

BOARD OF EXAMINERS FOR LAND SURVEYORS

November 18, 2021

The Board of Examiners for Land Surveyors (Board) convened at 9:02 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:
Jeremy Bender, LS, Omaha, Southeast Nebraska Land Surveyors Association (SENLSA)
Jeremy Feusner, LS, Kearney
Rex Heiden, LS, Waco
Jerry Penry, Deputy State Surveyor
Gene Thomsen, LS, Lincoln
Tyler Weers, LS, Lincoln
Gerri Monahan

Public notice of this meeting was given by publication in the *Lincoln Journal Star* on November 2, 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.

The 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 Pro seconded that the October 12, 2021 Board meeting minutes be approved as corrected, Board member’s remote attendance.

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

Motion carried.

Pro moved and Bolte seconded that the September and October expense vouchers be approved:

DAS Building Div. July and August parking	30.00
DAS Materiel, August postage (Annual Report \$462.68)	482.10
DAS Materiel, 64 th Annual Report printing	440.85
DAS IMServices, August web hosting	28.00
Data Source, office supplies	15.00
Lincoln Journal Star, September hearing notice	67.27
Hain, Jerry, September Board Meeting mileage	35.84
Hawk, James, September Board Meeting travel	277.80
Office Depot, July office supplies	38.59
Whitfield, Dennis, R& R mtgs, September Board Meeting mileage	<u>168.00</u>
September Total	\$1,583.45

DAS Building Div. September parking	15.00
DAS IMServices, September web hosting	28.00
DAS Materiel, September postage	42.77
Hain, Jerry, October Board Meeting mileage	35.84
Hawk, James, October Board Meeting travel	279.90
J.P. Cooke Co., seal & freight	33.05
Lincoln Journal Star, September meeting notice	9.04
Lincoln Journal Star, October meeting notice	11.31
Whitfield, Dennis, October Board Meeting mileage	<u>56.00</u>
October Total	\$510.91

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

Motion carried.

Hawks moved and Bolte seconded that the Board goes into executive session at 9:05 with Sherlock and Monahan present to discuss an informal complaint addressed to the Board, 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: Pro, Whitfield, Bolte, Hain, Hawks.

Motion carried.

The chair stated that discussion in the executive session would be limited to the informal complaint addressed to the Board.

Hain moved and Hawks seconded that the Board returns to regular session at 9:22 a.m.

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

Motion carried.

The chair stated that no subject matter other than the informal complaint addressed to the Board was discussed in the executive session.

Bolte moved and Pro seconded that Secretary sends letter to person acknowledging receipt of the complaint and that the LS survey's technical aspects were followed as calculations and corners were found and noted on survey.

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

Motion carried.

Secretary was asked to follow up with LS to determine if cleanup work was completed.

Secretary Sherlock reported on several meetings and presentations:

SENSLA meeting - Gretna
Government lot corners.

Professional Surveyors Association of Nebraska (PSAN) Winter Seminar in Kearney
Board's Rules and Regulations process, NBELS website, and teaching survey math class
for PSAN exam workshop.

Southeast Community College, Milford
WLT – Land Surveying/GIS/Civil Engineering Technology WLT.

Report to PSAN regarding Right-of-Way (ROW) marker statement.

A position statement, from the Board, will be written and sent to all registered Nebraska land surveyors and surveyors-in-training, regarding highway right-of-way markers not to be used as boundary survey markers.

The agenda was adjusted to move item 9 Fee Schedule, before the Public Hearing.

The fee schedule was reviewed.

Pro moved and Hawk seconded to approve the Board's fee schedule and methods of payments.

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

Motion carried.

The fee schedule will be posted on the Board's website and reviewed annually at a public meeting, following budget review.

Hain moved and Pro seconded to open the Board of Examiners for Land Surveyors Rules and Regulations public hearing at 10:02 a.m.

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

Motion carried.

Public notice for the public hearing for the Board of Examiners for Land Surveyors Rules and Regulations on November 18, 2021, was given by publication in the *Lincoln Journal Star* on October 12, 2021, and posted on the Board and Secretary of State websites.

Public testimony was offered by the following:

Jeremy Feusner, 4706 14th Ave, Kearney, NE, RLS 726
Nebraska Registered Professional Land Surveyor, also serves as the President of the Professional Surveyors Association of Nebraska; but he is here representing himself as a land surveyor, as the PSAN Board has not directed me to issue a statement on the subject of the proposed Rules and Regulations. After the notice of the proposed rulemaking hearing was posted on October 12, I reviewed the proposed rules and regulations in detail. Beyond the substance of the rules and regs I also viewed the proposed changes through the microscope of the S.M.A.R.T. acronym goals. I feel the proposed rules and regs are Specific in the areas that they need to be, Measurable when necessary, Attainable by current best practices, Relevant to both the public and land surveying professionals, and time-based approvable. I hereby support the rules and regs and would also like to thank the board for their time, energy, and dedication to make this important update. Thank You.

Jeremy Bender, I'm here representing the Southeast Nebraska Land Surveyors Association (SENLSA), my address is 11330 Taylor Street, Omaha, NE. My RLS number is 691. We had a Board meeting last Saturday and the only comments that we have received from our association as a result of a letter that went out to our association, we only received one comment, which were several comments from Brent Jorgensen, RLS 621, we asked him to speak today, he did not want to, but I believe that he sent his comments in to the Board. Our opinion is that since he was the only one there is general consensus for the that are open to or agree with the proposed changes, and that's all I wanted to say.

Tyler Weers, RLS 807, address is here in 5910 S. 52nd Street Ct., Lincoln, NE, and I'm just here in support of the new regulations as I'm the youngest one in here maybe, I'm the one that going to have to put up with these (Regulations) for the next 20-30 years. As everything with changes in technology we have to progress and advance things as we go along, something that's from 1989 probably should be updated with technology advances we have today to keep pace with everything else, so I support the changes.

Rex Heiden, RLS 361, Waco, NE, present representing himself. First I will apologize that I did not make your last board meeting when you were discussing the changes, but I just could not make it that day. I guess that I'll start in Chapter 7, page 16 Item 001.05, I would prefer not to see a signature across the seal. You made a comment earlier that in the absence of legibility the seal is invalid. I've seen signatures that use a broad pen and you can not read the name or their number if it's signed across the seal. So, I guess I would kinda question that. Going on to 002.05, I kinda questioned that last time. The supervisor and subordinates are employed by the same entity or employer, but you also in Chapter 10, 002.01, you may engage a consultant, and so if you have a consultant doing work for you, in my opinion if you have a consultant doing work for you, you don't have direct supervision. I guess things more or less are a little out of my realm. Direct supervision I guess is a problem to me. I still question under Chapter 8, 002.12 Professional development, I still kinda question the need for the ethics or a course on minimum standards every biennium and I guess also in that same thing you say a course on minimum standards, should that not be a course on your rules and regulations and not just minimum standards, I don't know. Chapter 10, page 27, 001.08, registrant possessing knowledge of violation of these rules and statutes, I guess, what are the ramifications if I don't. So, and I see some work being the County Surveyor that surveyors file in my office, I see some surveys there that have stuff that in my opinion are violations. But there again some of that's my opinion. I also have surveyors send me something and ask me to review it and to see what I think, and so I see some things that are not in my normal realm of work that for me I see is a problem. Some of it is a clear violation of the laws in my opinion, some things procedure errors covered by the manual of instructions (BLM Manual) with no explanation as to why you don't follow the manual. I think the next goes into minimum standards, conduct of survey, item G, the Plat or Certificate of Survey. The client shall be furnished a record of survey which shall show and identify the following. There's no comment for there that those items all of those same items are required to be in your or on a survey that is filed with the repository. Going on the Surveyors Certificate, I still don't understand the need for it. The your seal represents everything in the rules and regulations and when I sign a plat, I accept all responsibility for all the things that in state law and in your rules and regulations. So I guess I wouldn't say it's my biggest problem for me putting that on the survey is more of an ethical thing to me. You don't tell your client that information after you do work. All that information should be given to your client before you do anything. I just for me it's partially an ethical question. *Board member Hain interjects and asks a question* - "You don't put a surveyors certificate on your surveys now?" Response from Mr. Heiden "NO", Mr. Heiden continues, Casey's asked me about it. Under the current, the minimum standards, it says the client is to be informed or you know given this information and I have a form letter that I send to my clients when they somebody contacts me to do a survey. All that information is in the letter that I send to them up front. So I'm following state statutes. I sign it in attestation that I am a licensed surveyor and they can contact the state surveyors office for verification of my license. So all of that information is given to the client up front. It's not something I give to them on the tail end of doing work because to me that's wrong. Under that same thing the sample of the Surveyors Certificate is attached in item 2 (Appendix II), you've not made a correction, to the example, it's still the same wording as what you had before that you shall follow comply with minimum standards and not with your rules and regulations or state law. It's not in your rules and regs as I was thinking about it more in my position as a county surveyor that I'm on the receiving end of all the documents that come from the repository and the I realize the repository doesn't care how big a plat is, but for me I would rather that a subdivision plat not be filed as a record of survey. I've had some plats filed that have the, that 60% of the plat is worthless information as far as the survey, it's blank for the city to sign, the planning commission to sign, it's worthless information, it would take a surveyor 5 minutes to copy all that plat out and have just the plat and file that, and not have all that additional information, because I have to find space to put it all. The other thing with the documents that are in the records that I have there's a lot of surveys that are filed on cheap 20 pound paper. I don't know if that's something that can be placed saying that the document should be filed on better quality paper, because I know that some of the surveys that I have in my books, the books protect the stuff pretty well,

there again if it's handled much the stuff gets torn, I personally use 28 pound paper depending upon what you call the classification of it, but I also use 70 pound paper. Going on under H, monumentation. I guess it's kind of under item 7, ties should not be more than 200 feet, there's been, and I don't know maybe there're not considered ties, but when I reference to a fenceline or well not since I retired from the game commission, but we used to give basically like geographic calls, because setting out another metal object at 33 or 46.6 when you're out in the middle of a field has absolutely no meaning. So, a lot of times I'll give a distance to a fenceline and it might be 400 feet away or something. I guess I kind of question that. Item J, page 57, Perpetuation of the Land Survey Plat, Item 2. Just recently I... to me 10 years isn't sufficient, they either should be the life of your survey license or the life of the business. Recently I was just called JEO for a copy of a survey that was filed that on the filed copy and what was in the repository, you could not read or understand some of the information. There's two lines parallel or not really parallel, it was showing a gap in between two parcels or multiple parcels of ground and indication of corners set and I couldn't tell which line the corners were set on. So, I called JEO and they were able to give me, uh, send me a pdf, which was, I could enlarge, I could basically see then, and that plat was from I think it was 1994, so that's well over 20 years and they were still able to furnish me a readable copy. I guess that's everything. Thank you.

Gene Thomsen, RLS 397 I'm just here representing himself. 4600 S. 52nd, Lincoln, NE. The only one I wanted to comment was also on that surveyor's certificate, because I've seen a lot of surveyors certificates in the course of looking at records, and I'm wondering if sometimes people have inserted stuff in there and I've seen to the best of my ability, so I'm wondering if you brought somebody in to reprimand them about a survey and if they had wrote to the best of their ability, their ability might be, that might be their best ability. So, they just certified that uh and stamped it, maybe a good attorney or somebody would start saying well hey, this is all the better that this guy can do, but it still meets all the requirement and its in that surveyor's certificate. Cause I've also seen in that surveyors certificate where they have excepted things out. I've done this survey on a certain date, but some of the things that they're a little shaky, so the write that in that surveyor's certificate meaning that they're losing some of their liability by putting it in that certificate. We don't have a standard form, like if this is a thing that has to be on there exactly, well then maybe so, but sometimes people put disclaimers in those surveyor's certificates. Board member Hain asks *In the certificate itself?* Thomsen replies "YES". Hain asks *Are you against it?* Thomsen replies "Yeah... Right" Thomsen continues... I'm kind of like Rex (Heiden), do the engineers do that when they stamp their plans, I've never seen that, I just see their stamp and then they sign their name through it and the stamp means as much to the surveyor's certificate as your stamp. That's the only comment I had, it's up to you guys. And of course, Jerry (Hain) and I were around when this was all put together, so I know what kind of a problem, somebody did a lot of work on this, so I want to congratulate the board for at least doing something to be proactive, because in the last 30 years, nothing has been done other than somebody crossed out he or she. I just want to comment on thanks for updating this. That's all I had.

The secretary of the board did receive one comment submitted to the secretary's email from Mr. Brent Jorgensen to be attached and included.

Comments by Mr. Jorgensen as follows:

Comments From:

Name: Brent Jorgensen <jorgensensurveying@gmail.com>

Address: 73051 617 Ave
Tecumseh, NE 68450

Phone: 4023352033

Proposed NAC Changes Being Commented on: Title: 234 Chapter(s): 001 - 014 Section(s):

Hearing Information Hearing Date: 00-00-0000

Hearing Time:

Comments:

I believe that Chapter 7, 002.05 is anti-competitive to small business for the following reasons:

1. It prohibits the subcontracting of work that exceeds the small surveying office's resources and abilities.
2. It incorrectly reasons that two individuals working for the same company are capable of direct supervision when they might be in different offices or departments.
3. Surveyors / contractors with specialized knowledge or experience can't subcontract for that technical portion of a project.
4. Limits the competition on these type of projects to only those with the required equipment and experience. The possibility of a smaller firm sub-contracting the work can't be done.

Appendix I on page 34 has technical issues.

Accuracy of bearing can't necessarily be expressed as a single value. The bearing difference of 20 seconds on a 100 foot line is less than 0.01' and so would exceed the positional tolerance requirements.

Linear distance should be expressed in the same manner as the other items (parts per million or 1:xxx) This value also conflicts with item 1 above, where the positional tolerance is stated as 0.25' plus 100 ppm. A half-mile line would exceed the maximum allowable accuracy standard.

My opinion is that the main standard should be positional tolerance. Everything else is downstream of position.

My reasoning:

81-8, 109 (4) (d) includes topographic surveying, as well as 'artificial features in the air, on the surface or subsurface'...

Large topographic surveys can often be flown using airplanes, drones with lidar or other remote sensing equipment. A small surveying firm can check / verify the quality of the delivered product from a subcontractor which specializes in remote sensing without performing the entire project themselves. With these checks the surveyor can reasonably state the project was done under their: 'authority to review and to reject or approve' – 002.01

Since the surveyor has contracted the work, they are aware of the project's scope, needs, parameters – 002.02

Able to answer questions about decisions – 002.03

Once the final product is checked, they are 'reasonably satisfied' – 002.04

Some subsurface features (sanitary sewer and storm sewer pipes) can be located using pipe cameras and require confined space permits to enter. Many municipalities reject surveyors entering these confined spaces and require their own employees to perform the confined space work or operate a remote camera. This work would be done by someone not employed by the company and so would be banned.

Item 2 – Just because two individuals work for the same company doesn't mean they are in a supervisor / junior relationship. For instance, anyone working for the State of Nebraska Department of Roads doesn't have a supervisory relationship with Game and Parks or the State Surveyor's office.

Item 3 – Technical expertise in an area that other surveyors may need assistance in would be banned as the expert doesn't work for the same company.

My suggestion is to change 002.05 to change from 'employed' to 'engaged' or some other means to show the work was 'paid for'. Also, the word 'employed' implies a W2-based relationship. Once again, some work is performed by 1099 contract individuals.

Hawks moved and Pro seconded to close the Board of Examiners for Land Surveyors Rules and Regulations public hearing at 10:29 a.m.

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

Motion carried.

The Board discussed the comments from the public and made some minor revisions.

Bolte moved and Hain seconded to correct three clerical items: Chapter 1, 002.02, change address to "addressed"; Chapter 4, 002 last sentence, delete "be" after application is; Chapter 14 (B) 4, change he/she has to "they have".

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

Motion carried.

Hawks moved and Pro seconded that Chapter 8, 002.12, completion of a minimum of 2 hours of Professional Development Hours (PDH) be changed to read "in an ethics course or a course on the Nebraska Land Surveyors Regulation Act", is required for each renewal period.

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

Motion carried.

Bolte moved and Pro seconded that the sample surveyor's certificate wording in accordance with "Minimum Standards for Land Surveyors in Nebraska" be changed to "Land Surveyors Regulation Act".

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

Motion carried.

Hawks moved and Hain seconded to accept revisions to the proposed rules and regulations and approve Rules and Regulations under Title 234 Board of Examiners for Land Surveyors as amended per discussion following the public hearing.

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

Motion carried.

The approved final draft of Title 234 Board of Examiners for Land Surveyors Rules and Regulations will be submitted to the State of Nebraska for adoption.

Hawks moved and Bolte seconded that inasmuch as Samuel David Decker passed the Principles and Practices of Surveying (PS) examination on September 21, 2021, and passed the Nebraska State-specific examination on October 21, 2021, and has completed the requirements for Class 1 registration in Nebraska, and upon receipt of the registration fee in the amount of \$100.00, he be granted registration dated November 18, 2021, under Certificated 833.

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

Motion carried.

Hawks moved and Pro seconded that the Board goes into executive session at 12:37 p.m. with Sherlock and Monahan present for the purpose of discussing Class 2 Applications – Reciprocity, and Class 2 Registrations – 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: Whitfield, Bolte, Hain, Hawks, Pro.

Motion carried.

The chair stated that discussion in the executive session would be limited to Class 2 Applications – Reciprocity, and Class 2 Registrations – Reciprocity.

Hain moved and Pro seconded that the Board returns to regular session at 12:49 p.m.

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

Motion carried.

The chair stated that no subject matter other than Land Surveyor; Class 2 Applications – Reciprocity, and Class 2 Registrations – Reciprocity, was discussed in the executive session.

Bolte moved and Hain seconded that the Class 2 application of Patrick Ahearn Fox 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: Hain, Hawks, Pro, Whitfield, Bolte.

Motion carried.

Hawks moved and Pro seconded that the Class 2 application of Jason D. Boehler for land surveyor registration by reciprocity from Arizona 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 Bolte seconded that the Class 2 application of Larry W. Medrano for land surveyor registration by reciprocity from New Mexico 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 Bolte seconded that inasmuch as Christopher R. Badtke, passed the Nebraska reciprocity examination on October 28, 2021, and has completed the requirements for Class 2 land surveyor registration in Nebraska, by reciprocity from Wisconsin, and that upon registration fee in the amount of \$100.00, he be granted registration dated November 18, 2021, under Certificate No. 834.

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

Motion carried.

Bolte moved and Pro seconded that inasmuch as Kevin Flood, passed the Nebraska reciprocity examination on November 5, 2021, and has completed the requirements for Class 2 land surveyor

registration in Nebraska, by reciprocity from Missouri, and that upon registration fee in the amount of \$100.00, he be granted registration dated November 18, 2021, under Certificate No. 835.

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

Motion carried.

Hawks moved and Pro seconded that inasmuch as Michael Spears, passed the Nebraska reciprocity examination on November 9, 2021, and has completed the requirements for Class 2 land surveyor registration in Nebraska, by reciprocity from Oklahoma, and that upon registration fee in the amount of \$100.00, he be granted registration dated November 18, 2021, under Certificate No. 836.

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

Motion carried.

Pro moved and Bolte seconded that inasmuch as Jordan Cole Begley, passed the Nebraska reciprocity examination on November 16, 2021, and has completed the requirements for Class 2 land surveyor registration in Nebraska, by reciprocity from Kentucky, and that upon registration fee in the amount of \$100.00, he be granted registration dated November 18, 2021, under Certificate No. 837.

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

Motion carried.

Before the 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.

Hain moved and Pro seconded to approve Bolte, Hain, and Pro as National Council of Examiners for Engineering and Surveying (NCEES) Central Zone Meeting Board delegates and Sherlock as Member Board Administrator (MBA) to attend the April 21-23, 2022 meeting in Oklahoma City, OK.

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

Motion carried.

Legislative Resolution 191, a study to examine the effect of universal recognition of occupational licenses on population frequently negatively impacted by occupational licensing in the state, including low-income workers, military members and their spouses, and those with a criminal history, will be monitored during the upcoming Nebraska legislative session.

2022 Board meeting dates were set: January 20, March 17, May 19, July 21, September 15, and November 17. All meetings start at 9:00 a.m. in the Board room at 555 N. Cotner Blvd, LL, Lincoln, NE.

Hain moved and Bolte seconded that the meeting is adjourned at 1:07 p.m.

All in favor. Motion carried.

Casey C. Sherlock
Ex Officio Secretary of the Board