



# Oregon

State Board of Examiners for  
Engineering & Land Surveying  
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Minutes of Meeting  
January 11, 2011

## **CALL TO ORDER**

President Davis 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:**

Grant Davis  
James Doane  
Ken Hoffine  
Dan Linscheid  
Carl Tappert  
Sue Newstetter  
John Seward  
Amin Wahab  
Mari Kramer (arrived at 10:20 a.m.)  
Edward Butts (arrived at 10:45 a.m.)

## **Visitors Present:**

Mark Mayer, PLS, Professional Land Surveyors of Oregon Liaison  
Wesley Hill, Attorney, Martinis & Hill Attorneys at Law  
Jim Griffis, PLS  
Ken Roley, PE, MECOP/CECOP Representative  
Gary Petersen, MECOP/CECOP Representative

## **Others Present:**

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

## **APPROVAL OF AGENDA**

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

## **APPROVAL OF MINUTES**

President Davis noted that the date was incorrect in relation to the summary of the Joint Compliance Committee; the date should read December 15, 2009. It was moved and seconded (Tappert/Seward) to approve the minutes of the November 9, 2010 Board Meeting as amended. The motion passed unanimously.

## **PUBLIC INPUT**

Ken Roley with the City of Salem Public Works Department and a Board Member with the Multiple Engineering Cooperative Program (MECOP) addressed the Board with an update regarding MECOP. A few years ago, MECOP members made a presentation requesting the Board to revise the Oregon Administrative Rules (OARs) related to qualifying experience for entrance to the engineering examinations. Mr. Roley noted that MECOP/CECOP is very appreciative of the changes made at their request and further thought this would be a good opportunity to educate newer Board Members on the programs. He briefly reminded the Board members on the purpose and process of the industry driven program. Ms. Lopez commented that, although very low, there are a small percent of applicants who participated in the MECOP/CECOP program that did not obtain experience under the supervision and control of a professional engineer or professional land surveyor, thus lacking a verifiable reference. Mr. Roley noted that the participants and mentors are made aware of the requirement for obtaining experience and thanked her for the feedback.

## **October 2010 Oregon Specific Land Surveying Examination Report**

In the absence of Mr. Neathamer, Jim Griffis, PLS was in attendance to present the annual report related to the Oregon Specific Land Surveying Examination. In Mr. Neathamer's report, he requested the Board approve Mr. Griffis as the alternate liaison. After a brief discussion, it was determined to forward the request to the Examinations and Qualifications Committee for consideration.

## **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), Rules and Regulations (R&R) Committee, Standards of Land Surveying Practices, and the Board Member Search Committee each met during the interim. The Committee minutes were included in the packets.

### Administrative Activities

#### *Oregon Specific/National Council of Examiners for Engineering and Surveying (NCEES) Examinations*

The October 2010 Fundamentals of Engineering (FE), Fundamentals of Land Surveying (FLS), professional engineering (PE), and professional land surveying (PLS) examination results were distributed with the exception of the California Geotechnical and Washington Structural III examination results. Currently, staff is preparing for the April 2011 examinations. Mr. Seward inquired on the number of examinees for the October 2010 California Geotechnical examination; staff responded that there were 2 examinees.

#### *2011 Board Presidents Assembly*

Ms. Lopez noted that the 2011 Board Presidents Assembly is scheduled to be held from February 10<sup>th</sup> through February 12<sup>th</sup> in Atlanta, GA. President Davis and Ms. Lopez will attend this meeting.

### *2011 Western Zone Meeting*

Ms. Lopez reported that the 2011 Western Zone Meeting has been scheduled and will be held at the Davenport Hotel and Tower in Spokane, WA. The meeting will be held from May 26<sup>th</sup> through May 28<sup>th</sup>. President Davis will be the funded delegate and Mr. Linscheid, Ms. Newstetter, and Mr. Seward expressed interest in attending. Mr. Tappert will act as a back-up for the meeting.

### *Nomination for Treasurer of the NCEES*

Ms. Lopez briefly noted that the members of the Pennsylvania State Board respectfully request support of David H. Widmer, PLS for NCEES Treasurer. There was no further discussion.

### *Examination Agreements*

Ms. Lopez reported that no further progress has been made with the outstanding examination agreement with the Colonial States Board of Surveyor Registration (CSBSR) related to the photogrammetric mapping examination. She has been playing phone tag with Doyle Allen; however, a phone message left by Mr. Allen stated that there is concern on the behalf of CSBSR regarding the language not approved by the Board. Ms. Lopez stated that the language corresponds to NCEES examination and not the photogrammetric mapping examination. She will continue working with Mr. Allen. \* *After the lunch break, Ms. Lopez informally reported that she received a message from Mr. Allen relaying positive progress with relation to the examination agreement.*

### *Semi-independent Board Administrators (SIBA) Meeting*

Ms. Lopez briefly stated that a Semi-independent Board Administrator (SIBA) meeting is scheduled to be held on Tuesday, January 18<sup>th</sup> at the Optometry Board. No comments were made.

### *Professional Land Surveyors of Oregon (PLSO) Annual Conference*

Ms. Lopez reported that Mr. Wilkinson, Mr. McCartt, Ms. Gilbert will join her, along with Mr. Linscheid and Ms. Newstetter, in presentations at the Professional Land Surveyors of Oregon (PLSO) Annual Conference. Presentations will given regarding Law Enforcement and Professional Practices on January 19<sup>th</sup> and January 21<sup>st</sup> at the Salem Conference Center.

### *American Society of Civil Engineers (ASCE) – Capital Branch*

Ms. Lopez reported that she is scheduled to represent the Board, along with Mr. Wilkinson, on January 20<sup>th</sup> in Salem at Kwan's Original Cuisine to update the American Society of Civil Engineers (ASCE) on continuing professional development requirements, law enforcement, and various disciplines and their responsibilities. Mr. Linscheid expressed interest in participating and will join Ms. Lopez and Mr. Wilkinson.

### *Brown and Caldwell*

Ms. Lopez briefly stated that Ms. Gilbert will join her in representing the Board on February 2<sup>nd</sup> at the office of Brown and Caldwell on Macadam Avenue in Portland for a luncheon discussion. Discussion will be held regarding continuing professional development (CPD) requirements and when documents must be signed and sealed.

### *Board Vacancies*

A brief discussion was held regarding the process with the Governor's Office to fill Board

vacancies. The Governor's Office has yet to fill the position that was vacated by George Gross, PE in 2007 (Congressional District 3) and the terms for Mr. Butts and Ms. Kramer will end in June. Mr. Wahab stated that he was informed by an individual that an application was submitted to the Governor's Office. Ms. Lopez also informed the members that Chris Aldridge, RPP may be submitting an application as well. He would qualify as a public member appointment at this time since the Board's legislative concept has not yet been passed.

### *Staffing*

Ms. Lopez reported that the announcement for the Investigator position has been posted and 7 applications have been received to date. Additionally, the position vacated by Ms. Meyer has been updated and posted as well. This position is titled, Social and Communications Media Specialist.

**President Davis then took the Board into Executive Session as provided by Oregon Revised Statute (ORS) 192.660(2)(i) to discuss the annual evaluation of the Executive Secretary.**

**Upon returning to open session, it was noted that no action was taken during Executive Session.**

As a result of the discussion held in Executive Session to discuss the annual evaluation of Ms. Lopez, it was moved and seconded (Doane/Seward) as modified, with a step-increase effective July 1, 2011. Mr. Seward clarified that the "as modified" relates to the goals for the upcoming year. The motion passed with one opposition (Tappert). Mr. Seward further noted that the rationale for the July effective date corresponds to the beginning of the new biennium. It was moved and seconded (Seward/Hoffine) to revise the date for the evaluation of the Executive Secretary to be completed by July 1<sup>st</sup> of each year. The motion passed unanimously; the next evaluation will occur in July 2012.

### **PRESIDENT'S REPORT**

President Davis requested each committee to review its Mission, Functions, and Goals during the December meetings. He noted that the PPC and the LEC did not have a revised document. Ms. Newstetter informed President Davis that the PPC adjourned early due to the quorum requirement but will have the matter on the agenda for the February meeting. Mr. Linscheid noted that the LEC did not have any changes.

For informational purposes, President Davis shared what is anticipated to occur during the Board Presidents' Assembly (BPA) meeting he will attend in February. He stated that basically, the Committees of NCEES make a report to the Board Presidents in addition to the Board Presidents gathering to share information and discuss mutual topics of interest.

As a result of his inquiry on the activities of the Board, President Davis reported that he did receive some feedback from a few Board members. One was to go back to the self-introductions as a standard practice and courtesy to the public in attendance. Another comment he received related to the timing of the Board packets. He noted that the encrypted flash drives appeared to work well for the January Board packet of information.

President Davis informed the Board members of an invitation from the Professional Engineers of Oregon (PEO) to participate in Design Professional Day at the Capital on February 28, 2011. He stated that the purpose of the event is to make a presence at the Capital, identify bills before the Session begins to clarify any technical issues, and to provide access to the professionals. Mr. Seward also expressed his interest in participating in the event.

## **EXAMINATIONS AND QUALIFICATIONS COMMITTEE**

Mr. Butts reported that the E&Q Committee met on December 10, 2010 to discuss the matters contained in the Committee minutes. Additionally, discussion was held related to the following matters:

### Mission Statement

It was moved and seconded (Kramer/Linscheid) to approve the Mission Statement for the E&Q Committee as presented. The motion passed unanimously.

### LC1382 – Draft

The Board discussed the proposed response to Representative Thatcher in response to Legislative Concept (LC) 1382. After discussion, it was the consensus of the Board to send the response, but to address the fact that the Board does not approve schools, colleges, or university programs. This is conducted by the Accreditation Board for Engineering and Technology (ABET) and they are the recognized accreditor for college and university programs in applied science, computing, engineering, and technology. Additionally, Ms. Lopez will contact Representative Thatcher's office to promote further communication efforts.

### Registration

*Comity Applications* – Mr. Butts directed the members' attention to the list of 57 professional engineer applicants for registration by comity. It was moved and seconded (Butts/Linscheid) to approve the list of 57 professional engineer applicants as presented. The motion passed unanimously.

*1<sup>st</sup> Registration Applications* – Mr. Butts directed the members' attention to the applicant seeking 1<sup>st</sup> registration. It was moved and seconded (Butts/Wahab) to approve the applicant as presented. The motion passed unanimously.

## **EXTERNAL RELATIONS COMMITTEE**

Ms. Kramer reported that the ERC met on December 10, 2010, to discuss the matters as contained in the Committee minutes. Additional discussion was held by the Board regarding the following matters:

### Oregon Examiner –

#### *What is an Informal Conference*

It was moved and seconded (Kramer/Linscheid) to approve the article as presented. The motion passed unanimously.

#### *Am I Required to Maintain a Continuing Professional Development Organization Form?*

It was moved and seconded (Kramer/Newstetter) to approve the article as presented. The motion

passed unanimously.

#### Mission Statement

The Committee included goals to develop a presence on new social media, such as Facebook, Twitter, or by creating a blog. As a result of the discussion held, Board members will not engage in discussion or make comments to the social media individually. It was moved and seconded (Kramer/Newstetter) to approve the Mission Statement for the External Relations Committee as presented. The motion passed unanimously.

#### **FINANCE COMMITTEE**

Mr. Tappert reported that the Finance Committee met on December 10, 2010, to discuss the matters as contained in the Committee minutes. Additional discussion was held regarding the following matters:

#### Travel & Expenditure Reimbursement for Volunteers

It was moved and seconded (Tappert/Seward) to approve the policy as presented. The motion passed unanimously.

#### Mission Statement

It was moved and seconded (Tappert/Kramer) to approve the Mission Statement for the Finance Committee as presented. The motion passed unanimously.

#### *Finance Reports*

Members reviewed the Statement of Net Assets (Balance Sheet), Statement of Activities (Profit and Loss Statement), and Profit and Loss Budget Overview for the period of July 1, 2009 through September 30, 2010. This time period reflects the latest data received in bank statements for the 2009 – 2011 biennium.

#### **LAW ENFORCEMENT COMMITTEE**

Prior to reporting on the December 2010 LEC meeting, the Board held deliberation in accordance with ORS 192.690 with regard to law enforcement case #2465. Upon returning to open session, it was noted the Board took no action. However, it was moved and seconded (Newstetter/Tappert) to accept a revised Final Order drafted by AAG Joanna Tucker-Davis.

Mr. Linscheid reported that the LEC met on December 9, 2010, to discuss the following matters:

#### 2621 – Dennis C. Berlien / OSBEELS

Mr. Linscheid reported that the Committee met by teleconference in an informal conference with respondent Dennis Berlien, PE, to discuss a Notice of Intent to Suspend Registration and Assess a \$5,000 Civil Penalty (NOI) for violating ORS 672.200(4), OAR 820-010-0605, OAR 820-010-0635(1),(5), OAR 820-015-0026(1), OAR 820-020-0015(7),(8), and OAR 820-020-0025(1). Mr. Berlien signed his renewal form certifying he completed his CPD requirements, but failed to respond to letters related to his participation in an audit of his professional development hour (PDH) units. In addition, he did not submit a change of address to update his contact information. Mr. Linscheid informed the Board that Mr. Berlien submitted his CPD activities in response to the NOI and they were acceptable for meeting the requirements. Due to his failure to cooperate with

the audit and to change his address, the Committee offered a \$500 civil penalty. However, Mr. Berlien stressed his dire financial position and counter-offered a 90-day suspension of his registration in lieu of the civil penalty. The Committee accepted the offer. It was moved and seconded (Linscheid/Tappert) to approve the settlement agreement with Mr. Berlien. The motion passed unanimously.

2622 – Ronald T. Wharton / OSBEELS

Mr. Linscheid reported that the Committee met by teleconference in an informal conference with respondent Ronald Wharton, PE, to discuss a Notice of Intent to Assess a \$1,000 Civil Penalty (NOI) for violation of OAR 820-010-0605. Mr. Wharton failed to respond to letters related to his participation in a CPD audit of his PDH units. In addition, Mr. Wharton did not submit a change of address to update his contact information. Mr. Linscheid informed the Board that Mr. Wharton submitted his CPD activities in response to the NOI and they were acceptable for meeting the requirements. Due to his failure to cooperate with the audit because of a change of address issue, the Committee offered a \$500 civil penalty that was further negotiated to \$250. Mr. Hoffine added that the civil penalty was reduced because Mr. Wharton demonstrated a willingness to cooperate with the Board and he was sincere in his statements. It was moved and seconded (Linscheid/Tappert) to approve the settlement agreement with Mr. Wharton. The motion passed unanimously.

2626 – Thomas P. Swart / Mark Riggins

Mr. Linscheid reported that the Committee met in an informal conference with respondent Thomas Swart to discuss a Notice of Intent to Assess a \$1,000 Civil Penalty (NOI) for the unlicensed practice of land surveying in violation of ORS 672.007(2)(a),(c), ORS 672.025(1), and ORS 672.045(1),(2),(4) and to collect \$16,500 for failing to comply with the settlement agreement for law enforcement case #2494. Complainant Mark Riggins, Marion County Surveyor, alleged that Mr. Swart engaged in the unlicensed practice of surveying when he sealed and signed a partition plat that was submitted for filing. To settle #2494, the Board revoked Mr. Swart's registration to practice land surveying, but suspended the \$16,500 civil penalty conditioned upon him complying with the terms of the settlement agreement, particularly that he would transfer all pending work to another licensed land surveyor prior to his revocation. Mr. Linscheid informed the Board that Mr. Swart had not transferred the project to another surveyor and was therefore in violation of the settlement agreement. Mr. Swart entered into a settlement agreement to make \$50.00 per month payments until the \$17,500 civil penalty is paid. It was moved and seconded (Linscheid/Tappert) to approve the settlement agreement with Mr. Swart. The motion passed unanimously.

2631 – Geffory N. Adair / OSBEELS

Mr. Linscheid reported that the Committee met in an informal conference with respondent Geffory Adair, PLS, to discuss a Notice of Intent to Assess a \$3,000 Civil Penalty (NOI) for violations of OAR 820-010-0635(1),(5), OAR 820-015-0026, OAR 820-020-0015(7), and OAR 820-020-0025(1). In response to the CPD audit, Mr. Adair submitted a CPD Organizational Form, but provided no supporting documentation and later expressed confusion over what would qualify to support his claimed PDH units. Mr. Adair believed when renewing he had time to accrue the 30 PDH units, but realized while completing the forms that he did not have the necessary time. He reported the time as he had it and immediately attended two conferences in order to comply. However, the conferences were outside the audit time period. Mr. Adair agreed to a settlement

wherein the Board would dismiss the allegation regarding untruthful statements and Mr. Adair would pay a \$500 civil penalty for failing to meet the CPD requirements for the audit period. It was moved and seconded (Linscheid/Wahab) to approve the settlement agreement with Mr. Adair. The motion passed unanimously.

2633 – Ross A. Fenton / OSBEELS

Mr. Linscheid reported that the Committee reserved an opportunity to meet with respondent Ross Fenton, PE, to discuss a Notice of Intent to Assess a \$1,000 Civil Penalty (NOI) when he failed to cooperate with the audit for violation of OAR 820-020-0015(8). When Mr. Fenton responded to the audit request, he submitted 36.8 PDH units; however, he did not provide any supporting documentation. After not responding to further audit requests, his case was transfer to the Regulation Department. Mr. Fenton responded to a Board investigator with supporting documentation and stated he was confused about what qualified as documentation. His documentation met the CPD requirements upon review, but he failed to cooperate with the audit. The Committee issued the NOI. Mr. Fenton declined a hearing or informal conference and reiterated that he had submitted the required documentation. It was moved and seconded (Linscheid/Newstetter) to approve a Default Final Order for Mr. Fenton for failing to cooperate with the audit. The motion passed unanimously.

2606 – Martin D. Crouch / OSBEELS

Mr. Linscheid reported that the Committee met in a second informal conference with respondent Martin D. Crouch, PE, to discuss a Notice of Intent to Assess a \$1,000 Civil Penalty (NOI) for violating OAR 820-010-0635(1),(5), OAR 820-015-0026, OAR 820-020-0015(7), and OAR 820-020-0025(1). Mr. Crouch signed his renewal form certifying he had completed his CPD requirements. When audited, Mr. Crouch failed to provide PDH documentation and requested retirement. The Committee met with Mr. Crouch in a prior informal conference where his engineering practice and CPD efforts were discussed. As a result, the Committee reschedule him for another informal conference in order to review the documentation he could assemble. Upon review, the Committee determined that Mr. Crouch had exceeded the PDH requirements, but had failed to initially comply with the CPD requirements. A sanction was warranted. The Committee and Mr. Crouch had additional discussions about what would constitute acceptable training given his specialty and about his improved efforts at record keeping. It was moved and seconded (Linscheid/Tappert) to withdraw the NOI and to close the case as compliance met against Mr. Crouch. The motion passed unanimously.

2646 – David F. Welker / OSBEELS

Mr. Linscheid reported that the Committee met in a informal conference with respondent David F. Welker, PE, to discuss a Notice of Intent to Assess a \$2,000 Civil Penalty for violations of OAR 820-010-0635(1),(5), OAR 820-020-0015(7),(8), and OAR 820-020-0025. Mr. Welker signed his renewal form certifying he had completed his CPD requirements, but failed to respond to any audit letters. Mr. Welker explained that he failed to respond to the audit because he, along with forty others, were laid-off and escorted out of the building with nothing more that what they brought in that morning. He was unable to take his CPD records from his office. He added that he has been unemployed since January 2009 and could not maintain his Oregon registration. As a result, he decided to relinquish it and assumed he no longer needed to respond to Board inquiries. He apologized for his oversight and offered to pay a \$1,000 civil penalty for failing to keep records.

The Committee accepted the offer and would drop the allegation of untruthfulness. It was moved and seconded (Linscheid/Tappert) to approve the settlement agreement with Mr. Welker. The motion passed unanimously.

2637 – Patrick J. Lamb / OSBEELS

Mr. Linscheid reported that the Committee met with attorney Angela Franco Lucero for respondent Patrick Lamb, PE, who participated by teleconference from his Australia residence in an informal conference to discuss a Notice of Intent to Assess a \$1,000 Civil Penalty (NOI) for violations of OAR 820-010-0635(5) and OAR 820-020-0015(7). Mr. Lamb signed his renewal form certifying he had completed his CPD requirements. When audit, he submitted a CPD Organizational Form listing his PDH units, but failed to provide supporting documentation. Ms. Lucero noted that Mr. Lamb did not receive the letter requesting the supporting documentation until after the case was referred to the Committee. Once Mr. Lamb received the notice, he contacted his former employer because he gained his PDH units through in-house trainings. Copies of attendance records were secured to finally demonstrate compliance. In addition, she claimed the civil penalty would impose a financial hardship because his work was restricted due to medical reasons. The Committee informed Mr. Lamb that he has an option to place his registration into inactive or retired status if he not using his PE registration in Oregon. It was moved and seconded (Linscheid/Tappert) to withdraw the NOI against Mr. Lamb and close the case as compliance met. The motion passed unanimously.

**Committee Meeting**

2582 – Clint Air / OSBEELS

Mr. Linscheid reported the Committee discussed that respondent Clint Air mailed his resume along with a cover letter to several professional land surveying firms in Oregon. One of the recipients questioned if Mr. Air, a southern California resident, offered professional land surveying services by submitting his resume, seven letters of recommendation, and a rate table for a one-man and two-man field crew. The Committee weighed whether Mr. Air was holding himself out to be a land surveyor or whether he was seeking employment. The Committee noted that Mr. Air used the phrase “consulting services” and offered to do his own construction calculations. Mr. Air did not ask about employment or state that he was not a registered professional surveyor in Oregon. It appeared that he was making an offering of professional services. The Committee determined to issue Mr. Air a Notice of Intent to Assess a \$1,000 Civil Penalty for offering unlicensed professional services in violation of OAR 820-010-0720.

2583 – Shaun P. Fidler / OSBEELS

Mr. Linscheid reported the Committee discussed that respondent Shaun Fidler, PLS and President of Construction Mapping Team Inc. (CMT) was involved with Erik Esparza, PE, Principal of LanPacific, Inc., in law enforcement case #2534. During the #2534 investigation, questions arose whether Mr. Fidler aided or assisted Mr. Esparza in his unlawful practice of land surveying by contracting with and accepting projects through his company. As a result, case #2583 was opened against Mr. Fidler regarding violation of OAR 820-020-00045(5). During the informal conference for #2534, Mr. Fidler stated that he had not seen LanPacific’s Web site and that Mr. Esparza was solely responsible for the content of their Web site. The investigation showed there was no evidence that Mr. Fidler was aware of Mr. Esparza’s actions. It was moved and seconded

(Linscheid/Tappert) to close the case against Mr. Fidler as allegations unfounded. The motion passed unanimously.

2589 – Marcella M. Boyer / OSBEELS

Mr. Linscheid reported that the Committee discussed the case against respondent Marcella Boyer, PE especially qualified as a geotechnical engineer, was reviewed by the Joint Compliance Committee (JCC). OSBEELS and the Oregon Board of Geologist Examiners (OSBGE) established the JCC to review cases of overlapping practices of geotechnical engineering and engineering geology. In this instance, Ms. Boyer evaluated foundation bearing pressures that was coincident to a landslide that affected a 6,000 sq. ft. residence and a down slope lot and septic system. The investigation found that the geotechnical firm hired by the lot owner offered only testing services and not design services and that design recommendations had already been made by the time she was on site. The Committee concurred with the JCC that it was the responsibility of the lot developer to hire a geotechnical engineer of record who would be in responsible charge of earthwork and grading. Current code does not require that approach. It was moved and seconded (Linscheid/Tappert) to close the case against Ms. Boyer as allegations unfounded. The motion passed unanimously.

2590 – James D. Rodine / OSBEELS

Mr. Linscheid reported that the Committee discussed the case against respondent James Rodine, Registered Geologist (RG) and Certified Engineering Geologist (CEG), also was first reviewed by the JCC. The JCC noted that Rodine went beyond the CEG scope by designing two retaining walls and plans and calculations for a gazebo. The JCC referred the case to the Committee for resolution. However, Mr. Rodine conducted works on structures related to single-family residences and the LEC confronted the excepted structures definition under ORS 672.060(10). AAG Tucker-Davis had reminded the Committee that even if the Building Codes Division (BCD) requires an engineer for an excepted structure, ORS 672.002 to ORS 672.325 does not apply to unlicensed persons. Since Mr. Rodine is not a professional engineer, he is considered unlicensed.

The Committee held a lively debate regarding whether retaining walls are an accessory or are “annexed or belonging legally to some more important thing.” The statute specifically notes garages, barns, and sheds and there was no debate about the exception applying to the gazebo. The discussion continued, however, about how retaining walls differ from occupancy structures and that some retaining walls are not auxiliary, but are crucial to life, health, and property.

There was further consideration regarding Mr. Rodine’s communications with the City of Brookings. Under Brookings Ordinance Chapter 17.100.020D, a qualified geologist or certified engineer can prepare geologic reports under Chapter 17.100.060. However, Mr. Rodine argued with the City that Chapter 17.100.020D also qualified him to prepare engineering reports. The City of Brookings halted his work when they realized he had prepared engineering plans under Chapter 17.100.070. Chapter 17.100.070 requires plans to be prepared by a civil engineer. The LEC determined that a RG or CEG has not been examined as having the same qualifications to conduct work constituting the practice of engineering and that it was proper for the City of Brookings to stop Mr. Rodine’s engineering work. It was moved and seconded

(Linscheid/Tappert) to approve closing the case with a letter of concern to Mr. Rodine with a copy to the City of Brookings. The motion passed unanimously.

2612 – Steven G. Banton / Robert Mathias

Mr. Linscheid reported that the Committee discussed a complaint filed by City of Bend Building Official Robert Mathias against respondent Steven Banton, PE. Mr. Mathias alleged that Mr. Banton had not demonstrated “competency in the practice of structural engineering particularly in the area of designing code compliant wind and seismic lateral force resisting systems.” Mr. Banton was the engineer working under architect Gary Johansen to design a 5,894 sq. ft., wood-frame outpatient medical building. In addition, the City expressed concerns about two separate residential projects with engineering work by Mr. Banton. Due to initial questions regarding life and safety, the Committee assigned the case to professional reviewer Ed Tornberg, PE. The Committee met at different times with Mr. Tornberg and with Mr. Banton to discuss the case.

In addition, the Committee conducted a preliminary evaluation of a complaint that Mr. Banton filed against Mr. Mathias and two City of Bend plans examiners. The Committee found the City of Bend does not have engineers on staff and contract out for their engineering services. The City has the authority to go outside their organization to consult with an engineer if there are questions and, therefore, the City did nothing wrong that would rise to a level to warrant opening a case.

Regarding the complaint against Mr. Banton, the Committee noted that Mr. Tornberg found the preparation and submittal of documents was “incompetently executed,” but Mr. Banton’s “actions do not display glaring technical incompetence or negligence.” Mr. Tornberg also noted that the City was justified in making its complaint to the Board. However, the execution of engineering documents is not within the realm of technical competence as a violation of ORS Chapter 672 or OAR Chapter 820. It was moved and seconded (Linscheid/Tappert) to close the case against Mr. Banton with a letter of concern regarding execution of engineering documents. The motion passed unanimously.

2630 – Jack L. Watson / OSBEELS

Mr. Linscheid reported that the Committee discussed the case against respondent Jack Watson, PLS, with professional reviewer Evelyn Kalb, PLS, JD, who delivered her report to the Committee on December 1, 2010. The case was opened because of questions regarding the evidence Mr. Watson used to reestablish three original General Land Office (GLO) corners. Mr. Linscheid stated that Ms. Kalb met Investigator Wilkinson in John Day, OR, for field investigations and interviews. The field investigation was to include representatives of the U.S. Forest Service (USFS) and the Bureau of Land Management (BLM), but they declined to participate.

During the Committee meeting, Ms. Kalb noted one concern she had was that Mr. Watson provided a weak case for accepting scant evidence at these particular corners. However, she was unsure if these would rise to a sanction because some of the corners were set awhile ago and she has seen times in surveying where more evidence was required and where less evidence was required.

However, she expressed concern about USFS survey #1712 that Mr. Watson completed in 2004. She questioned whether Mr. Watson had conclusive evidence to overturn a section corner established by Howard Perry, PLS, in 1979. In addition, she thought there may be a conflict of interest regarding this survey. Mr. Watson conducted the survey for the brother of his partner Carl Stout, PLS. The Stout property was bordered by USFS property and Mr. Watson did not accept an established corner and proportioned his own thus realigning boundary lines to the apparent benefit of Mr. Stout. She explained that during the 1970s and 1980s surveyors were not accepting established corners due to a lack of evidence and then placing their own, but that is no longer acceptable especially in light of *Dykes v. Arnold*. Over time surveyors have come to accept established corners unless there is gross error or conclusive evidence is found of the original corner. Regardless, there was not enough evidence on the corners she evaluated to reach a professional opinion, but admitted concerns about survey #1712.

Mr. Linscheid also noted a BLM Encroachment Report and Field Investigation regarding unpermitted timber removal in the Prineville District. The June 19, 2008, report discussed how the BLM Cadastral Survey was asked to validate a 1996 survey done by Mr. Watson. The BLM report speculated that Mr. Watson misidentified a bearing tree and monumented the section corner in the wrong location. Mr. Wilkinson informed the Board that the BLM investigation should conclude this spring; however, it is not part of the case.

Mr. Hoffine noted the Committee had additional questions for Ms. Kalb to answer before making any final decisions. Mr. Linscheid agreed commenting that this case shows the need for a standard of land surveying practice for Oregon. Ultimately, the Committee questioned if and how *Dykes v. Arnold* caused a change to Mr. Watson's surveying practices. Mr. Tappert emphasized that the Committee wants to make sure that the evidence, if required, shows that Mr. Watson was negligent in his practice and was beyond the standard of care. The Committee determined further investigation.

#### 2634 – Edward A. Foster / OSBEELS

Mr. Linscheid reported the Committee discussed the case against respondent Edward Foster, RPP, who was the first registered professional photogrammetrist to participate in a CPD audit. Mr. Foster failed to respond to the initial request, but responded to a second request with an explanation of how he obtained PDH units for the audit period. He did not provide documentation. Upon third notice, Mr. Foster responded with a list of work invoices, his testimonies as an expert witness, and his certification in a professional society. Mr. Linscheid informed the Board that Mr. Foster was diligent in working with staff, but that he did not understand what was required. Once he understood what would qualify, Mr. Foster provided the documentation to show compliance with the CPD requirements. A motion to withdraw the NOI against Mr. Foster and close the case as allegations unfounded was moved and seconded (Linscheid/Tappert). The motion passed unanimously.

#### 2639 – Michael R. Moore / OSBEELS

Mr. Linscheid reported the Committee discussed the case against respondent Michael Moore, PE. He signed his renewal form certifying that he had completed the required PDH units. In response to the audit, Mr. Moore submitted a CPD Organizational Form listing his PDH units claimed. However, it was without supporting documentation. As a result, Mr. Moore was sent a second

notice and upon failing to respond the file was transferred to the Regulation Department. Investigator McCartt contacted Mr. Moore who stated that he was unable to provide documentation because his former employer destroyed his records after he left the company. After further efforts, Mr. Moore was able to submit documentation showing CPD compliance. The Committee determined to issue Mr. Moore a Notice of Intent to Assess a \$1,000 Civil Penalty for failing to maintain his CPD records and to submit them when requested to do so by the Board in violation of OAR 820-010-0635(1),(5) and OAR 820-020-0015(7).

2640 – Jeffery D. Nichols / OSBEELS

Mr. Linscheid reported the Committee discussed the case against respondent Jeffery Nichols, PE. He signed his renewal form certifying he had completed the required PDH units, but failed to respond to the audit request and to subsequent requests. The file was transferred to the Regulation Department. When contacted by a Board investigator, Mr. Nichols explained he could not provide documentation because his computer files were unrecoverable. He also requested to place his PE registration into inactive status because he had not practiced engineering in Oregon for some time. He was not eligible for inactive status, but for retirement status. Afterwards, Mr. Nichols was able to submit documentation deemed compliant for audit purposes. As a result, the Committee determined to issue Mr. Nichols a Notice of Intent to Suspend Registration for 90-days and to Assess a \$1,000 Civil Penalty for lack of cooperation in violation of OAR 820-020-0015(8) and ORS 672.200(4).

2653 – Jack L. Watson / Peter Sass

Mr. Linscheid reported the Committee discussed the case against respondent Jack Watson, PLS. The complainant Peter Sass claimed that Mr. Watson entered his property without providing notice of right of entry. However, Mr. Watson claimed permission was given by his client to use an easement that crossed the Sass property. Mr. Watson set a corner common between his client and Mr. Sass and later returned to complete a survey for his client. The common corner is not in the easement and is accessible only by foot. As a result, the Committee determined to issue Mr. Watson a Notice of Intent to Assess a \$1,000 Civil Penalty for violation of ORS 672.047.

**New Business**

Preliminary Evaluation: Robert A. Walz reprimand

Mr. Linscheid reported the Committee discussed a preliminary evaluation regarding Robert A. Walz, PE. He notified the Board that disciplinary action was taken against him by the North Carolina Board of Examiners for Engineers and Surveyors. The Committee determined that the initial charge involved an excepted single-family residence and that the penalty did not rise to an action level under OAR 820-020-0015(6). However, Mr. Walz notified the Board in 2010 about the 2006 violation and a 2008 final decision and Order. Mr. Linscheid informed the Board that the Committee directed staff to open a case because the notification was not timely in violation of OAR 820-020-0045(4).

Preliminary Evaluation: Union of Operating Engineers

Mr. Linscheid reported the Committee discussed a preliminary evaluation regarding an anonymous complaint alleging that the Union of Operating Engineers was unlawfully using the title of “engineer” without registration. The Committee discussed that the Union represents heavy

equipment operators and that their name generally does not create confusion with professional engineers. Mr. Linscheid informed the Board that the Committee determined to not open a case.

#### Review LEC Policies and Procedures

Mr. Linscheid reported that the Committee held a comprehensive discussion about the Committee's Policies and Procedures. The review did not reveal anything that was missing or lacking, other than the Committee wanted a matrix with which to track prior violations and sanctions. Investigator Wilkinson informed the Board in response to a question about case load that there are about 76 currently open cases and about 50% of those are CPD allegations. Ms. Lopez commented that the change in CPD reporting may affect the number of registrants being transferred to law enforcement. Effective with the June 30, 2011 biennial renewal schedule, registrants will be required to submit their CPD Organizational form with their renewal. Upon receiving a request to participate in an audit, the registrant will then submit the supporting documentation to support the activities recorded on the CPD Organizational form previously submitted with the renewal request. She believed this would help reduce the number of violations. Ms. Lopez also informed the Board that seven applications had been received for the open Investigator position. Applicant skills range from attorneys to police officers.

#### **Unfinished Business:**

##### 2579-Lim, discussion regarding settlement agreement

Mr. Linscheid reported that the Committee received an update from AAG Tucker-Davis regarding the Jaime Lim case #2579. Mr. Linscheid informed the Board that there was a settlement agreement in place, but Mr. Lim failed to meet a deadline to report the projects that he transferred to another engineer. The list was overdue, but it was received by the Committee during the meeting. The list was reviewed and the Committee determined that it was in compliance with the settlement agreement. He added that if a project on the Lim list is later flagged as a problem, then the Board can discuss it with Mr. Lim at that time.

#### **Settlement Agreements:**

Mr. Linscheid reported that the Committee reviewed the list of Cases Subject to Collections, Cases Subject to Monitoring, and Case Status Report and offered no comments.

Ms. Newstetter asked what happens when the Oregon Department of Revenue (DOR) collects on civil penalties owed to the Board. Ms. Lopez stated that the Board has the authority to put a lien on their property. However, the Board has not done that in a number of years. Ms. Newstetter replied that for people who owe the Board civil penalties for violations, the Board should put a lien on their property to collect, or use whatever other means are available. Investigator Wilkinson added that property liens have not been done since he started in July 2004 and guidelines would help staff take the next step when the Board is unable to collect on civil penalties. The Board is using other resources in the Department of Justice to conduct a debtor examination on Larry Crowley who owes the Board \$9,000 for unlicensed practice of engineering. Ms. Lopez emphasized that Mr. Crowley is not a registrant and the Board has the statute to secure property liens, which is unlike other agencies. She added that we can look at options because some of the collections are aging. It is frustrating because we can only be in the DOR system for one year and then resubmit a respondent for collections. The Board directed staff to invite representatives from DOR to attend the next Committee meeting and give an overview of their process.

## **PROFESSIONAL PRACTICES COMMITTEE**

Ms. Newstetter reported that the PPC met on December 10, 2010, to discuss the matters contained in the Committee minutes. There was no further discussion.

## **Standards of Land Surveying Practices**

Mr. Linscheid reported that the Standards of Land Surveying Committee met on December 9, 2010, to discuss the matters contained in the Committee minutes. There was no further discussion.

## **RULES AND REGULATIONS COMMITTEE**

Mr. Seward reported that the R&R Committee met on December 10, 2010, to discuss the matters contained in the Committee minutes. Additional discussion was held regarding the following matters:

### OAR 820-010-0635 – Continuing Professional Development

It was moved and seconded (Seward/Kramer) to approve the rulemaking process to amend OAR 820-010-0635 as presented. The motion passed unanimously.

### Mission Statement

It was moved and seconded (Seward/Kramer) to approve the Mission Statement for the Rules and Regulations Committee as presented. The motion passed unanimously.

As a result of the Rules Hearing held at 1:30 p.m., the following action was taken by the Board:

It was moved and seconded (Seward/Linscheid) to amend the rules as presented. The motion passed unanimously.

- OAR 820-010-0209 – Applications for Certification as a Water Right Examiner
- OAR 820-010-0210 – Application for Enrollment as an Engineering Intern (EI) and Land Surveying Intern (LSI)
- OAR 820-010-0212 – Applications for Registration as Professional Engineers (PE) Based on Examination
- OAR 820-010-0213 – Applications for Registration as Professional Land Surveyors (PLS) Based on Examination
- OAR 820-010-0214 – Applications for Registration as Professional Photogrammetrists (RPP) Based on Examination
- OAR 820-010-0215 – Form of Applications
- OAR 820-010-0305 – Fees
- OAR 820-010-0400 – Application for Registration as a Geotechnical Engineer
- OAR 820-010-0417 – Nature of Examination for Structural Engineer (SE)
- OAR 820-010-0427 – Nature of Examination for Registered Professional Photogrammetrist (RPP)
- OAR 820-010-0463 – Cutoff Scores for Examinations
- OAR 820-010-0505 – Biennial Renewal of Registration or Certification
- OAR 820-010-0520 – Registrants or Certificate Holders Not Qualified to Practice

OAR 820-010-0435 – Oral Interview - It was moved and seconded (Seward/Linscheid) to repeal

OAR 820-010-0435 as presented. The motion passed unanimously.

## **UNFINISHED BUSINESS**

### Board Member Search Committee

Mr. Wahab reported that the Board Member Search Committee met on December 10, 2010 to discuss the vacancies on the Board and as contained in the minutes. There was no further discussion. However, President Davis requested the Committee to meet again in February.

## **NEW BUSINESS**

### EI Certificates

Mr. Butts informed the Board members that he recently became aware that the Board no longer issues a certificate to new engineer interns (EIs); they receive a pocket card and congratulatory letter. Unfortunately, staff is unaware of the history surrounding the discontinuance of the EI certificates. After a brief discussion, it was moved and seconded (Butts/Seward) to reinstate the issuance of the EI and land surveying intern (LSI) certificates. The motion passed unanimously.

### Staff Organization and Compensation

To alleviate questions posed each year with regard to the employees of the Board and their compensation, Mr. Seward provided a document containing the classification of the employee, working title, and salary range. Ms. Lopez expressed her concern with maintaining another document with similar information as contained in the OSBEELS Employee Handbook. Mr. Seward stated that this was just an attempt to document this information for a different audience; the Board members. He further noted that the OSBEELS Employee Handbook covers different minutia that is not relevant to a Board member. Ms. Gilbert clarified that the information to be provided to the Board members relate to the position of the Executive Secretary; not all staff. Mr. Linscheid also noted that a statement should be included that the Board does not have authority with regard to other staff. No further direction was given and no action was taken by the Board.

## **ADJOURN**

The meeting was adjourned at 2:53 p.m.

**NEXT MEETINGS**

Next Board Meeting:

March 8, 2011

Next Committee Meetings:

LAW ENFORCEMENT:

Friday, February 11<sup>th</sup> at 8:00 a.m.

Standards of Land Surveying Practices:

Friday, February 11<sup>th</sup> at 12:00 p.m.

PROFESSIONAL PRACTICES:

Thursday, February 10<sup>th</sup> at 8:00 a.m.

RULES & REGULATIONS:

Thursday, February 10<sup>th</sup> at 9:00 a.m.

EXAMINATIONS & QUALIFICATIONS:

Thursday, February 10<sup>th</sup> at 10:00 a.m.

Board Member Search:

Thursday, February 10<sup>th</sup> at 12:00 p.m.

EXTERNAL RELATIONS:

Thursday, February 10<sup>th</sup> at 1:00 p.m.

FINANCE:

Thursday, February 10<sup>th</sup> at 2:00 p.m.