

TEXAS SOCIETY OF PROFESSIONAL SURVEYORS

OFFICIAL REPORT FORMAT

DIVISION: **LIAISON** DIV #: _____ DIVISION OFFICER: **Davey Edwards**

Committee: **REAL ESTATE DIVISION OF STATE BAR**

CHAIRMAN REPORTING: **MARK J. HANNA**

BOARD MEETING DATE: **June 13, 2009**

COMMITTEE REPORT

The Committee continues to monitor recent Texas real estate law cases and summaries which are prepared by the Real Estate Section of the State Bar of Texas and published in the *Texas Surveyor*.

TEXAS SOCIETY OF PROFESSIONAL SURVEYORS

BOARD OF DIRECTORS MEETING

JUNE 13, 2009
AUSTIN, TEXAS

LEGAL COUNSEL'S REPORT

Listed below are the developments/activities which have occurred since our February 7, 2009 Board of Directors Meeting.

- (1) **Eighty-First Legislative Session** – The Legislative Session convened on January 13, 2009 and will adjourn *Sine Die* on June 1, 2009. More than 7,000 bills were introduced. A complete report listing bills of interest to TSPS will be distributed at the Board of Directors Meeting on June 13, 2009.
- (2) **Sales Tax** – On November 21, 2008, the Tax Policy Division, Texas Comptroller of Public Accounts, advised TSPS that a new publication clarifying the application of sales tax to surveying services would soon be available in draft form for TSPS to review and comment. The draft "*Tax Bulletin #94-103 on Surveying Services*" was provided to TSPS on February 25, 2009. A meeting was held with the Comptroller's staff to discuss revisions on March 3, 2009. Our goal is to complete a draft which will list all taxable and non-taxable activities (with definitions) and submit the final draft to the Comptroller within the next 60 days.
- (3) **Evadale Independent School District** – On May 19, 2009, I wrote a letter to the Evadale Independent School District (see attached) requesting reasonable assurance that the District is selecting providers of professional land surveying services in full compliance with the requirements of the Texas Professional Services Procurement Act. To date no response has been received.
- (4) **Title Insurance** – The Commissioner of Insurance issued a Notice of Hearing for the 2008 Texas Title Insurance Biennial Hearing on July 22, 2008. The hearing will consist of a rulemaking phase and a ratemaking phase. The rulemaking phase, under Docket No. 2690, will be for the consideration of rules, forms, and endorsements, and related matters not having primary rate implications. The ratemaking phase, under Docket No. 2691, will be for the consideration of fixing the premium rate and other matters with direct rate implications. The scope of the hearing includes subjects and matters related to both real property title insurance and personal property title insurance. The hearing for the rulemaking phase was held on October 2, 2008. No agenda items were submitted which would have an adverse impact upon the surveying profession. At the direction of the Commissioner, the ratemaking phase of the hearing will be conducted by the

State Office of Administrative Hearings. The ratemaking hearing will begin at 8:30 a.m. on June 2, 2009, and continue through June 5, 2009. Anyone who wishes to participate in the ratemaking phase must file a motion for admission as a party. TSPS filed its Motion for Admission As A Party on August 11, 2008.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mark J. Hanna". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mark J. Hanna
TSPS Legal Counsel

Attachment

LAW OFFICES OF
HANNA & ANDERTON

PROSPERITY BANK PLAZA
900 CONGRESS AVENUE, SUITE 250
AUSTIN, TEXAS 78701

ROBERT M. ANDERTON
MARK J. HANNA
FRANK B. WALKER

May 19, 2009

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**VIA CERTIFIED MAIL,
RETURN RECEIPT REQUESTED
AND REGULAR FIRST CLASS MAIL**

Dr. Rodney D. Cavness
Superintendent
Evadale Independent School District
Highway 105 South
Evadale, Texas 77615

Re: *Partial Boundary and Topographic Survey
Evadale High School Campus*

Dear Dr. Cavness:

I represent the *Texas Society of Professional Surveyors*. As you know, the Texas Professional Services Procurement Act, Chapter 2254, Subchapter A, Government Code, provides that a governmental entity may not select a provider of professional services, which includes land surveying, on the basis of competitive bids. Instead, the governmental entity must first select the most qualified provider on the basis of demonstrated competence and qualifications, and then attempt to negotiate with that provider a contract at a fair and reasonable price. If a satisfactory contract cannot be negotiated with the most highly qualified provider, the governmental entity must formally end negotiations with that provider, select the next most highly qualified provider, and attempt to negotiate a contract with that provider at a fair and reasonable price. The governmental entity must continue this process to select and negotiate with providers until a contract is entered into.

However, with regard to the referenced project,¹ it is our understanding that the Evadale Independent School District (EISD) selected a surveying firm to provide the professional services and then requested and received a proposal for professional surveying and mapping services (including a fee estimate) for this project which was submitted to EISD on or about March 10, 2009. Subsequently, without making any attempt to negotiate a contract at a fair and reasonable price and without formally ending negotiations with the surveying firm first selected (as the statute requires), EISD contracted with another surveying firm to do the work. Accordingly, it appears that EISD awarded a contract for surveying services for the referenced project based upon the submission of "competitive bids," which is not in compliance with the requirements of the Government Code regarding the procurement of professional land surveying services. In this regard, it is important to note that a contract entered into or an arrangement made in violation of the Professional Services Procurement Act is void as against public policy.²

The purpose of this correspondence is to ask that you provide reasonable assurance that the EISD is selecting providers of professional land surveying services in full compliance with the requirements of the Texas Professional Services Procurement Act and not on the basis of competitive cost proposals submitted by multiple surveying firms. Please respond at your earliest convenience. Thank you.

Sincerely,



Mark J. Hanna

¹ It is our understanding that the purpose of the survey is to support architectural design services being provided by Labiche Architectural Group related to planned improvements at the high school on FM Highway 105 in Evadale. Current plans include the design and construction of new architectural and school bus service buildings located south of the existing football field. A new football field house is planned to be located off the east end of the football field. Paving and drainage design will be included to service these additions. To accomplish this, a partial boundary survey to locate and delineate the south boundary line of the school property will be necessary along with location of any easements that may affect the area of planned improvements. A limited topographic survey to locate utilities, structures and various ground features will be necessary for design purposes.

² Section 2254 005, Government Code