



Oregon

State Board of Examiners for
Engineering & Land Surveying
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Minutes of Meeting
July 14, 2009

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
Mari Kramer
Edward Butts
Ken Hoffine
Susanna Laszlo
Dan Linscheid
Susan Newstetter
John Seward
Carl Tappert
Amin Wahab

Visitors Present:

Michael Hardy, PE, Professional Engineers of Oregon Liaison
Abraham Taylor, PLS

Others Present:

Mari Lopez, OSBEELS Executive Secretary
Jennifer Gilbert, Executive Assistant (excused absence)
JR Wilkinson, OSBEELS Investigator
Allen McCart, OSBEELS Investigator
Joanna Tucker-Davis, Assistant Attorney General
Katherine Lozano, Assistant Attorney General

APPROVAL OF AGENDA

Mr. Seward requested to add an item (OACES Letter dated May 11, 2009) under the Unfinished Business portion. President Davis requested to add an Item E. (reapplication deadlines for Oregon Specific Exams) to the Examinations & Qualifications Committee portion. It was moved and seconded (Linscheid/Laszlo) to approve the agenda as amended. The motion passed unanimously.

APPROVAL OF MINUTES

It was moved and seconded (Laszlo/Tappert) to approve the minutes of the May 12, 2009 Board Meeting. The motion passed unanimously.

PUBLIC INPUT

President Davis 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. Mr. Hardy shared several activities of PEO.

Abraham Taylor requested to address the Board regarding law enforcement case #2480. Mr. Linscheid summarized the outcome of the informal conference between the Law Enforcement Committee (LEC) and Abraham Taylor that occurred on June 11, 2009.

Mr. Linscheid stated that Mr. Taylor and the Committee met in an informal conference to discuss a Notice of Intent to Assess a \$1,000 Civil Penalty (NOI) for violations of the Oregon Revised Statute (ORS) 209.250(1), ORS 672.200(2), and the Oregon Administrative Rule (OAR) 820-020-0015(1),(2). Mr. Linscheid continued that a settlement agreement was not reached for Mr. Taylor who was surveying a subdivision lot located in Washington County. He explained that Mr. Taylor found an original back property corner monument, which he occupied, and used another found monument along the back subdivision line to turn the plat angle because Mr. Taylor was unable to find the front property monument or the center of the cul-de-sac. After a lengthy informal conference discussion, Mr. Linscheid stated that the Committee questioned whether or not Mr. Taylor had met the standard of practice in Oregon and a settlement was not reached. At the end of the discussion, the Committee asked Mr. Taylor to provide a list of clients for last year by August 10, 2009. If the Committee has further questions about his methodology, the Committee may then initiate a separate investigation.

Mr. Taylor stated the core issue as he failed to properly monument property corners for violation of ORS 209.250(1), which requires a surveyor to file a map of survey only if the “surveyor establishes or reestablishes a boundary monument.” It is not a **requirement** to set a monument. He admitted that the standard of practice is to monument a property corner when the client requests a boundary survey. However, he believed that it is not the standard of practice to do so when the task is to set several stakes along the property lot line for fence construction, which was his charge.

Mr. Taylor continued to explain that he found an original monument at the back property corner. Furthermore, he found collateral physical evidence to verify the subdivision plat. With plenty of evidence to retrace the alignment of the lot line, he placed several stakes along the property line to mark where the fence should be built. He set a stake at the edge of the concrete because the fence would not extend into the sidewalk. Mr. Taylor believes that the Committee is in error in its ORS 209.250(1) interpretation that requires him in this circumstance to place a permanent monument or to set the stake in the sidewalk. Upon asking the Committee to reconsider before proceeding, he thanked the members for their hard work, but asserted ORS 209.250(1) does not apply.

In response, Assistant Attorney General (AAG) Joanna Tucker-Davis informed the Board that his rights are being observed. At some point, the Board will need to decide the issues. However, the Board did not need to decide today whether to impose a civil penalty or sanction, or to dismiss or go to a hearing. Mr. Linscheid added that the question was less about the ORS 209.250(1) interpretation and more about Mr. Taylor’s standard of practice. After discussing modification of his NOI, it was moved and seconded (Linscheid/Seward) to approve sending the issue back to the Law Enforcement Committee for further review. The motion passed

unanimously.

EXECUTIVE SECRETARY'S REPORT

Committee Activities

Ms. Lopez reported that the Examinations and Qualifications (E&Q), External Relations (ERC), Finance, LEC, Professional Practices (PPC), and Rules and Regulations (R&R) Committees each met during the month of June and the Committee minutes were included in the packets.

Administrative Activities

April 2009 Examinations

Ms. Lopez reported that the Fundamentals of Engineering (FE), Fundamentals of Land Surveying (FLS), and the Certified Water Right Examiner (CWRE) examination scores have been sent. The results of the Professional Engineering (PE) and the Professional Land Surveying (PLS) will be mailed out no later than the 24th of July. Staff is currently getting ready for the October examinations.

PLSO

The Board reviewed a request on behalf of the Professional Land Surveyors of Oregon (PLSO) Chair Gary Johnston to receive a copy of the opinion recently produced by the OSBEELS' AAG concerning the Right of Entry and Notice. It was moved and seconded (Laszlo/Kramer) to enter into Executive Session to discuss the AAG opinion. The motion passed unanimously.

President Davis took the Board into Executive Session as provided by ORS 192.660(2)(f) to consider written advice from AAG Tucker-Davis. Upon returning to open session, it was noted that no action was taken during Executive Session.

It was moved and seconded (Tappert/Laszlo) to release the opinion (DOJ File No. 917-001-GB0254-09) to the public upon request. The motion passed unanimously.

2009 Western Zone Meeting

Ms. Lopez informed the members that Sue Laszlo, Grant Davis, Dan Linscheid, Amin Wahab and herself attended the Western Zone (WZ) meeting in Banff, Alberta, Canada from May 28-30, 2009. She reported that the Member Board Administrators Forum was held on May 30th. Miscellaneous issues were discussed; however, two administrative highlights of the meeting were regarding exam proctoring and the new candidate information system. The WZ meeting minutes was provided for review. Additionally, Mr. Linscheid's report of the Surveyors Forum was provided for review.

NCEES 88th Annual Meeting

Ms. Lopez stated that Grant Davis and Sue Newstetter have requested to serve as the delegates to attend the National Council of Examiners for Engineering and Surveying (NCEES) conference on August 12-15, 2009 held in Louisville, KY at the Louisville Marriott Downtown. She will also be attending. As well, JR Wilkinson and Allen McCartt will be attending the Law Enforcement Program scheduled for Friday afternoon and all day Saturday.

Additionally, information in the packets included a request from the Maryland Board for

consideration of Howard “Skip” Harclerode II, PE for NCEES Treasurer.

OSBEELS’ Legislation

Ms. Lopez reported that the Governor signed SB142, SB143, and SB144 on June 16, 2009. The effective date is January 1, 2010. Mr. Linscheid recommended that Ms. Lopez mail “thank you” letters to the Chair, Senator Rick Metsger and his Committee (Business and Labor) as well as Senator Peter Courtney. The Board concurred.

House Bill 2457 – Relating to Journeyman Plumbers

Ms. Lopez reported that on May 28th Michael Hardy, PE sent out an email to all interested parties requesting confirmation that all parties have agreed to not push HB2457 and its various amendments any further during this session. Instead, a workgroup would be established to identify the issues that may be hindering the installation of residential fire sprinkler systems in Oregon and to work towards a solution for the benefit of all parties. In addition, volunteers were requested to participate in this workgroup. The workgroup will begin after the close of the 2009 legislative session. Ms. Lopez responded to Mr. Hardy that OSBEELS wishes to participate. Ms. Lopez welcomed additional comments by Mr. Hardy.

Mr. Hardy added by further explaining his efforts and that of others in opposing HB2457. He has received several volunteers to participate in a workgroup between sessions to gain an understanding of and addressing the primary concerns regarding residential fire sprinkler systems. He informed the members that the Professional Engineers of Oregon (PEO) will begin to actively follow Oregon Legislation.

Senate Bill 274 B – Relating to Administrative Law Judges

Ms. Lopez briefly reported that SB274 B passed. However, the Governor has yet to sign the bill. The Enrolled Bill was included in the packets. Ms. Lopez further explained that the Board should attempt to establish Standards of Practice into the OARs. The Board decided to forward this matter to the R&R Committee.

Semi-independent Board Administrators (SIBA) Meeting

Ms. Lopez reported that a special Semi-independent Board Administrators (SIBA) meeting was held on June 16, 2009 to further discuss with V. Dale Bond, Secretary of State, Audits Division the recent announcement of the next biennial audit expenses per Board and/or Commission. A series of questions were proposed to Ms. Bond. However, she was not prepared to respond. These questions were answered by Mary Wenger, Secretary of State, Audits Division on June 25th by email. The email was made part of the packets.

Governor's Suggestion to Senate and House

Ms. Lopez reported that the Governor is requesting the legislature to consider consolidating OSBEELS, and 3 other Semi-Independent Boards into the Building Codes Division (BCD) and removing OSBEELS from Semi-independent status in the 2010 legislative session or 2011 at the latest due to the state budget. Ms. Laszlo recommended that members of OSBEELS meet with members of the affected Boards (OBAE, OSLAB, and LCB) for a collaborative plan to represent our Boards to the lobbyist(s) and representatives of the legislature as needed. She further believes that this action would create more government problems than reducing state

government. After a lengthy discussion, the members of the Board concurred with Ms. Laszlo. President Davis and Ms. Newstetter will represent OSBEELS. The Architect Joint Committee will now be known as the Legislative Joint Committee. Ms. Lopez will contact the administrators of OBAE, OSLAB, and LCB. Mr. Hardy shared with the members that PEO has requested comments from their members concerning this matter. PEO is not in favor of this consolidation proposal. Ms. Lopez was directed to inform American Council of Engineering Companies (ACEC) and PLSO as well.

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. However, Ms. Lopez announced the re-appointment of John Seward for a four year term (July 1, 2009 to June 30, 2013). It was noted that ORS 672.240 does not include a registered professional photogrammetrist. The Board decided to forward this matter to the R&R Committee. Ms. Lopez stated that for the February 2010 special session (fairly limited), all drafts are due to Legislative Counsel by 5:00 p.m. on Friday, November 13th for Senate consideration.

Staffing

Ms. Lopez informed the Board that the announcements for the Investigator 2 and the Administrative Specialist 1 positions have been posted on iMatchSkills with the Oregon Department of Employment, as well as on the OSBEELS Web site. She will also begin recruitment shortly for the position that Ms. Meyer resigned from in April.

PRESIDENT'S REPORT

President Davis reported the following matters as a result from his attendance at the Western Zone meeting:

He mentioned that the National Council of Examiners for Engineering and Surveying (NCEES) will introduce a new 16-hour Structural (SE) PE examination in April 2011. The exam will replace the current Structural I and Structural II exams, which will be administered for the last time in October 2010. The new 16-hour Structural exam will be divided into two 8-hour components, which will be offered on successive days. The Vertical Forces component focuses on gravity loads and incidental lateral loads. The Lateral Forces component focuses on wind and earthquake loads. Each component will also have a depth module that focuses more closely on a single area of practice. Examinees may choose whether they want to concentrate on buildings or bridges for this module. However, in Oregon, the examinee would be required to choose the buildings module. Mr. Seward stated that this requirement would affect applicants applying thru comity. Ms. Lopez was directed to contact the State of California and the State of Washington to obtain information about their states position on the SE exam requirements.

President Davis comment on proposed language contained in the NCEES Model Rules and Laws concerning the need for a PE or PLS in a branch office. Ms. Lopez reported that the State of Nevada is now registering firms to eliminate the number law enforcement cases concerning the advertising for or offering to perform services without employing a licensee.

To promote the engineering licensure pathway, President Davis noted that the Association of

Professional Engineers, Geologists, and Geophysicists of Alberta, Canada (APPEGA) shared with the NCEES Member Boards that they began a program titled *Application for Registration University Student Membership (ASAP)*. ASAP is free for undergraduate 1st, 2nd, 3rd, and 4th year engineering and geoscience students registered at selected Alberta schools (waiving the FE fees for students that take the FE examination within a year of graduation).

President Davis briefly reported on the masters or equivalent (formally know as the B+30) and the roles of ABET and NCEES. Possible NCEES language will require continuing education. However, questions were raised regarding the certification of classes. No decisions were made.

He noted that the next Western Zone meeting will take place in Salt Lake, Utah from May 13-15th 2010.

President Davis reported that NCEES will be changing the way they establish their examination fees. Instead of basing their fees by jurisdiction, NCEES will use a fixed rate for exam administration services.

President Davis announced that he was approached by another member of the Board concerning the salaries paid to Board Staff. The concerns were regarding the competitiveness and whether the salaries are in line with the regular state (not semi-independent) agencies. Additionally, President Davis was informed that the Department of Administrative Services (DAS) could review classifications and salaries of OSBEELS' employees. Ms. Lopez noted that DAS will not allow Semi-Independent Boards to recruit through the state process for hiring. After a lengthy discussion, it was moved and seconded (Linscheid/Laszlo) to investigate whether DAS could complete a salary study for all employees of OSBEELS to assist with the future biennial budget.

President Davis presented the New Committee assignments. He further recommended that the past chairpersons of each committee write a helpful guide for the new chairpersons. This would allow for an easy and smooth transition. He recommends completion and dissemination by the next Board meeting scheduled for September 8, 2009. It was noted that Ms. Laszlo was not named on the Committee assignments due to the completion of her Board term. However, until a replacement is made by the Governor's office Ms. Laszlo is willing to continue serving on the Board. Therefore, President Davis inquired to Ms. Laszlo whether she would participate with the Professional Practices and Finance Committees; she accepted. Thank you Ms. Laszlo!

EXAMINATIONS AND QUALIFICATIONS COMMITTEE

In the absence of Mr. Butts, Ms. Kramer reported that the E&Q Committee met on June 12, 2009 to discuss the matters contained in the Committee minutes. There was no further discussion. However, additional discussion was held by the Board regarding the following matters:

Photogrammetry Contract

It was noted that due to Ms. Lopez's absence (vacation) the latest draft contract was not included in the Board packets for the members review. Therefore, the members requested copies of the draft contract for review and discussion. AAG Lozano led the discussion concerning the latest draft revisions made to the photogrammetry contract with the Colonial States Boards for Surveyor Registration (CSBSR). It was noted that no applications were received for the October

photogrammetry exam administration. After a lengthy discussion, it was the consensus of the Board to table the discussion until a thorough review could be conducted. A Special Teleconference meeting of the Board is scheduled for July 22, 2009 at 2:00 p.m. to allow for further discussion and decision making. Ms. Lopez was directed to prepare the notice and agenda according to the Oregon Public Records and Meetings Manual.

Software Engineer

Mr. Hardy inquired whether there was any new news from NCEES regarding the emerging discipline of engineering known as Software Engineer. Ms. Lopez stated that the Institute of Electrical and Electronics Engineers (IEEE) is driving NCEES and the Member Boards for a path to license software engineers in the United States. Until NCEES receives requests for a new discipline module to the PE examination by no fewer than 10 Member Boards collectively, the request will be put to rest. These requests must demonstrate a need for the new examination.

Reapplication of an Oregon Specific examination

President Davis informed the members that he received an email from Ron Stuntzner, past Board Member concerning the application deadline dates for Oregon Specific Land Surveying examination applicants. The Board decided to forward this matter to the next E&Q Committee meeting.

Registration

Comity Applications – Ms. Kramer directed the members’ attention to the list of 139 professional engineer applicants for licensure by Comity. It was moved and seconded (Kramer/Laszlo) to approve the list of 139 professional engineer applicants as presented. The motion passed unanimously.

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

EXTERNAL RELATIONS COMMITTEE

Ms. Kramer reported that the External Relations Committee met on June 12, 2009, to discuss the matters as contained in the Committee minutes. There was no further discussion. However, additional discussion was held by the Board regarding the following matters:

Summer 2009 Oregon Examiner

Ms. Kramer directed the members’ attention to 3 articles intended for printing in the Summer 2009 *Oregon Examiner*. It was moved and seconded (Laszlo/Newstetter) to approve the Prior Practice Application Deadline for Registration as a Geotechnical Engineer, LiDAR, and Attention Registrants articles upon minor revisions. The motion passed unanimously.

Forms

Ms. Kramer distributed the *Request for Verification* form for review and approval. It was clarified that the form is a request for proof of Certification(s) and/or Registration(s) for Engineering Interns, Land Surveying Interns, Professional Engineers, Professional Land Surveyors, and Registered Professional Photogrammetrists who need a certified copy of the type and hours of examination(s) that were taken in the State of Oregon be sent to licensing authorities in other jurisdictions. It was moved and seconded (Kramer/Laszlo) to approve the

form upon minor revisions. The motion passed unanimously.

Web site

Ms. Kramer directed the members' attention to the Board Member Vacancy announcement for the Web Site. Ms. Laszlo suggested adding the announcement in the *Oregon Examiner*. It was moved and seconded (Kramer/Laszlo) to approve the Board Member Vacancy announcement for the Web site and the *Oregon Examiner* upon minor revisions. The motion passed unanimously.

FINANCE COMMITTEE

Mr. Tappert reported that the Finance Committee met on June 12, 2009, to discuss the matters as contained in the Committee minutes. There was no further discussion. However, additional discussion was held by the Board regarding the following matters:

Funded Delegate Policy

Mr. Tappert directed the members' attention to the OSBEELS' NCEES Funded Delegate Policy. It was moved and seconded (Tappert/Newstetter) to approve the OSBEELS' NCEES Funded Delegate Policy as presented. The motion passed unanimously.

Finance Reports

Members reviewed a Profit & Loss statement and Income and Expense graphs for the period of July 1, 2008 through May 31, 2009. After a lengthy discussion concerning the latest data received in bank statements, Mr. Tappert explained the Finance Committee's process in determining the projections for the 2009-2011 biennial budget. Ms. Lopez noted that a Balance Sheet will be included in the September 8, 2009 Board meeting packets for review. No decisions were made.

Credit Card Fees

Ms. Laszlo informed members that OSBEELS is being charged miscellaneous fees from credit card companies when applicants and/or registrants conveniently pay for their application fees, renewal fees, and other miscellaneous fees charged by the Board. The fees vary from company to company and some credit cards such as Discover and American Express do not appear to be a popular choice of payment. She suggested that the Finance Committee review how frequent OSBEELS receives payments by the various credit card companies and perhaps choose the most common and utilized companies to offset charges incurred by the Board.

LAW ENFORCEMENT COMMITTEE

Mr. Linscheid reported that the LEC met on June 11, 2009, to discuss the following matters:

2476 – Bruce Goldson / OSBEELS

Mr. Linscheid reported that the respondent Bruce Goldson, PE, PLS, originally was issued a Notice of Intent to Assess a \$1,000 Civil Penalty (NOI) for failing to provide right of entry notice violating ORS 672.045. Mr. Goldson eventually provided evidence of notification to Board investigators and the NOI was withdrawn. However, the Board issued Mr. Goldson a Notice of Proposed Assessment of a \$1,000 Civil Penalty for failing to cooperate with the Board. The Committee met with Mr. Goldson in an informal conference and were unable to reach a settlement. As a result, the case was referred for a hearing I to the Office of Administrative

Hearings (OAH). The Committee offered Mr. Goldson an opportunity to decide whether to move forward with the hearing or to accept a Default Final Order and pay the \$1,000 civil penalty. On June 26, 2009, Mr. Goldson informed the Board in writing that he would accept a Default Final Order. It was moved and seconded (Linscheid/Wahab) to approve the Board President to sign the Goldson Default Final Order. The motion passed unanimously.

2480 – Abraham Taylor / Joseph Petrotta

Mr. Linscheid reported that the Board already discussed this case during the Public Input portion of the agenda.

2546 – Douglas McMahan / Roger Roberts

Mr. Linscheid reported that the respondent Douglas McMahan, PLS, was issued a Notice of Intent to Assess a \$9,000 Civil Penalty (NOI) for failing to file nine maps of survey violating ORS 209.250(1). Mr. McMahan met with the Committee in an informal conference. The Committee proposed to settle the case by reducing the civil penalty to \$4,500 because Mr. McMahan worked with the Board to quickly rectify the violations. In addition, the Committee recognized that Mr. McMahan took steps to comply with an earlier settlement agreement. It was moved and seconded (Linscheid/Tappert) to approve the Board President to sign the McMahan settlement agreement.

Upon discussion, Mr. Hoffine noted that Mr. McMahan admitted his mistakes and took immediate action. This is contrary to respondents who disagree with the Board. He informed members that Mr. McMahan began his informal conference by apologizing and throwing himself on the mercy of the Committee by discussing his staffs' efforts to comb through his files looking for unfiled surveys. Mr. Hoffine also highlighted the County Surveyor who did not notify Mr. McMahan about the unfiled surveys. This lack of communication contributed to the problem. Mr. Hoffine stated it looked worse than it was and disagreed with the civil penalty amount.

In response, Mr. Linscheid observed that this was the second matter brought before the Board regarding Mr. McMahan. The issues and discussions sounded similar to case number 2290. He continued that the monuments in question were subject to the settlement agreement related to case number 2290, signed on March 9, 2004. In case 2290, Mr. McMahan was assessed a \$43,000 civil penalty for not filing maps. The Committee abated the amount to \$21,000 if he complied with the terms of settlement. One settlement term required Mr. McMahan to review his files and complete and file any unfinished surveys. The Committee found during the investigation of case 2546 that Mr. McMahan complied with the terms of the case 2290 settlement agreement. However, concerns were expressed about whether Mr. McMahan did a thorough review of his files during the case 2290 settlement to avoid the case 2546 law enforcement case. For this reason, Committee members compromised to the \$4,500 civil penalty.

Upon realization of prior business transactions, Mr. Tappert withdrew his second and recused himself. It was moved and seconded (Linscheid/Laszlo) to approve the Board President to sign the McMahan settlement agreement. The motion passed with Mr. Hoffine opposing.

2443 – Edward Wood / Paul Allen

Mr. Linscheid reported that prior to the Board meeting the Committee met in an informal conference with the respondent Edward Wood, PE, to discuss a Notice of Intent to Revoke Registration and Assess a \$5,000 Civil Penalty (NOI) for incompetence in the design of a winery building violating ORS 672.200(2),(4) and OAR 820-020-0015(2). Mr. Wood stated he was not pleased with the project and that the client pressured him into submitting plans he believed were not complete. During the informal, Mr. Wood provided the Committee with an example of a current project he asserted would demonstrate his competence. After dismissing the offered plans to focus on the plans used as the basis of the NOI, the discussion returned to his practice. Mr. Davis explained the issues to Mr. Wood who replied that this was not his finest work. Upon consideration, the Committee offered to drop the civil penalty if Mr. Wood retired his PE registration. Otherwise, the Board was prepared to go to a hearing. Mr. Wood disagreed with the allegations, but decided to retire his PE registration. To retire his registration in good standing, Mr. Wood must submit a notarized retirement form. It was moved and seconded (Linscheid/Laszlo) to approve the Board President to sign the Wood settlement agreement. The motion passed unanimously.

2332 – Maurice Farr / Paul Allen

Mr. Linscheid reported that the Committee reviewed an updated case summary of the allegations against respondent Maurice Farr, PE. Mr. Davis will provide at the next Committee meeting his review of selected Farr engineering projects. However, the Committee discussed concerns regarding professional engineers who also are in the unique position of being a building official. As shown by the Wood case, building official cooperation is essential to identifying engineers who are submitting substandard designs and to providing the Board evidence of substandard engineering. Without cooperation, the Board faces difficulties investigating and sanctioning engineers who are not meeting the standard of practice in Oregon. In the Farr case, Larry Ellenwood, PE, was the building official who provided additional information and the Committee wanted to acknowledge his cooperation and encourage continued support. More importantly, the Committee believed it is a duty of PE's who are also building officials to notify the Board in instances where a professional engineer is not meeting the standard of practice and to cooperate by providing evidence (see OAR 820-020-0015(5)). The Board reviewed a draft letter to Mr. Ellenwood and authorized its release.

2461 – Randal Seiger / Carl Clinton

Mr. Linscheid reported that the Committee discussed an Affidavit of Correction prepared by the respondent Lee Spurgeon, PLS. Mr. Linscheid continued that when notified of a surveying error, Mr. Seiger responded in a determinative manner and submitted an Affidavit of Correction to the County Surveyor. He explained that it is an administrative function of the County Surveyor's office to review Affidavits of Correction to make sure they are complete and to authorize recording in the County Clerk office. Since the County Surveyor did not approve the Affidavit, it could not be recorded. However, ORS 209.255 authorizes an Affidavit of Correction, which is outside the Board's jurisdiction. It was moved and seconded (Linscheid/Laszlo) to close the case as Board lacks jurisdiction. The motion passed unanimously.

2465 – Richard Montgomery / OSBEELS

Mr. Linscheid reported that the Committee issued the respondent Richard Montgomery, PLS, a Notice of Intent to

Revoke Registration and Assess a \$2,000 Civil Penalty (NOI) for negligence and/or incompetence violating ORS 672.200(2),(4) and OAR 820-020-0015. Mr. Montgomery signed a partition plat wherein he set monuments for the corners of the property, but chose to disregard found senior monuments of record called for in the deeds of properties adjacent to the South of the partition. Mr. Linscheid noted that Bill Lulay, PLS, PE, presented information to the Committee regarding the case since Mr. Lulay was onsite to reset monuments of record. Lastly, he identified a professional reviewer and expert witness (PREW) for this case since it raises questions of standard of practice. However, the individual is not an approved PREW.

AAG Tucker-Davis stated that the case may go to a hearing and she will need PREW assistance. She communicated her concern to Mr. Linscheid who identified an individual, but the Board has an established Professional Reviewer and Expert Witness Policy (Policy) that sets the procedure for approving a PREW and assigning a law enforcement case to an approved PREW. This particular individual is not an approved PREW, yet is widely recognized as an expert. As currently written, the Policy does not include flexibility for the Board to solicit individuals recognized to be an expert in their field. By changing the Policy, Board staff would consult with Board members and choose an individual for a particular law enforcement case. As with an approved PREW, the Board and expert would sign a scope of work and reimbursement contract.

A discussion began about experts as 1099 independent contractors and it was explained that the Board enters into a contract for payment with a PREW and does not direct or supervise work production. The Request for Qualifications (RFQ) solicits experts as a means to vet their qualifications before being Board approved and listed on the PREW list. In this instance, the person is widely known and accepted as an expert. What is needed is a Policy modification to authorize the Executive Secretary to enter into a scope of work with a known professional reviewer and expert witness for a particular case. Mr. Wilkinson added that he will draft suggested language to modify the Policy ready for the Committee to review in August.

2473 – Holger Sommer / OSBEELS

Mr. Linscheid reported that the Committee discussed anonymous allegations made against the respondent Holger Sommer regarding the unlicensed practice of engineering. However, the Board was notified on July 11, 2009, that Mr. Sommer passed away on July 7, 2009. It was moved and seconded (Linscheid/Laszlo) to close the case as respondent unreachable. The motion passed unanimously.

2481 – Lee Spurgeon / William Horning

Mr. Linscheid reported that the Committee reviewed allegations regarding whether the respondent Lee Spurgeon, PLS, was negligent or incompetent by setting a monument in the wrong location and by mislabeling several monuments on a map of survey. Mr. Spurgeon was hired by the owner of Parcel 1 to locate the corners of his property for a landscaping project. Mr. Spurgeon subsequently filed a map of survey with the County Surveyor. However, as owner of Parcel 2 complainant Mr. Horning disagreed with the Spurgeon survey and hired Andy Paris and Associates to check the Spurgeon survey for errors. When notified of the mistakes, Mr. Spurgeon corrected the problems.

During the investigation, it was found that Mr. Spurgeon failed to sign his seal or mark his map of survey preliminary when he submitted it to Andy Paris and Associates for review. In addition, the Committee noticed other issues including Mr. Spurgeon showing measured distances equaling plat distances, which was highly unusual and may indicate substandard practice. The Committee determined to issue Mr. Spurgeon a Notice of Intent to Assess a \$2,000 Civil Penalty for negligence or incompetence violating ORS 209.250(3)(e), ORS 672.200(2), ORS 672.025(2),

OAR 820-010-0621(2), and OAR 820-020-0015(10).

2482 – James O’Neill / Holger Sommer

Mr. Linscheid reported that complainant Mr. Sommer alleged that James O’Neill, PE, gave testimony as an expert regarding the Applegate floodplain and violated the Rules of Professional Conduct. However, the complainant did not submit evidence of the allegations, so a letter was sent requesting that he provide evidence. No response was received. It was moved and seconded (Linscheid/Laszlo) to close the case as allegations unfounded. The motion passed unanimously.

2483 – Michael Swenson / Holger Sommer

Mr. Linscheid reported that complainant Mr. Sommer alleged that Michael Swenson, PE, who was in apparent responsible charge of a project, did not properly supervise James Webb when he provided public testimony. However, the complainant did not submit evidence of the allegations, so a letter was sent requesting that he provide evidence. No response was received. It was moved and seconded (Linscheid/Laszlo) to close the case as allegations unfounded. The motion passed unanimously.

2485 – Charles Guile / Pamela Hillstrom

Mr. Linscheid reported that complainant Pamela Hillstrom alleged the respondent Charles Guile, PLS, was in violation the Rules of Professional Conduct. During a lawsuit over a road vacation order and deeded property, Mr. Guile admitted making an error when he stated that a 1988 Lane County road survey was never legalized. However, his error was based on information he received from the Lane County Surveyor. Immediately upon learning of his error, Mr. Guile notified the attorney that the 1988 survey was legalized. Mr. Guile also discovered that a 1947 survey referenced property deeds, but was not filed. Due to his diligence, the survey was eventually filed. Mr. Guile was hired to review documents to offer his professional opinion, which was not a violation of ORS 672 or OAR 820. It was moved and seconded (Linscheid/Laszlo) to close the case as allegations unfounded. The motion passed unanimously.

2486 – John DeJong / OSBEELS

Mr. Linscheid reported that the Board received an anonymous complaint regarding the use of a computer generated signature by Thomas Amberg, PE, to sign engineering documents. However, Board investigators met with Mr. Amberg and Technical Engineering Corporation (TEC) President John DeJong to discuss the matter. Mr. DeJong admitted that without Mr. Amberg’s knowledge he affixed a copy of Mr. Amberg’s seal and signature to a set of designs and issued them to a client. Mr. DeJong was changed to the respondent in the case, but the Committee expressed concern about Mr. Amberg’s role managing his seal and signature. The Committee determined to issue Mr. Amberg a letter of concern and to issue Mr. DeJong a Notice of Intent to Assess a \$1,000 Civil Penalty for violating ORS 672.045(3).

Investigator memorandum: preliminary evaluation of Bend Metro Park & Recreation allegations

Mr. Linscheid reported that the Board received an anonymous complaint alleging that a set a plans issued for bid by the Bend Metro Park & Recreation District did not have an engineer’s seal and signature. Upon investigation, it was found that the bid documents were prepared and issued by a licensed Landscape Architect. While not final, he sealed and signed the final construction documents as per Landscape Architect Board requirements. The Committee determined to not open a case and to refer the case for consideration to the Landscape Architect Board.

Investigator memorandum: preliminary evaluation of Justin Johnson allegations

Mr. Linscheid reported that Justin Johnson emailed the Board about his eligibility to sit for the PE exam and signed the email as “Environmental Engineer.” Upon investigation, it was found that Mr. Johnson was employed by the Bonneville Power Administration (BPA) and the “engineer” title was given to him by the BPA. The Committee discussed that the BPA and Mr. Johnson fall under the industrial exception in ORS 672.060(6) and determined to not open a law enforcement case.

Investigator memorandum: preliminary evaluation of Epic Scan pricing brochure

Mr. Linscheid reported that the Board received a complaint alleging that Epic Scan, Inc. offered unlicensed land surveying or photogrammetric services when they published a pricing brochure. Epic Scan is a vendor of Light Detection and Ranging (LIDAR) equipment. Upon investigation, an ORS 672.060 exception allows law enforcement agencies to gather data. However, Epic Scan offered to perform Laser Scanning Control. While LIDAR use may fall under an ORS 672.060 exception due to excepted staff using the equipment for an excepted purpose, the offering for Epic Scan staff to perform certain work such as a control network may not fall under the exception. The Committee determined to open a law enforcement case based on the second offering.

Investigator memorandum: preliminary evaluation of OBAE allegations

Mr. Linscheid reported that the Oregon Board of Architect Examiners (OBAE) alleged that Tom Bossard, PE, directed designer Ken Snelling in the preparation of proposed tenant improvements, but did not seal and sign the plans. The OBAE alleged that Mr. Bossard lacked responsible charge of Mr. Snelling under ORS 672.020. Upon investigation, it was found that the mechanical work was a design-build by a mechanical contractor and the electrical plans were signed by an electrical contractor’s supervising electrician. Lastly, Mr. Bossard was found to have correctly sealed and signed two plan set cover sheets. The Committee determined to not open a law enforcement case and to appropriately notify the OBAE.

Investigator memorandum: preliminary evaluation of Joe Curtis allegations

Mr. Linscheid reported that Joe Curtis alleged that Martin Stewart, PLS, conspired to have him pay more for a survey than his neighbor. The conflict began when a property owner who desired to partition her lot and sell a portion to Curtis hired Gerald Nygren, PLS, to complete the property line adjustment. However, a disagreement arose, so Mr. Nygren pulled his monuments before the 45-day period ended. A court issued a judgment and Mr. Stewart was hired to monument the line, but was refused entry into the property. Upon investigation, the complaint was submitted without evidence to substantiate the claims and the allegations appear outside the Board’s jurisdiction. The Committee determined to not open a law enforcement case.

Investigator memorandum: preliminary evaluation of the City of Lebanon allegations

Mr. Linscheid reported that an anonymous complainant alleged that the City of Lebanon had two employees who were working in the Engineering Division of the Community Development Center used the “Project Engineer” title, but were not registrants. Upon investigation, City Engineer Dan Grassick, PE, wrote that only one City employee within the Public Works Engineering section did not meet the strict interpretation of ORS 672.007(1)(b). The City changed the job title and modified business cards. The Committee determined that compliance was met and to not open a law enforcement case.

Investigator memorandum: preliminary evaluation of Loren A. Jalbert, PE, admission

Mr. Linscheid reported that Loren A. Jalbert, PE, wrote the Board stating he signed a Stipulation and Consent Order (Order) to settle a law enforcement action with the Idaho Board of Licensure of Professional Engineers and Professional Land Surveyors. Mr. Jalbert developed a well for a new source of domestic water and prepared two well logs for a test hole to identify the subsurface geology and hydrogeology. The two logs differed in reporting where consolidated material occurred when, in fact, it was unconsolidated material. This difference potentially misled bidders to their detriment in determining the type of equipment that could be used and the potential cost of the overall project. Idaho fined Mr. Jalbert \$1,000. Upon investigation, Oregon rules require a “conviction of a felony without restoration or rights, or the revocation or suspension of license” if the act constituted a violation of ORS 672 or OAR 820. Since the Idaho sanction was a civil penalty, the Committee determined to not open a law enforcement case.

2462 – Thomas Burton: Payment plan modification

Mr. Linscheid reported that the Board and Thomas Burton reached a settlement agreement wherein Mr. Burton would retire his land surveying registration effective January 31, 2007, and would agree not to reapply to practice land surveying in Oregon. No civil penalty was assessed. Subsequently, Mr. Burton was sanctioned for surveying while in retired status and was assessed a \$2,000 civil penalty. Mr. Burton made regular payments on his civil penalties until November 2008 and later informed the Board that he was incapacitated due to a car accident. He asked to stop making regular payments to make a single, final payment on September 5, 2009. Mr. Linscheid noted that this was a settlement agreement modification. At the time of his request, Mr. Burton did not provide documentation, but it was provided to Mr. Wilkinson who distributed it to Board members for discussion. Upon review, it was moved and seconded (Linscheid/Butts) to approve Burton’s request. The motion passed unanimously.

2478 – Doyle Gilliland: Default Final Order Gilliland

Mr. Linscheid reported that the Board issued respondent Doyle Gilliland a Notice of Intent (NOI) to Assess a \$2,000 Civil Penalty for negligence in the practice of land surveying and for failing to respond to Board inquiries. In addition, the Committee would not allow Mr. Gilliland to renew his registration. However, the Committee decided to issue Mr. Gilliland an Amended Notice of Intent that would leave in place the \$2,000 civil penalty, but revoke his registration. Since Mr. Gilliland has been unresponsive, it was moved and seconded (Linscheid/Butts) to approve a Default Final Order. The motion passed unanimously.

Romey Ware: Visitor discussion regarding recent right-of-way article

Mr. Linscheid reported that Romey Ware, PLS, attended the Committee meeting to discuss among other things his recent article entitled, “Right of Entry, Or Not?” and published by the Professional Land Surveyors of Oregon (PLSO). Mr. Ware wrote that the Committee has issued civil penalties against professional land surveyors for violating right of entry ORS 672.047, but opined that it was a matter of trespass for the civil courts to review. Mr. Linscheid noted that Mr. Ware had a first-hand experience regarding applications of the ORS and OAR to various law enforcement situations. Mr. Linscheid also noted that there have been lively exchanges between the Committee and Mr. Ware, but he hoped that the experiences left Mr. Ware with an

appreciation of the difficulties the Committee faces as it applies ORS and OAR to law enforcement cases. Mr. Linscheid concluded that the Committee cannot waive the ORS 672.047 requirements and must apply it as required by law.

The Board briefly discussed the Cases Subject to Collections, Cases Subject to Monitoring, and Case Status. Mr. Wilkinson informed the Board that Mr. Porior made his civil penalty payment in case number 2472 and was in compliance.

PROFESSIONAL PRACTICES COMMITTEE

President Davis reported that the Professional Practices Committee met on June 12, 2009, to discuss the matters contained in the Committee minutes. There was no further discussion.

RULES AND REGULATIONS COMMITTEE

Mr. Tappert reported that the Rules and Regulations Committee met on June 12, 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 820-010-0470 – Review of Examinations & OAR 820-010-0480 – NCEES Examinations
It was moved and seconded (Tappert/Laszlo) to approve the rulemaking process to amend OAR 820-010-0470 & to adopt OAR 820-010-0480 as presented. The motion passed unanimously.

OAR 820-010-0620 – Official Seals
It was moved and seconded (Tappert/Linscheid) to approve the rulemaking process to amend OAR 820-010-0620 as presented. The motion passed unanimously.

OAR 820-010-0215 – Form of Applications
It was moved and seconded (Tappert/Laszlo) to approve the rulemaking process to amend OAR 820-010-0215 as presented. The motion passed unanimously.

OAR 820-010-0225 – Educational Qualifications to Take the Fundamentals of Engineering (FE) Examination for Enrollment as an Engineering Intern (EI) & OAR 820-010-0226 - Educational Qualifications to Take the Fundamentals of Land Surveying (FLS) Examination for Enrollment as a Land Surveying Intern (LSI)
It was moved and seconded (Tappert/Linscheid) to approve the rulemaking process to amend OAR 820-010-0225 & OAR 820-010-0226 as presented. The motion passed unanimously.

OAR 820-010-0520 – Registrants Not Qualified to Practice
It was moved and seconded (Tappert/Laszlo) to approve the rulemaking process to amend OAR 820-010-0520 as presented. The motion passed unanimously.

UNFINISHED BUSINESS

Mr. Seward introduced a discussion topic regarding law enforcement by noting the length of time it takes to resolve complaints. He inquired about different law enforcement models that may decrease the amount of time it takes to complete an investigation, or is the model the Board currently uses the best model for the circumstances.

In response, it was noted that Board investigators attend national law enforcement forums. During these forums, it is discussed that every state approaches law enforcement in a different manner based on their state's laws and regulations. The Board has examined similar regulatory boards in Oregon, like the Architect Board, but their rules and requirements also vary from OSBEELS. Another issue explored was that LEC members are volunteers who meet every other month. With an additional investigator, there may be additional meetings scheduled to review cases.

As an alternative, the Board discussed developing a schedule of fines based on the violation. If a Board investigator issued a fine based on a schedule of violations, the respondent would have the right to an appeal to the LEC. Perhaps it would reduce the number of informal conferences. The downside is not having the benefit of peers reviewing case information to render a decision until an appeal. Once a respondent is notified of the fine, they will retain their right to a contested case hearing and the efficiency gained may not outweigh other factors. There are trade-offs to any law enforcement model. The unknown is how many appeals would be created in a model based on fines versus the current process.

Regarding the civil penalty amount, the statutory maximum is \$1,000 per offense (ORS 672.325). The Board currently notices a law enforcement case respondent at the maximum amount. It was observed that it is easier to negotiate from the maximum level down and settle rather than working up from a lesser amount to the maximum. If the fine is set low, most respondents may pay the fine. However, it's a policy decision that the Board needs to make. It was also commented that informal conferences are an important method to achieve settlement and compliance. During an informal conference, additional information and subtleties are exchanged, often shedding new light on a case. This information is crucial at times to the decision and beyond what is reported in a case summary. Conversely, Board investigators issuing low civil penalties may encourage respondents to pay the fine and not go to a hearing or informal conference. It could make the process more efficient but sends a quiet message.

It was further noted that cases are not always black and white. Another question arose whether statistics were available on the types of cases or the classification of cases. Cases involving professional development hours (PDH) may be a good example of black or white cases that could be streamlined. However, it was also noted that not all PDH cases are black and white either and the challenge is in the time it takes to get a case to the LEC for review. Once at the LEC level, the steps to resolution are minimal.

AAG Lozano commented that at BCD, she works with applicants who have been denied to sit for an exam, appeal the decision, and are granted a hearing. She noted there is no financial consequence if they lose and the same principle can be applied here. In her BCD experience, there is no real decrease in the case load. She also explained that BCD does not have an informal conference prior to the contested case hearing. Contested case hearings are expensive, especially if a settlement can be achieved in an informal conference. AAG Tucker-Davis added that the Board requests a lot of information from a respondent as part of the investigation. By going this extra mile, the outcome is good for the respondents and for the Board; (OSBEELS' process is clean and thorough). More important, it is beneficial for a hearing because there of the due

diligence in the investigation before the hearing to collect evidence that might change the picture; efficiency versus gaining an understanding.

The discussion then turned to hiring additional investigators. The Board now has two investigators and the case load for LEC review has increased. There was a drop in the number of investigations reviewed while there was only one investigator. According to Ms. Lopez, reassigning other Board staff to the Regulation Department is not possible due to the understaffing in the other departments at OSBEELS.

It was further observed that the LEC has processed two PDH cases. However, PDH cases are not only a matter of determining the violation(s) and assessing a civil penalty, but also of preserving their rights to a contested case hearing. After discussing the last PDH audit and the nineteen PDH cases pending investigation, it was noted that even with a third investigator there might not be enough resources to conduct regular audits. A question was raised if the Board could issue “low” fines for failing a PDH audit. In spite of a “low” fine, a respondent has the right to receive a notice of intent that explains the allegations and civil penalty and the right to respond to the allegations. They can pay the civil penalty, but their rights are preserved whether that means the Board’s informal conference or the contested case hearing process. Regardless, PDH cases involve violations of change of address, failure to cooperate, and untruthful statements to Board. Some of the registrants requested to participate in the PDH audit reside out of the state, so the issue may not be black and white. The Board is keeping all the signed renewal forms since they certify the registrant’s statement and can become evidence of untruthfulness.

As it stands, the Board considers all the issues on an individual basis. Upon recognizing the advantages and disadvantages of streamlining, the Board decided to table further discussion.

NEW BUSNIESS

Wind Turbines

The Board reviewed an email from Jennifer Tierney, PE containing her concerns regarding Building Codes Division’s (BCD) proposed rule regarding the certification of small wind turbines. The proposed rule establishes a process for certifying small wind turbines with a capacity of 100 kW or less. If adopted, this rule would be valid until January 1, 2011 allowing time for standards to be developed and manufacturers to have the products tested to those standards. This proposed rule would become effective October 1, 2009.

Upon review, the Board determined that the issues are not within the Board’s scope of authority. Furthermore, the BCD can impose further requirements above those set by OSBEELS.

Although it appears that the rule requires the product design be reviewed for compliance by an Oregon licensed electrical professional engineer, the work is not subject to the laws governing registered professional engineers, namely ORS 672.002 to ORS 672.325. However, it is also the responsibility of the professional engineer to determine whether or not they accept responsibility and control by placing their seal on the design. By placing their seal on a document, the registrant is also stating competence by education and/or experience under Oregon Administrative Rule OAR 820-020-0020.

ADJOURN

The meeting was adjourned at 3:20 p.m.

NEXT MEETINGS

Next Board Meeting:

September 8, 2009

Next Committee Meetings:

LAW ENFORCEMENT:

Thursday, August 13th at 8:00 a.m.

PROFESSIONAL PRACTICES:

Friday, August 14th at 8:00 a.m.

RULES & REGULATIONS:

Friday, August 14th at 9:00 a.m.

EXAMINATIONS & QUALIFICATIONS:

Friday, August 14th at 10:00 a.m.

FINANCE:

Friday, August 14th at 1:00 p.m.

EXTERNAL RELATIONS:

Friday, August 14th at 2:00 p.m.