual Statements of Financial Interests with the Nebraska Accountability and Disclosure Commission. Board members asked the Secretary to look into this and report back.

County surveyor appointments and duties were discussed.

Sherlock and Penry have been surveying school sections for Board of Educational Land and Funds (BELF).

A position statement will be drafted and sent to all registered Nebraska land surveyors, regarding right of way markers.

Surveys received in the State Records Repository (SRR) are filed with minimum data per 81-8,122.01 land surveying; filing; contents. The SRR does not police surveys.

A new email for Board questions is on the website. nbels.board@nebraska.gov

Public notice of revisions to the Board's Rules and Regulations hearing was given by publication in the *Lincoln Journal Star* on August 19, 2021 and posted on the NBELS website. Notice was also email to all registered Nebraska land surveyors.

Hain moved and Pro second to open the public hearing at 10:00 a.m.

Voting Aye: Pro, Whitfield, Bolte, Hain, Hawks.

Motion carried.

Online Comments on Proposed Regulation:

Brian Foral, Brainard – I am a professional land surveyor in the state of Nebraska, and have reviewed the proposed changes. I am in support of the proposed changes. I feel they are necessary for the good of the profession and the public's interest.

Heath Howser, Omaha –I am a survey technician in the state of Nebraska and have reviewed the proposed changes. I am in support of the proposed changes. I fee they are necessary for the good of the profession and the public's interest.

Public Hearing In Person Comments:

Jeremy Feusner, PSAN President – support for the Rules and Regulations as presented.

Brian Foral, Registered Land Surveyor – support for the Rules and Regulations as presented.

Tyler Weers, Registered Land Surveyor – support for the Rules and Regulations as presented.

Rex Heiden, Registered Land Surveyor – doesn't "approve or disapprove" only has questions as follows:

1. Chapter 1, paragraph 005, if investigative files, litigation files, and test papers are "confidential", then how does the Board inform the general population of surveyors of the issues and problems the Board is seeing? Doesn't think all this should be confidential.
2. Chapter 2, paragraph 001, Doesn't believe Registered Land Surveyors should be called Registered Land Surveyors. He believes Registered Land Surveyors are Licensed Surveyors. Thinks that registered and licensed are two different things.
3. Chapter 3, paragraph 002. Says that since the federal government doesn't recognize land surveyors as professionals, therefore Nebraska Registered Land Surveyors should not refer to themselves as Professionals. He doesn't know how the Board can "deem" land surveyors as Professionals.
4. Chapter 9, paragraph 001.02 Thinks that instead of the language "Minimum Standards for Surveys", the text should be replaced with "complies with the laws, rules and regulations for land surveying in the State of Nebraska". Not just the Minimum Standards because there are a lot of other things beyond just the minimum standards land surveyors must comply with.
5. Chapter 11, paragraph 003. Same comment as #4 above and repeat throughout all of the rules and regs document.
6. Chapter 12, paragraph 002.06. Has questions about the phrase "directly related to land surveying" should any subject that's on the national exam be considered "directly related to land surveying". Attended a diggers hotline workshop and found that material valid to be "related to surveying".
7. Chapter 12, paragraph 002.11. Doesn't think that 2 hours of ethics and standards should be necessary for every renewal period. Maybe every 2 or 3 renewal cycles, but not every biennium. Questions necessity for it.
8. Chapter 13, 001. Use of the seal. Does not consider himself a registered surveyor, he considers himself as a licensed surveyor. Doesn't like the use of the term registered.
9. Addendum A, minimum standards. Inconsistency of term Registered, Licensed, and Professional throughout document.
10. Addendum A, (C) definitions, part 4. Direct Supervision. Statute refers to a different definition of direct supervision, (no statutory reference) an online search will find other wording for definition. Earlier section better covers the definition, this one further limits the definition to not allow a surveyor to hire or contract another person to do work, because the definition says they must be employed by the same company.
11. (C) Definitions, part 13. Metes and Bounds Description. Thinks this should say Metes and/or Bounds Description. They are not synonymous.
12. (D) Legal Description. Same as above with regard to "metes and bounds" and then under part 1, a valid PLSS legal description does not need to contain, "city", "county", or "state".
13. (D) Legal Description. Part 3. Referred to "corners of record". Has a problem with that, because there are surveys that were completed setting corners that were not filed during an early period of time. He thinks that the statement "corners of record" limits his ability to use a corner found but for which there is not a filed record. He thinks this statement requires him to not recognize any survey for which he cannot find a filed record of the survey.
14. (F) Conduct of Survey. Part 9. Set all monuments required, seems like there should be additional regulation for corner to be set in a manner in which it is least likely to be destroyed. Any monument set flush with the ground doesn't have a life span of longer than 5 years. Utility companies will destroy most of the monuments set at the rear lot lines. Thinks there should be something stated there about this.

15. (G) Plat or Certificate of Survey. Suggested requirement for surveys to be printed on something better than 20lb "rot gut paper".
16. (G) Surveyors Certificate. Not comfortable using a certification. Personal feelings, to him the seal as provided by the Board, represents all the requirements that he is to do as a licensed surveyor. The seal is the certification that he is complying with all the laws, rules and regulations. He doesn't think he can certify that he is a licensed land surveyor. The Board can certify that he is a licensed surveyor. Again "minimum standards" should be replaced with all laws, rules and regulations. Thinks that his signature and seal certifies he is complying with laws, rules, and regulations.
17. (H) Monumentation. Should be set someplace where it's not likely to be destroyed. Thinks they should be required to be set 3"-4" below the surface.
18. (I) Priority of Calls. Sees that we dropped "coordinates" from the list; however, in (G), part 6, it refers to the use of coordinates. Not sure why it was dropped, doesn't think that it should be.
19. (J) Copies of records of surveys should be retained by the firm for as long as they are in business. Ten years is not long enough.
20. Appendix II, he would really not be comfortable using the "sample surveyors certificate", he doesn't feel like he is a registered surveyor, he feels like he is licensed under the Act. Really doesn't like that there is a "SAMPLPLE" provided for surveyors to use.

Tom Tremel, Tremel Surveying/Platte County Surveyor.

Most of the stuff in the Rules and Regulations, he really doesn't have a problem with. Some of it seems like it's the Boards way or the highway, there's no allowance for him to make a decision. Some of the rules are really going to cause in impact on the cost. He thinks that because he is a small business owner that he should be able to cut corners to reduce costs and that big firms have deep pockets, so they can follow the rules easier because big firms have big clients with deep pockets and his small firm doesn't have clients with deep pockets. He thinks that putting out ties on section corners is ridiculous. He doesn't want ties out there. He thinks that ties just mislead the public. He thinks that measuring with GPS is better. Agrees with Rex about the 2 hour ethics and minimum standards rule, doesn't think it's necessary, he doesn't think it means anything. He thinks there are too many rules and they don't benefit the public. He thinks there is a lot of good stuff in here, but a lot of the stuff is ... Brown wrote an instruction on monumentation and he thinks that placing a magnetic memorial is a joke. But he also said you have the choice to do something different or better. Doesn't see that there is the flexibility to make decisions in these regulations. He doesn't think that there was anyone on the PSAN committee that has small clients. He thinks that everyone on the committee works for big clients and big firms with deep pockets. Doesn't think that the Board thinks he provides a good service. Thinks that if there is no justification for a rule, then it isn't necessary.

Hain moved and Hawks second to close the public hearing at 10:43 a.m.

Voting Aye: Whitfield, Bolte, Hain, Hawks, Pro.

Motion carried.

Secretary Sherlock noted that the Governor's Policy Research Office (GPRO) had reviewed the draft rules and regulations, prior to today's hearing, and restricted words must be removed and if an item is already in statutes, it also should be removed.

Hawks moved and Bolte seconded that GPRO revisions and today's public comments be incorporated into a new draft of the Board's Rules and Regulations and set a public hearing for November 18 at 10:00 a.m. at the Board meeting.

Voting Aye: Bolte, Hain, Hawks, Pro, Whitfield.

Motion carried.

The Board set a Special Meeting for October 12, 2021 at 9:00 a.m. to review September 23 comments and revisions.

Pro moved and Hawks seconded that the Board go into executive session at 11:11 a.m. with Sherlock and Monahan present for the purpose of discussing Class 1 Application – Land Surveyor; Class 2 Applications – Reciprocity; and Class 2 Registration – Reciprocity, and to prevent needless injury to the reputation of a person/s and as such person/s has not requested a public meeting.

Voting Aye: Hain, Hawks, Pro, Whitfield, Bolte.

Motion carried.

Chair stated that discussion in executive session would be limited to Class 1 Application – Land Surveyor; Class 2 Applications – Reciprocity; and Class 2 Registration – Reciprocity.

Hawks moved and Pro seconded that the Board return to regular session at 11:47 a.m.

Voting Aye: Hawks, Pro, Whitfield, Bolte, Hain.

Motion carried.

Chair stated that no subject matter other than Class 1 Application – Land Surveyor; Class 2 Applications – Reciprocity; and Class 2 Registration – Reciprocity; was discussed in executive session.

Hawks moved and Hain seconded that the Class 1 application of Joshua Jay Gilbertson for land surveyor registration be approved and he be permitted to take the Principles and Practice of Surveying (PS) and Nebraska State Specific land surveyor examinations.

Voting Aye:

Voting Nay: Pro, Whitfield, Bolte, Hain, Hawks.

Motion failed.

Bolte moved and Pro seconded that the Class 2 application of Lawrence Simon Kiefer for land surveyor registration by reciprocity from Texas be approved and that he be required to appear before the Secretary of the Board for an interview and land surveyor examination.

Voting Aye: Whitfield, Bolte, Hain, Hawks, Pro.

Motion carried.

Hawks moved and Hain seconded that the Class 2 application of Michael Spears for land surveyor registration by reciprocity from Oklahoma be approved and that he be required to appear before the Secretary of the Board for an interview and land surveyor examination.

Voting Aye: Bolte, Hain, Hawks, Pro, Whitfield.

Motion carried.

Hain moved and Pro seconded that the Class 2 application of Michael Nathan Kern for land surveyor registration by reciprocity from Minnesota be approved and that he be required to appear before the Secretary of the Board for an interview and land surveyor examination.

Voting Aye: Hain, Hawks, Pro, Whitfield.

Voting Nay: Bolte.

Motion carried.

Hawks moved and Bolte seconded that the Class 2 application of Jordan Cole Begley for land surveyor registration by reciprocity from Kentucky be approved and that he be required to appear before the Secretary of the Board for an interview and land surveyor examination.

Voting Aye: Hawks, Pro, Whitfield, Bolte, Hain.

Motion carried.

Pro moved and Hain seconded that the Class 2 application of Adam Ryan Leftwich for land surveyor registration by reciprocity from Kentucky be approved and that he be required to appear before the Secretary of the Board for an interview and land surveyor examination.

Voting Aye: Pro, Whitfield, Bolte, Hain, Hawks.

Motion carried.

Hain moved and Pro seconded that the Class 2 application of William Doyle Gaston for land surveyor registration by reciprocity from Arkansas be approved and that he be required to appear before the Secretary of the Board for an interview and land surveyor examination.

Voting Aye: Whitfield, Bolte, Hain, Hawks, Pro.

Motion carried.

Pro moved and Hawks seconded that inasmuch as Neil Charles Shultz, passed the Nebraska reciprocity examination on September 21, 2021 and has completed the requirements for Class 2 land surveyor registration in Nebraska, by reciprocity from Pennsylvania, and that upon registration fee in amount of \$100.00, he be granted registration dated September 23, 2021 under Certificate No. 832.

Voting Aye: Bolte, Hain, Hawks, Pro, Whitfield.

Motion carried.

Before formal filing of surveys in the State Records Repository, a newly registered land surveyor is asked to send their first 5 Nebraska surveys to the Nebraska State Surveyor for review. This is a courtesy service to potential unique situations that may arise when surveying in Nebraska.

The next meeting is a special meeting to review Rules and Regulations scheduled for October 12, 2021 in Lincoln. The next regular meeting is scheduled for November 18, 2021.

Additional meeting dates are published on the NBELS web site <https://nbels.nebraska.gov/> under the General Information link.

Hawks moved and Bolte seconded that the meeting be adjourned at 11:54 a.m.

All in favor. Motion carried.

Casey C. Sherlock, Secretary