



# Oregon

State Board of Examiners for  
Engineering & Land Surveying  
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Minutes of Meeting  
May 12, 2009

## **CALL TO ORDER**

President Laszlo called the meeting to order at 9:00 a.m. in the conference room of the Oregon State Board of Examiners for Engineering and Land Surveying (OSBEELS) office at 670 Hawthorne Avenue, SE Suite 220, Salem, Oregon 97301.

## **Members Present:**

Susanna Laszlo  
Edward Butts  
Grant Davis  
Ken Hoffine  
Mari Kramer  
Dan Linscheid  
Susan Newstetter  
Carl Tappert  
Amin Wahab (excused absence at 1:00 p.m.)  
John Seward (excused absence)

## **Visitors Present:**

Michael Hardy, PE, Professional Engineers of Oregon (PEO) Liaison  
Gary Anderson, PLS, Professional Land Surveyors of Oregon (PLSO) Liaison  
Bob Neathamer, PLS  
Chuck Pearson, PLS  
Quentin Smith

## **Others Present:**

Mari Lopez, OSBEELS Executive Secretary  
Jenn Gilbert, OSBEELS Executive Assistant  
Allen McCartt, OSBEELS Investigator  
James R. (JR) Wilkinson, OSBEELS Investigator  
Katharine Lozano, Assistant Attorney General  
Joanna Tucker-Davis, Assistant Attorney General (excused absence)

## **APPROVAL OF AGENDA**

It was moved and seconded (Butts/Davis) to approve the agenda. The motion passed unanimously.

## **APPROVAL OF MINUTES**

It was moved and seconded (Davis/Butts) to approve the minutes of the March 10, 2009 Board Meeting. The motion passed unanimously.

It was moved and seconded (Tappert/Wahab) to approve the minutes of the April 15, 2009

Special Meeting. The motion passed unanimously.

## **PUBLIC INPUT**

President Laszlo welcomed the guests and requested them to introduce themselves. Michael Hardy, PE, representative from the Professional Engineers of Oregon (PEO) was in attendance to observe the meeting. He had no matters to bring to the attention of the Board.

Chuck Pearson, PLS distributed a letter on behalf of the Oregon Association of County Engineers and Surveyors (OACES) as a result of discussions held during their regularly scheduled meetings. Mr. Pearson stated that the OACES members have concerns regarding the length of time it takes for complaints to progress through the OSBEELS law enforcement process. As a past board member, he also noted that this is not a new problem and an issue in which the Board he sat on did not have the answers at that time as well. President Laszlo informed him that the Board has budgeted for an additional Investigator position in the upcoming 2009 – 2011 biennial budget. Mr. Pearson also offered the assistance of the County Surveyors to improve the caseload.

Gary Anderson, PLS, introduced himself as a representative from the Professional Land Surveyors of Oregon (PLSO). Mr. Anderson briefly noted that PLSO shared the same concerns voiced by Mr. Pearson and also offered the assistance of PLSO. He also distributed photocopies of an article in *The Oregonian* related to the Willamette Stone and extended an invitation to celebrate the 50<sup>th</sup> anniversary of the PLSO.

Bob Neathamer was in attendance to report on the April 2009 Oregon Land Survey 4-hour Law examination.

## **EXECUTIVE SECRETARY'S REPORT**

### Committee Activities

Ms. Lopez reported that the Examinations and Qualifications (E&Q) Committee, External Relations Committee (ERC), Finance Committee, Law Enforcement Committee (LEC), Professional Practices Committee (PPC), and Rules and Regulations (R&R) Committee each met during the interim. Additionally, the LEC met for a second meeting by telephone on April 23<sup>rd</sup> to consider Albert Duble's request for reinstatement of registration. The committee minutes were included in the packets.

### Administrative Activities –

#### *Oregon Specific Examinations/ELSESES*

Ms. Lopez reported that the National Council of Examiners for Engineering and Surveying (NCEES) PE, PLS, FE, and FLS examinations took place at the Lane County Fairgrounds in Eugene on April 24<sup>th</sup> and 25<sup>th</sup>. Although OSBEELS did not participate in observing the ELSESES' administration, she noted that Jennifer Carmack and Matt Bryan, along with herself staffed the Oregon Specific Examinations. The Oregon Land Surveying 4-hour Law examination also took place at the Lane County Fairgrounds on April 25<sup>th</sup> and the Certified Water Right Examination (CWRE) took place in conference rooms, 124A and 124B, of the Water Resources Department, in Salem, on April 10<sup>th</sup>. She further reported the numbers of "No Shows" for the administered exams were: FE-54, PE-2, FLS-0, PLS-0, Oregon 4-hr Law-1, and CWRE-1. These numbers

also include examinees from test locations overseas. A total of 862 applicants were approved for the April exam administration.

Mr. Neathamer reported on the April 2009 Oregon Land Surveying 4-hour Law examination. Of the 23 examinees, 8 examinees obtained a passing score of 70 points or greater. He stated that staff sent a copy of the syllabus to individuals approved to take the examination to assist in preparation. The average passing score was 79 with the highest score of 94. Mr. Neathamer further informed the Board that staff sent the syllabus to those applicants approved for the examination as a study guide. Ms. Newstetter stated that it appeared those who prepared were successful. He also noted that in accordance with Oregon Administrative Rule (OAR) 820-010-0470(1), none of the remaining 15 examinees are able to review their examination.

Mr. Linscheid informed the Board of comments he heard about possible bias regarding the scoring and grading of the exam. Mr. Neathamer answered that the volunteers are comprised of 4 professors from the Oregon Institute of Technology (OIT) and 3 other professional land surveyors in private practice that he believes would have no reason for bias. He also noted that effective with the Fall 2009 examination administration, volunteers would not be able to determine the individual that corresponded with the exam being graded. Mr. Linscheid stated that he did direct this individual to submit his concerns to the Board. Staff informed the members that no such complaint has been received.

#### *Registration*

Ms. Lopez briefly reported that annual renewal activity for June is underway. Staff mailed approximately 4,000 courtesy reminders in the first week of April.

#### *2009 Western Zone Meeting*

As of this date, Ms. Lopez stated that the following individuals will represent OSBEELS at the 2009 Western Zone Meeting in Banff, Alberta, Canada: Sue Laszlo, Grant Davis, Dan Linscheid, Amin Wahab and herself. She also added that information was contained in the packet regarding a request from the members of the Idaho Board for support of David Curtis, PE for Western Zone Secretary/Treasurer. A brief discussion was held on how the Board would like to handle these matters. It was moved and seconded (Hoffine/Tappert) to authorize the voting on behalf of the Board to the attendees of the out-of-state meeting. The motion passed unanimously.

#### *NCEES 88<sup>th</sup> Annual Meeting*

Ms. Lopez informed the members that arrangements have been made for the NCEES conference on August 12-15, 2009 held in Louisville, KY at the Louisville Marriott Downtown. Funded Delegate notification response is needed by June 5<sup>th</sup>. The NCEES will pay the travel expenses of one voting delegate from each Member Board to attend the Annual Meeting. Grant Davis and Sue Newstetter voiced interest in attending the meeting.

Additionally, information in the packets included a request from the members of the West Virginia Board for consideration of Leonard "Joe" Timms, Jr., PE for NCEES President-Elect. The members of the South Carolina Board also respectfully requested support of Gene Dinkins, PE, PLS for NCEES Treasurer.

### *House Bill 2457*

Ms. Lopez reported that she attended a hearing on April 13<sup>th</sup> on behalf of OSBEELS with Dan Linscheid in opposition of this Bill without success. On May 6<sup>th</sup>, the House recommended a do pass with amendments. However, on May 7<sup>th</sup> the rule was suspended with a second reading. Mr. Hardy requested that Ms. Lopez and President Laszlo to elaborate on this bill during their upcoming presentation for PEO, along with the importance of support from the associations during legislative sessions.

### *Office of the Governor*

Ms. Lopez reported that she attended a meeting with Danny Santos, Senior Policy Advisor at his request on April 20<sup>th</sup>. The purpose of this meeting was to update Mr. Santos on legislation that OSBEELS is tracking.

### *Engineers Night*

Engineers Night was held on April 21<sup>st</sup> at Chemeketa Community College. Ms. Lopez reported that she attended the event with Jennifer Carmack, Amelia Volker, and Dan Linscheid. A table was made available for OSBEELS to set out information regarding the pathways of licensure for Engineering and Land Surveying. NCEES assisted in providing brochures, posters and promotional items. The event was a great success!

### *Professional Engineers of Oregon (PEO)*

Ms. Lopez reported that she is scheduled to represent the Board, with Sue Laszlo, on May 15<sup>th</sup> in Corvallis at the Oregon State University (OSU) to update PEO on the recent Board activities.

### *Professional Land Surveyors of Oregon (PLSO) – Midwest Chapter*

Ms. Lopez reported that JR Wilkinson is scheduled to speak about the Board's law enforcement process and the OAR Chapter 820, Division 20 Code of Professional Conduct requirements on June 8<sup>th</sup> in Springfield at the Springfield Country Club.

### *OSBEELS' Legislation*

Ms. Lopez reported that a hearing (Business and Labor Committee) has been scheduled for Friday, May 15<sup>th</sup> concerning OSBEELS sponsored legislation (SB 142, SB 143, and SB 144). Sue Laszlo, Dan Linscheid, and Grant Davis will join her in presenting testimony.

### *Senate Bill 274 A and House Bill 3373*

*SB 274 A* – Ms. Lopez reported that the work session was postponed from April 17<sup>th</sup> to April 20<sup>th</sup> due to unfinished paperwork. From her observation of the work session on April 20<sup>th</sup>, she reported that the Senate adopted the dash-4 amendment during the session. Senator Prozanski explained that the purpose of removing the Secretary State from section 10 was due to the fact that the agency does conduct administrative hearings broadly for many individuals. Therefore, the Judiciary Committee believes that the Secretary of State should operate under the same administrative laws and rules that other Agencies, Commissions, and Boards must abide. Additionally, Senator Prozanski noted that the intent of SB 274 is to make clear that the work of an Administrative Law Judge(s) (ALJ), Chief Judge, as well as the Office of Administrative Hearings (OAH) should not to be interfered with and can be independent with that particular purpose. It is also understood and expected that OAH will continue to be housed with the

Employment Department and that the Employment Department will maintain oversight, billings processes, and any administrative costs required. Senator Prozanski stipulated that OAH will not become an Independent Agency. On April 24<sup>th</sup>, the Senate recommended a do pass with amendments (Printed A-Eng.). A second reading occurred on April 27<sup>th</sup> and on April 28<sup>th</sup> SB 274 A passed the Senate Chambers. A hearing (Judiciary Committee) has been scheduled for Wednesday, May 13<sup>th</sup>, at 1:00 p.m. in Room 357.

AAG Lozano explained that the Board has two real concerns with SB 274 A: the evidentiary standards and the possible fiscal impact. She further explained that to overturn a finding of historical fact, the amendments in SB 274 A change to a much higher standard of clear and convincing evidence, which will be difficult, especially when highly technical fields such as engineering and land surveying are involved. These fields incorporate very complex mathematical and science concepts. This in turn could increase expenses for the Board to retain expert witnesses for their expertise with engineering plans and reports, as well as survey maps and reports and those related to photogrammetric mapping as well as their need to educate the ALJs on the finer points of very complex and technical fields.

President Laszlo and Dan Linscheid volunteered to testify on behalf of the Board pending their outside schedules.

Ms. Lopez stated that there has been no movement on HB 3373.

#### *Board Vacancies*

Ms. Lopez briefly reported that the Board has yet to fill the engineer position that was vacated by George Gross and no replacement has been found for Sue Laszlo's position. Information regarding the Board vacancies will be presented during the PEO presentation.

#### *Staffing*

Ms. Lopez informed the Board that Shantelle Meyer resigned on April 14, 2009 from the Information Coordinator position. Recruitment for this position will begin this month. She further informed the Board that since Ms. Meyer was the staff authorized by the Board to retain the Board's debit card and to act as the alternate authorized signatory to sign checks, she recommended that Jennifer Carmack assume this responsibility as of May 12, 2009. It was moved and seconded (Kramer/Davis) to authorize Ms. Carmack to retain the Board's debit card and act as the alternate signatory to the Board's checking account. The motion passed unanimously.

She further noted that Jenn Gilbert returned to work full time on May 4, 2009. During the time Ms. Meyer and Ms. Gilbert were on maternity leave, Ms. Lopez reported that she prepared and signed expense checks for the Board. However, President Laszlo continued to review all checks.

### **PRESIDENT'S REPORT**

President Laszlo confirmed, as a follow up to a discussion held during the March Board meeting, that the Board as a Semi-Independent Agency, was excluded in the February 27, 2009 Cost Reduction Directives implemented by the Department of Administrative Services (DAS).

President Laszlo included a few friendly reminders in her last President's Report, that included:

- To be conscientious of offline discussions, keeping in mind the rules of Public Meetings, whether by telephone or email;
- To keep Ms. Lopez aware of the activities and discussions regarding Board matters; and
- To request permission from Ms. Lopez prior to utilizing the services of the AAG for Board activities.

Additionally, she stated that if a Board member receives inquiries related to the Board, the Board member should discuss the matter with Ms. Lopez. Since Ms. Lopez is a member of OSBEELS staff and Board members are transient, she often has historical information that may provide additional insight to answering inquiries. Furthermore, President Laszlo noted that when Board members function as advocates for the Board and their respective profession, employer, or association instead of one or the other, groups can work collaboratively to benefit all parties.

Finally, President Laszlo noted that she experienced slight difficulties in assisting an individual with completing the PE application. She recommended placing the deadlines for applications in a more conspicuous area on the new Web site.

## **EXAMINATIONS AND QUALIFICATIONS COMMITTEE**

Ms. Kramer reported that the Examinations and Qualifications Committee met on April 10, 2009 to discuss the matters contained in the Committee minutes. A brief discussion was held regarding correspondence and/or inquiries received from NCEES that require Board or Committee action within a given timeframe. Unfortunately, due to the timing of Board and committee meetings, deadlines to answer these inquiries can not always be met. Therefore, it was determined that Ms. Lopez should use her discretion in correspondence regarding NCEES matters that require Board judgment. However, if there is an NCEES matter that requires Board action, Ms. Lopez will call a Special Meeting of the Board.

### Licensure

*Comity Applications* – Mr. Butts directed the members' attention to the list of 69 professional engineer applicants for licensure by Comity. It was moved and seconded (Kramer/Butts) to approve the list of 69 professional engineer applicants as presented. The motion passed unanimously.

*First Registration Applications* – Mr. Butts directed the members' attention to the applicant seeking registration based on examination in another jurisdiction or by NCEES. It was moved and seconded (Kramer/Butts) to approve the applicant as presented. The motion passed unanimously.

*Applications by Prior Practice* – Mr. Butts directed the members' attention to the 7 applicants seeking Geotechnical registration by prior practice. It was moved and seconded (Kramer/Wahab) to approve the 7 applicants as presented. The motion passed unanimously.

## **EXTERNAL RELATIONS COMMITTEE**

Ms. Kramer reported that the External Relations Committee met on April 10, 2009, to discuss the matters as contained in the Committee minutes. It was noted that the electronic version of the *Oregon Examiner* may take longer to download if an individual has a dial-up connection.

However, hard copies are still mailed to individuals upon request. Additional discussion was held regarding the Spring edition. Due to the position vacated by Shantelle Meyer, Mr. Butts volunteered to write articles for the Spring edition. Additionally, it was moved and seconded (Kramer/Hoffine) that the next edition to be distributed will take place during the Summer. The motion passed unanimously.

### **FINANCE COMMITTEE**

Mr. Tappert reported that the Finance Committee met on April 10, 2009, to discuss the matters contained in the Committee minutes. Additional discussion was held regarding the line item considered as a contingency for business continuity. Ms. Newstetter suggested that the Committee develop a policy statement for the use of that line item. She also noted that the dollar amount may not be sufficient in the case of a true emergency. Staff will contact DAS Risk Management or the Secretary of State Audits Division for additional assistance and information regarding a policy for this fund and the appropriate designation for this line item. After discussion, it was moved and seconded (Butts/Hoffine) to investigate the limitations of the fund and to create a policy for the use of the funds. The motion passed unanimously.

Furthermore, a discussion was held regarding the \$150.00 from NCEES for miscellaneous expenses incurred by a funded delegate. It was determined that the money should be deposited with the Board's funds to support the expenses for all delegates from the Board. The Committee will draft a policy during the next meeting.

Additionally, Mr. Butts requested that a Balance Sheet be included for review in future Board packets.

### **LAW ENFORCEMENT COMMITTEE**

Mr. Linscheid reported that the Law Enforcement Committee met on April 9, 2009, to discuss the following matters:

#### Informal Conferences

##### *2479 – Daniel Landry*

Mr. Linscheid reported that the respondent Daniel Landry and his attorney Danny Hitt met with the Committee in an informal conference to discuss a Notice of Intent (NOI) to Assess a \$1,000 Civil Penalty for Mr. Landry's use of the title of "Supervising Engineer" without registration violating ORS 672.007(1)(a),(c) and ORS 672.045(2). Mr. Landry was identified as a "Supervising Engineer" in a letter to the Oregon Department of Environmental Quality (DEQ) and on his former firm's Web site. Mr. Linscheid noted that the Committee and the respondent debated whether or not his work was the practice of engineering. However, that determination was not important in light of the unregistered use of the title. Other Committee members observed that Mr. Landry was in a difficult position because he had corrected the title and modified the Web site prior to a business merger and therefore was in compliance. After the merger, the violations reappeared outside of Mr. Landry's control. The Committee also recognized Mr. Landry was concerned about any disciplinary action affecting his prospect for future licensure. The Committee reached a settlement agreement wherein Mr. Landry admitted to the violations, but due to his actions to correct the matter the Committee agreed to no

disciplinary action. It was moved and seconded (Linscheid/Hoffine) for the Board President to sign the Landry settlement agreement. The motion passed unanimously.

#### *2472 – Donald Porior*

Mr. Linscheid reported that the respondent Donald Porior, PE, PLS, and his attorney Benjamin M. Bloom met with the Committee in an informal conference to discuss a Notice of Intent (NOI) to Revoke Registration and Assess a \$7,000 Civil Penalty for Mr. Porior signing and sealing a certificate of completion for the local building department stating he had observed construction of a retaining wall per his design. He recommended approval in October 2005. The home was constructed, but the wall failed causing property damage in December 2005. Afterwards, Mr. Porior wrote his client stating that the wall had not been constructed to his design, that he had not observed construction, and that he should have not recommended approval. Mr. Linscheid stated that Mr. Porior was negligent in his observation and verification and was untruthful in his engineering statements violating ORS 672.200(2), (4); OAR 820-020-0015(1), (2); and OAR 820-020-0025(1). Other Committee members confirmed that Mr. Porior understood the seriousness of the matter and had paid for the mistake through a civil lawsuit.

The Committee reached a settlement agreement wherein Mr. Porior would be suspended from the practice of engineering for 180-days from June 1, 2009, until November 28, 2009. However, he can continue to practice as a professional land surveyor during the suspension. In addition, Mr. Porior would pay a reduced civil penalty of \$2,000 because the Committee found that Mr. Porior analyzed and used standard details that were applicable to the project. He had properly sealed and signed five designs. Mr. Porior also met the two conditions established by the Committee: he provided the Board with a list of his clients that would be affected by his suspension and he identified the engineer of record that would be in responsible charge during the suspension period. It was moved and seconded (Linscheid/Davis) for the Board President to sign the Porior settlement agreement. The motion passed unanimously.

#### *2443 – Edward Wood*

Mr. Linscheid reported that the respondent Edward Wood, PE, met with the Committee in an informal conference to discuss a Notice of Intent (NOI) to Revoke Registration and Assess a \$5,000 Civil Penalty for Mr. Wood submitting incompetent engineering designs that were not safe for public health, property, and welfare. Mr. Wood sealed and signed sets of plans and calculations for a winery, but plans reviewers discovered design problems. Mr. Wood was unable to correct the problems before the client removed him from the project. Regardless, the design problems were evaluated by Committee member Grant Davis who reported to the Board the significance of the deficiencies. Mr. Davis continued that the Committee agreed to allow Mr. Wood a second opportunity to review his design and calculations and to respond to the issues raised by Mr. Davis' review. Mr. Wood will meet in an informal conference with the Committee during the June meeting to discuss his response.

### Cases Reviewed

#### *2476 – Bruce Goldson / Justy Papst*

Mr. Linscheid reported that the respondent Bruce Goldson originally was issued a Notice of Intent to Assess a \$1,000 Civil Penalty for failing to provide a right of entry notice to

complainant Justy Papst violating ORS 672.045. Despite requests during the investigation for relevant documentation, Mr. Goldson waited to provide documentation to investigators when he was scheduled to meet with the Committee. The document evidenced that notice was given to the property owner by an agent of Mr. Goldson, so compliance was met regarding proper notice. However upon further discussion, Mr. Goldson was found to be uncooperative with the Board by not providing the documentation when requested during the investigation. In addition, Mr. Goldson attempted to place responsibility for providing notice on other registrants who are in his employ. Through these acts and as a result of the March Board discussion, the Board came to believe he was uncooperative. Therefore, Mr. Linscheid reported that the Committee directed staff to issue Mr. Goldson a Notice of Intent to Assess a \$1,000 Civil Penalty for failing to cooperate with the Board violating OAR 820-020-0015(8).

*2480 – Abraham Taylor / Joseph Petrotta*

Mr. Linscheid reported that the respondent Abraham Taylor, PLS, was issued a Notice of Intent to Assess a \$1,000 Civil Penalty for incompetence or negligence in the practice of surveying violating ORS 209.250(1), ORS 672.200(2), and OAR 820-020-0015(1), (2). Mr. Taylor conducted a corner search for an adjoining neighbor of complainant Joseph Petrotta to verify whether Mr. Petrotta was reconstructing the fence in the correct location. Mr. Taylor set a stake to mark the approximate location of the northeast property line because the front corner monument was no longer recoverable. Mr. Petrotta constructed the fence to the point staked by Mr. Taylor. In a report to his client, Mr. Taylor recommended a high precision survey prior to any investment that would require an exact property corner location. Mr. Taylor informed his client that the stake set at the approximate northeast lot corner is likely within +/- 0.5 feet of where a high precision survey would determine the true corner to fall.

It was noted that the NOI was issued because of Mr. Taylor's failure to uphold the professional practice of land surveying by not properly monumenting the property corner. He continued that land surveying is a service to the public, particularly in a situation where there is a known conflict over a boundary. It was also asserted that Mr. Taylor failed his professional duty by only informing his client of the survey's limitations and not Mr. Petrotta. It was also observed that a professional land surveyor in setting a hub, lath, or metal rod that is within 5.0 feet or 0.05 feet of the true property corner is representing that point on the face of the earth as the property corner. Whether terming the work as "high precision" or "low precision," Mr. Taylor engaged in the practice of land surveying and established a property corner, which requires the filing of a map of survey. It was concluded that Mr. Taylor failed his standard of care.

A discussion was then held regarding the broader issues of monuments under ORS 209, high precision and low precision surveys, and filing of maps of survey. Board members exchanged perspectives on options to begin a surveying community dialogue about potential rules that would guide professionals in their application of a standard of care. Support was expressed for publishing an article in the newsletter and working with the PLSO to determine if consensus could define a standard of care since it is currently not defined by rule.

Mr. Neathamer noted that this dialogue has been occurring among professionals for some time. He added that professional land surveyors who engage in a "low precision" survey do so because the client asked. However, he disagreed with the practice because land surveying is not a client

driven process, but one driven by mandates set in statute and rule. The client wants their boundaries determined and surveyed. The filing requirement for a map of survey, however, begins by statute with the act of setting a monument. He observed that past discussions ended with the definition of a monument. He encouraged the working relationship between OSBEELS and PLSO about the dialogue. He concluded by reminding the Board that the filed map of survey is the only way the public can gain documented knowledge about the survey and the techniques used to establish the boundary line.

#### *2546 – Douglas McMahn / Roger Roberts*

Mr. Linscheid reported that the respondent Douglas McMahan, PLS, was issued a Notice of Intent to Assess a \$9,000 Civil Penalty for failing to file nine maps of survey violating ORS 209.250(1). He explained that the respondent had entered into a settlement agreement with the Board to close law enforcement case number 2290 on March 9, 2004. Mr. McMahan was suspended for one year and assessed a \$43,000 civil penalty. However, the civil penalty was abated to \$21,000 if he complied with the terms of the settlement. Significant to the discussion was a settlement clause that if the Board notifies Mr. McMahan of any other survey monuments that were discovered and not identified in the settlement agreement, then McMahan would have 45-days to complete and file the survey.

When complainant Roger Roberts submitted the complaint, the Board notified McMahan who filed the surveys. Board investigator Allen McCartt confirmed the nine unrecorded surveys were from the 2290 settlement agreement time period. AAG Lozano explained that the 2290 settlement required Mr. McMahan to file the nine surveys once he had been notified. Since he filed the surveys, the Board could not seek the abated amount or revoke his registration. Had the surveys not been from that time period, or had he not complied by filing the surveys then Mr. McMahan would stand in violation of the 2290 settlement agreement and revocation would be a possible disciplinary action. However, Mr. McMahan complied and the settlement agreement remains intact. Regardless of the 2290 agreement, Mr. McMahan is being assessed a \$9,000 civil penalty for failing to file the maps of survey.

#### New Business

##### *David Krumbein, P.E., P.L.S., C.W.R.E.*

Mr. Linscheid reported that the Board received a communication from the Oregon Water Resources Department (WRD) regarding David Krumbein, PLS, PE, CWRE. The WRD wrote that Mr. Krumbein prepared a Claim of Beneficial Use (COBU) for his client and submitted it to the WRD. However, he used the incorrect form. The WRD returned the COBU to Mr. Krumbein for correction, but it was not resubmitted and his client inquired with WRD about its fate. Mr. Linscheid informed the Board that it appeared Mr. Krumbein failed his PE/PLS standard of care duty as a certified water right examiner (CWRE), so the Committee determined to open a law enforcement case against Mr. Krumbein. He continued that the Board does not have rules for solely disciplining a CWRE and suggested the matter be referred to the Rules and Regulations Committee.

AAG Lozano initiated a discussion about the statutes and rules that govern the practice of a certified water right examiner (CWRE) and the responsibilities of the WRD and the Board. She

explained that the WRD empowered the Board with CWRE certification by OAR 690-014-0050, which also stated “OSBEELS rules found in OAR chapter 820 apply.” In addition, OAR 690-014-0080 allowed the Board to decertify a CWRE certificate “for violation of OAR chapter 690, division 14 rules or violation of OAR chapter 820 rules.” She observed that the Board is the enforcement arm for WRD on water right examiners by virtue of OAR 690, but the Board does not have OAR 820 rules to implement the OAR 690 authorization. The question for the Board is how much of that authority does the Board want or need to enforce compliance.

The Board has held previous discussions with representatives from the Governor’s regulatory streamlining agency in an attempt to resolve the patchwork of statute and rules that govern the CWRE practice. It requires a change in the WRD statute. Until that occurs, however, the Board should consider adopting rules for CWRE law enforcement actions under the Board’s authority. The authority has been granted to the Board by WRD under OAR 690; the Board needs to clarify the law enforcement process by OAR 820 rulemaking.

AAG Lozano continued that under the current regulatory scheme, there is no way to suspend or revoke a CWRE certificate without also affecting other registrations. As a result, a revocation of the certificate to practice water right examinations also becomes revocation of their professional registration(s). Further compounding the challenge is that registered geologists are eligible to become a CWRE. The Board does not have the authority to revoke a geologist, but it is within the purview of the Board to take disciplinary action against registered geologists for CWRE violations. She noted these issues raised difficult policy questions.

The members agreed that CWRE enforcement is a public health and safety issue that is not being addressed. Further discussions lead to a suggestion to adopt a rule that would revoke a CWRE certificate, but not affect the other registrations. It was moved and seconded (Hoffine/Tappert) to open discussion to determine whether there was consensus to provide for sanctioning of a CWRE by OAR 820 rulemaking. The motion passed unanimously.

The discussion revealed that the Board has received renewal and application fees from approximately 400 CWRE registrants. While this is the first complaint regarding a CWRE, water is becoming a more contentious issue and the Board likely will see an increase in CWRE complaints. It was asserted that the issue goes beyond being a professional land surveyor or engineer. Allegations involving a CWRE are tied to water law and to the WRD. Mr. Butts perceived that the WRD employ the staff who can interpret water law and rules to identify the violations, which are mainly administrative in nature. It was also commented that from a practical standpoint, the WRD are the water experts and would need to detail the violations as part of the complaint. The Board could decide to investigate based on a rule requiring such information to be made part of the complaint. This would require WRD involvement since they interpret water law and set the standard of care for water right applications. It is not uncommon for WRD to reject an application. It was also observed that it is an interpretative process.

The discussion turned to processing complaints that may come from the public about water right examiners. If WRD sends the Board a complaint dossier with an interpretation of the statute and rules, some public members may see the WRD in conflict because they issued, or did not, the water right permits. For example, WRD issued a permit and a neighbor believes it has done

harm then it is likely the neighbor would not go to WRD about their complaint. However, the issue is not about the permit, which had already been approved, but about the CWRE who prepared the water right application. The harm is to the person who asked the CWRE to submit the application. It was moved and seconded (Davis/Tappert) to send the matter to the Rules and Regulations Committee to review and report back to the Board. The motion passed unanimously.

*Dennis S. Nelson, P.E.*

Mr. Linscheid reported that the Board received a communication from Dennis S. Nelson, PE, of Eau Claire, WI, regarding an investigation by the West Virginia Board of Registration for Professional Engineers. Mr. Nelson was contacted by the WV Board about his design calculations for a roofing system and it took longer for him to present his safe design than the WV Board allowed. Mr. Nelson was issued a fine and the registration boards of Wisconsin, Oklahoma, and Ohio took action against him for failing to notify them of the WV action. The Committee found that Mr. Nelson notified the Board as required. Furthermore, OAR 820-020-0015(6) requires the revocation or suspension of the license of a registrant in another jurisdiction. In this case, Mr. Nelson paid a fine to WV, which does not rise to a level required by OAR 820-020-0015(6). The Committee determined not to open a law enforcement case.

*Colorado ILC Services, LLC*

Mr. Linscheid reported that he submitted an inquiry regarding the surveying services offered by Colorado ILC Services, LLC. Board investigators found that they limited their services to only Colorado. The Committee determined there were no violations.

*Right of Entry and Romey Ware article*

Mr. Linscheid reported that he had received notification that Douglas County Surveyor Romey Ware wrote an article entitled "Right of Entry, Or Not?" for The Oregon Surveyor published by the PLSO. Mr. Ware noted in the article that the Committee has issued civil penalties against professional land surveyors for violating right of entry ORS 672.047. Mr. Linscheid worked with AAG Tucker-Davis to draft a response not done on behalf of the Board. The Committee discussed his response. After a short exchange about the articles, the Board agreed to invite Ware to the next Committee meeting in order to aid him in understanding the law enforcement process. Individual Board members agreed to work with Mr. Ware to schedule his attendance.

*Albert Duble*

Mr. Linscheid reported that the Committee met by teleconference on April 23, 2009, to discuss a proposed Notice of Intent to Refuse Restoration of Registration (NOI) for Albert Duble, PE, retired. Upon review, the Committee determined to not issue the NOI. Rather, Mr. Duble must submit qualified CPD hours and successfully pass the take-home examination on the laws and rules in Oregon. Upon receipt of proper payment and paperwork, the Committee would recommend restoration of his registration. The Board reviewed the Committee terms offered to Duble in a draft letter and made edits. It was moved and seconded (Linscheid/Tappert) to send the letter as amended. The motion passed unanimously.

Unfinished Business

2332 – Maurice Farr

Mr. Linscheid reported that the Committee was briefed on the status of the case by Board investigator JR Wilkinson. Maurice Farr, PE, PLS, was sent a letter requesting that he list his engineering activities. However, his response was inadequate and a second letter was sent soliciting the information. The Committee will be reviewing this case in June.

#### Expert Witness Applicant

*Paul Eckley, P.E.*

Mr. Linscheid reported that the Committee reviewed the Statement of Qualifications submitted by Paul Eckley, PE, in response to the Request for Qualifications (RFQ). Mr. Eckley met the requirements of the professional reviewer program. Mr. Butts declared a conflict and abstained from voting. It was moved and seconded (Linscheid/Tappert) to approve Eckley as a professional reviewer and expert witness. The motion passed.

*John Shaw, P.E.*

Mr. Linscheid reported that the Committee reviewed the Statement of Qualifications submitted by John Shaw, PE, in response to the RFQ. Mr. Shaw met the requirements of the professional reviewer program. It was moved and seconded (Linscheid/Butts) to approve Shaw as a professional reviewer and expert witness. The motion passed unanimously.

The Board briefly discussed the Cases Subject to Collections, Cases Subject to Monitoring, and Case Status. Mr. Linscheid noted that 13 complaints were received by the Board in March.

#### **PROFESSIONAL PRACTICES COMMITTEE**

Mr. Davis reported that the Professional Practices Committee met on April 10, 2009, to discuss the matters contained in the Committee minutes. Additional discussion was held regarding the Reference Manual for Building Officials. President Laszlo voiced her concerns over a few of the draft revisions as a result of her prior conversations with the Architect Board in developing the Manual. However, it was moved and seconded (Davis/Tappert) to submit the revisions as discussed and amended to the Architect Board. The motion passed unanimously.

#### **RULES AND REGULATIONS COMMITTEE**

Mr. Tappert reported that the Rules and Regulations Committee met on April 10, 2009, to discuss the matters contained in the Committee minutes. There was no further discussion.

However, action was taken by the Board on the following rules:

*OAR 820-010-0010 – Definitions*

It was moved and seconded (Tappert/Butts) to approve the rulemaking process to amend OAR 820-010-0010 – Definitions. The motion passed unanimously.

*OAR 820-010-0230 – Information to be Furnished by Professional Engineer Applicants*

It was moved and seconded (Tappert/Kramer) to approve the rulemaking process to amend OAR 820-010-0230 – Information to be Furnished by Professional Engineer Applicants. The motion passed unanimously.

*OAR 820-010-0300 – Refunds and Charges*

It was moved and seconded (Tappert/Davis) to approve the rulemaking process to amend OAR 820-010-0300 – Refunds and Charges. The motion passed unanimously.

*OAR 820-010-0465 – Application for Readmission to Examination*

It was moved and seconded (Linscheid/Tappert) to approve the rulemaking process to amend OAR 820-010-0465 – Application for Readmission to Examination. The motion passed unanimously.

Rulemaking Hearing

Mr. Tappert reported that a Rulemaking Hearing was held at 1:30 p.m. in the Conference Room of the Board office. There were no individuals in attendance to present oral comments and no written comments were received.

It was moved and seconded (Butts/Tappert) to amend OAR 820-010-0325 – Budget. The motion passed unanimously.

It was moved and seconded (Linscheid/Tappert) to amend OAR 820-010-0635 – Continuing Professional Development. The motion passed unanimously.

It was moved and seconded (Linscheid/Tappert) to amend OAR 820-030-0060 – Filing Time and Place. The motion passed unanimously.

It was moved and seconded (Butts/Tappert) to amend OAR 820-040-0005 – Definitions. The motion passed unanimously.

**NEW BUSNIESS**

Mr. Davis requested the members to inform him of the committees that they wish to serve. However, changes would not be made until July, effective with the August committee meetings.

**ADJOURN**

The meeting was adjourned at 2:40 p.m.

## **NEXT MEETINGS**

### Next Board Meeting:

July 14, 2009

### Next Committee Meetings:

LAW ENFORCEMENT:	Thursday, June 11 <sup>h</sup> at 11:00 a.m.*
PROFESSIONAL PRACTICES:	Friday, June 12 <sup>th</sup> at 8:00 a.m.
RULES & REGULATIONS:	Friday, June 12 <sup>th</sup> at 9:00 a.m.
EXAMINATIONS & QUALIFICATIONS:	Friday, June 12 <sup>th</sup> at 11:00 a.m.**
FINANCE:	Friday, June 12 <sup>th</sup> at 1:00 p.m.
EXTERNAL RELATIONS:	Friday, June 12 <sup>th</sup> at 2:00 p.m.

\* The 11:00 a.m. time on 6/9/2009 for the LEC is tentative. Depending on the schedule of informal conferences, the LEC may meet earlier or later in the afternoon.

\*\* An Informal Hearing for the Examinations and Qualifications Committee is scheduled for 10:00 a.m. on Friday, June 12, 2009.