



# Oregon

State Board of Examiners for  
Engineering & Land Surveying  
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Minutes of Meeting  
July 13, 2010

## **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  
Edward Butts  
James Doane  
Ken Hoffine  
Mari Kramer  
Dan Linscheid  
Carl Tappert  
Sue Newstetter  
John Seward  
Amin Wahab (excused absence)

## **Visitors Present:**

Mark Mayer, PLS, Professional Land Surveyors of Oregon Liaison  
David Bassett, PE, Professional Engineers of Oregon Liaison  
Tera Lum  
Lois Williams  
Jim Walsh  
Lori Graham  
Danny Santos, Senior Policy Advisor, Office of the Governor (arrived at 11:00 a.m.)  
Sarah Knudson, Intern for Mr. Santos (arrived at 11:00 a.m.)  
Nathan Thompson, Intern for Mr. Santos (arrived at 11:00 a.m.)

## **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  
Sue Laszlo, PE, OSBEELS Emeritus Member  
Bob Neathamer, PLS, OSBEELS Emeritus Member

President Davis welcomed the visitors to the meeting and requested the visitors, Board members, and others present to introduce themselves.

## **APPROVAL OF AGENDA**

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

## **APPROVAL OF MINUTES**

It was moved and seconded (Linscheid/Tappert) to approve the minutes of the May 11, 2010 Board Meeting as amended. Mr. Doane abstained. The motion passed.

## **EXECUTIVE SECRETARY'S REPORT**

### Committee Activities

Ms. Lopez reported that the Examinations and Qualifications (E&Q), External Relations (ERC), Finance, Law Enforcement (LEC), Professional Practices (PPC), Rules and Regulations (R&R), and Standards of Land Surveying Practice Committee, and the Oregon Specific Examination Task Force each met during the interim. The Committee minutes are included in the packets.

### Administrative Activities

#### *April 2010 Oregon Specific Examinations/NCEES*

Ms. Lopez reported that the Fundamentals of Engineering (FE), Professional Engineering (PE), Fundamentals of Land Surveying (FLS), Professional Land Surveying (PLS) and the Water Right Examiner (WRE) examination results have been distributed by mail. Staff is currently preparing for the October 2010 examination administration.

#### *Registration*

Ms. Lopez noted that staff mailed courtesy registration renewal reminders in the second week of April for the June 30, 2010 biennial renewal schedule. Pursuant to the Oregon Administrative Rule (OAR) 820-010-0505, a late penalty fee of \$80.00 per registration was assessed for renewals not received by 5:00 p.m., on June 30, 2010.

Additionally, she stated that information submitted by the final participants of the January 2010 Continuing Professional Development (CPD) audit list will be addressed at the next E&Q meeting in August. Requests to participate in the next audit will be sent later this month.

#### *Examination Agreements*

With regard to the following examination agreements, Ms. Lopez informed the members of the following:

- NCEES – The agreement was executed on June 17, 2010.
- CSBSR (Photogrammetric Mapping) – Doyle Allen, contact for the Colonial States Board of Surveyor Registration was sent a revised agreement for his review on May 26, 2010. Acknowledgement of receipt was received on June 25, 2010.
- California Geotechnical – Email correspondence was received on June 21, 2010 from Ric Moore, Examination Unit Manager for the California Board for Professional Engineers & Land Surveyors. He has been assigned to work with their legal counsel in locating the original contract for an amendment with updated security agreements for OSBEELS' review.

There was no further discussion.

### *2010 Joint Central/Western Zone Meeting*

Ms. Lopez briefly stated that Grant Davis, Dan Linscheid, Sue Newstetter, and Carl Tappert attended the Western Zone meeting in Salt Lake City, Utah from May 13-17, 2010. The draft Western Zone meeting minutes were provided in the Board packets for review. Additionally, she included Mr. Linscheid's report of the Surveyor's Forum. There was no further discussion.

### *NCEES 89th Annual Meeting*

Additionally, Ms. Lopez briefly noted that Grant Davis, Sue Newstetter, and Amin Wahab have requested to serve as the delegates to attend the NCEES Annual Meeting on August 18-21, 2010 at the Marriott Denver City Center in Denver, CO. Grant Davis is the NCEES Funded Delegate (The NCEES will pay the travel expenses of one voting delegate from each Member Board to attend the Annual Meeting).

At the request of Ms. Newstetter, Ms. Lopez provided the latest edition of the NCEES' publication, Licensure Exchange. The Licensure Exchange contains an article titled, "NCEES plans for the unlikely to ensure business continuity." Ms. Newstetter summarized the importance of completing OSBEELS' Business Continuity Plan (BCP) due to recent fire that destroyed the U.S. Forest Service in Enterprise, Oregon. At the request of President Davis, Ms. Lopez informed the members that the Board's digital information is backed up every week and the tape is held in the safety deposit box at the bank. Furthermore, the information is also backed up and held in Chicago, Illinois. After a brief discussion, the Finance Committee was given the task of determining the final details to complete the BCP.

### *Office Space – Oregon Board of Architect Examiners (OBAE)*

Ms. Lopez reported that the OBAE's lease at 205 Liberty St. NE, Salem will expire on August 31, 2011 and they are still interested in purchasing a building; hopefully during the 2011-2013 biennium. Therefore, Carol Moeller, OBAE Administrator has inquired whether OSBEELS would be interested in co-purchasing a building. Mr. Tappert commented that an analysis would provide positive reasoning to purchase a building. Conversely, several members of the Board also provided their perspectives from past experiences of owning buildings or working for organizations that owned the building in which the company occupied. After discussing the term of OSBEELS' current lease and office size, it was moved and seconded (Newstetter/Doane) to continue leasing office space for the Board. The motion passed (favor – Davis/Seward/Butts/Hoffine/Newstetter/Kramer/Doane); opposed – Tappert/Linscheid). However, Ms. Lopez was directed to inform OBAE that OSBEELS may consider leasing office space with OBAE in the future.

### *Oregon Department of Revenue (DOR)*

Ms. Lopez directed the members' attention to a letter dated May 19, 2010 from Eric Smith, HB 3082 Pilot Project Manager. In sum, DOR received a list (6,006) of Oregon active Professional Engineers and Land Surveyors (excluding registrants that have an out of state or out of country address) through a secure transmission method. The results concluded that 96.99% OSBEELS registrants were in compliance and 3.01% were not.

Lois Williams presented additional information to the Board concerning a short survey to obtain

additional data. The DOR would like this survey to be accessible from the OSBEELS Web site. The Board determined that a link to the DOR Web site to access the survey would be more suitable. Mr. Hoffine offered comments he received regarding OSBEELS participation; unfortunately, comments were quite negative. He stated that the perception appears to be that OSBEELS is using its resources, staff time and Board funds, to participate in the pilot project. Ms. Newstetter also offered comments she received; opposite of those Mr. Hoffine heard and quite positive. The comments Ms. Newstetter received were appreciative and perceived to be leveling the field with competitors. As a result, Ms. Williams will work with Ms. Lopez to draft language informing OSBEELS registrants that the Board participated to the minimum allowed by law and allowed the DOR utilize its information. It was moved and seconded (Kramer/Seward) to approve the link and draft language for the OSBEELS Web site. The motion passed unanimously.

#### *SIBA*

Ms. Lopez summarized the matters discussed during the May 25, 2010 meeting of the Semi-Independent Board Administrators. Matters discussed relevant to OSBEELS were; Audit vs. Reviews, Risk Management 2011-2013 fees. This information will be presented to the Finance Committee in August for consideration. There was no further discussion.

#### *Department of Consumer and Business Services (DCBS) – Building Codes Division (BCD)*

Ms. Lopez directed the members' attention to a letter from Lori Graham, Building Codes Division ePermitting Manager, requesting an interagency agreement between DCBS and OSBEELS to obtain an electronic list of active professional engineers. Ms. Graham stated that the purpose of obtaining an electronic list would assist in BCD's efforts for professional engineers in the State of Oregon to apply for permits electronically over the Web. Although OAR 820-001-0020(3)(c) provides a fee of \$50.00 for this type of information, DCBS requested that the fee be waived. Mr. Tappert commented that he has been watching the development of this process and agrees that this will be beneficial to engineers. As a result, the Board agreed to waive the fee.

#### *Governor's Reset Cabinet's Report*

Ms. Lopez briefly noted that the Governor's Reset Cabinet released their Report on June 25, 2010 and an excerpt of the Report concerning Boards and Commissions was included in the packets for review. As a result of the Report, Ms. Lopez invited Danny Santos, Senior Policy Advisor for the Office of the Governor to discuss the Report and answer any questions of the Board. Mr. Santos summarized the Report and briefly rationalized the creation of the Reset Cabinet and the 2009 Executive Order. He noted that a portion of the Reset Cabinet and ensuing Report spotlights board and commissions. Initially, the consolidation and elimination of boards and commissions were discussed. The focus was mainly on public safety, human services, and education. Also reviewed were the fiscal and administrative efficiencies and the long-term effects. Mr. Santos also noted that the 2011 biennium may begin with a \$2.7 billion deficit.

Another highlight of the Report recommends that the Governor be granted the authority to appoint and remove the administrator for these boards and commissions regardless if they are consolidated. Mr. Tappert noted that the policies of OSBEELS are created by the Board members appointed by the Governor, not the Director of the agency, and the Governor has the authority over all of the members of the Board. President Davis concurred and further stated that the Board would have the best knowledge of what type of Director should administer the Board; not politically chosen.

David Bassett, noted that continuity of Directors is also vital to the effectiveness of an agency. As a past OSBEELS Board member and staff of the Building Codes Division (BCD), the initial idea of consolidating OSBEELS under the BCD was not a good idea. Mr. Santos stated that idea was not on their radar at this time. Mr. Santos continued informing the Board that any changes would still need to occur through the 2011 Legislature. He further noted that boards and commissions that are supported by the general fund may have to advocate greater than those that are self-supporting.

Mr. Santos concluded by expressing his appreciation for the opportunity to discuss the Report. He noted that when all cards are on the table, there is less apprehension regarding the matters. Not all parties need to agree, but at least all parties are aware of where each side is coming from.

#### *Water Resources Department (WRD) Legislative Concept (LC) 499*

Ms. Lopez reported that the WRD forwarded the first draft of LC 499 completed by the Legislative Counsel for OSBEELS' review on July 6, 2010 and included in the packets for review. Due to a deadline imposed by Legislative Counsel to respond, Ms. Lopez offered the following in place of subsection 2 of the concept:

*The State Board of Examiners for Engineering and Land Surveying shall establish fees in rule for the application, certification and renewal of water right examiners. No fees or other payments will be due from or payable by the Board to the Water Resources Department. Instead, the Department shall be entitled to retain all test administration fees, exam book and scoring fees paid by or on behalf of persons who register to take the examination. The test administration fees, exam book and scoring fees shall be established by rule. The Board may retain all other fees charged by the Board. These fees shall be based upon the expenses of the Board and the Water Resources Department in conducting a program to certify water right examiners.*

She noted that she also expressed concerns with page 3, line 10 (board rule) and anticipates that Legislative Counsel will complete another draft for consideration at a later time.

#### *Board Vacancies*

Ms. Lopez briefly reported that the Board has yet to fill the engineer position that was vacated by George Gross. However, James Doane, P.E., P.L.S. was appointed by the Governor to succeed the position held by Sue Laszlo, P.E. Additionally, Amin Wahab and Carl Tappert were re-appointed for another four-year term (July 1, 2010 to June 30, 2014).

#### *Staffing*

Ms. Lopez stated that there are two vacant staff positions, Investigation and Outreach. Furthermore, JR and Allen will be attending the 2010 Council on Licensure, Enforcement and Regulation (CLEAR) Training Program in Nashville, TN in September 2010. JR is scheduled for Specialized Training (JR completed the Basic Training in September of 2006) and Allen is scheduled for the Basic Training. CLEAR training is for personnel who conduct regulatory investigations.

Ms. Lopez reported that the Department of Administrative Services (DAS) Human Resource Services (Class and Compensation) Division completed their study of 7 positions at the OSBEELS

office to ensure that the classifications and compensations accurately reflect the work performed by staff and the work is inline with the state. Therefore, she invited Jim Walsh to attend the meeting and answer any questions of the Board regarding the Position Classification Review. The classification review determined that the majority of the positions at OSBEELS are consistent with the state's classification system. Two classifications were not correctly classified. As a result, those staff persons will remain in their current classifications and when or if the position becomes vacant, the position should be reclassified to the recommendation of DAS.

## **PRESIDENT'S REPORT**

President Davis briefly summarized highlights from the Western Zone Meeting held in May that were pertinent to OSBEELS. Included in the highlights were motions related to finance, awards from the Advisory Committee, computer-based testing, BS+30, faculty licensure, new provision of the 16-hour structural examination, and professional development hours.

President Davis also reported that he updated the Structural Engineers of Oregon (SEAO) of recent changes to the structural examinations. This updated included the administration of the examinations and the prerequisite of registration prior to applying for the structural examination. There was no further discussion.

## **EXAMINATIONS AND QUALIFICATIONS COMMITTEE**

Mr. Butts reported that the E&Q Committee met on June 11, 2010 to discuss the matters contained in the Committee minutes. Additional discussion was held by the Board regarding the following matters:

### *Revisions to the Take-home Examination*

Staff provided a total of 40 questions for consideration to include in the new online take-home examination. After discussion and a few revisions, it was moved and seconded (Kramer/Hoffine) to approve the 40 questions, as revised, for the online take-home examination. The motion passed unanimously.

### *Exam Irregularity Report*

As a result of the June Committee meeting, Dinesh Kumar received correspondence invalidating his April 2010 examination results. Information received from NCEES stated that Mr. Kumar was observed using a non-NCEES writing instrument. However, Mr. Kumar responded stating what happened from his perspective. After discussion, it was determined that additional research needs to occur; such as interviewing the proctor. AAG Tucker-Davis has also been requested to provide advice regarding any rights Mr. Kumar may have. The Committee will reconsider the matter after additional information and advice from AAG Tucker-Davis is obtained.

### *CPD Audit Updates*

Ms. Lopez updated the members on the following Continuing Professional Development (CPD) audit files:

- Erin Shipp – Submitted additional information that will be reviewed and considered prior to opening a law enforcement case.
- Matthew Shipp – Submitted additional information that will be reviewed and considered prior to opening a law enforcement case.

- Steven Ward – Submitted additional information that will be reviewed and considered prior to opening a law enforcement case.
- Ronald Fuller – Passed away.

### Registration

*Comity Applications* – Mr. Butts directed the members’ attention to the list of 105 professional engineer applicants for registration by comity. It was moved and seconded (Butts/Linscheid) to approve the list of 105 professional applicants as presented. The motion passed unanimously.

*1<sup>st</sup> Registration Applications* – Mr. Butts directed the members’ attention to the 3 applicants seeking 1<sup>st</sup> registration. It was moved and seconded (Butts/Linscheid) to approve the 3 applicants as presented. The motion passed unanimously.

*Prior Practice Applications* – Mr. Butts directed the members’ attention to the 6 applicants seeking Geotechnical registration by prior practice. It was moved and seconded (Butts/Kramer) to approve the 6 applicants as presented. The motion passed unanimously.

### **EXTERNAL RELATIONS COMMITTEE**

Ms. Kramer reported that the ERC met on June 11, 2010, to discuss the matters as contained in the Committee minutes. Additional discussion was held by the Board regarding the following matter:

#### *Spring 2011 Symposium*

The Committee discussed matters related to holding a forum for associations to attend. The purpose of the forum is to discuss different issues that face the professions, along with building stronger communications with the professional associations of the Board. As a result of the Committee discussion, it was moved and seconded (Kramer/Laszlo) to hold a Spring 2011 symposium. The motion passed unanimously.

### **FINANCE COMMITTEE**

Mr. Tappert reported that the Finance Committee met on June 11, 2010, to discuss the matters as contained in the Committee minutes.

#### *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 May 28, 2010. This time period reflects the latest data received in bank statements for the 2009 – 2011 biennium. Mr. Tappert also noted that staff was directed to discontinue providing Income & Expense graphs as they were no longer necessary to complete a review of the Board’s financial information.

### **LAW ENFORCEMENT COMMITTEE**

Mr. Linscheid reported that the LEC met on June 10, 2010, to discuss the following matters:

#### **Informal conferences**

##### *2553 – William Walpole*

Mr. Linscheid reported that the Committee met in an informal conference with respondent William

Walpole to discuss a Notice of Intent of Assess a \$1,000 Civil Penalty (NOI) for violations of ORS 672.020(1), ORS 672.045(1),(2), and OAR 820-010-0720(1). The Board received an anonymous complaint that Mr. Walpole was offering engineering services through his firm of Walpole Industrial Engineering, LLC.

Mr. Linscheid stated that Mr. Walpole had retired from a California firm and was contracted by the firm to continue to perform his machinist duties. Since retiring, he also began to make hot rod parts he sells through a local auto club and word-of-mouth. The Committee offered to settle the case as compliance met provided that Mr. Walpole supplied the Board with a copy of a name change request he submitted to the Oregon Corporate Division by July 2, 2010. He was to remove the term “engineering” from his business name. Board Investigator McCartt confirmed that Walpole submitted the required documentation. Mr. Linscheid observed that Mr. Walpole had met the terms of his settlement agreement and was therefore in compliance. Mr. Seward asked if the industrial exception applied. Mr. Tappert noted the Committee found that Mr. Walpole was not offering to or performing engineering services for the public, but that the name of his company caused the action. A motion to approve the settlement agreement with Mr. Walpole was moved and seconded (Linscheid/Butts). The motion passed unanimously.

#### *2545 – Dwayne Kliewer*

Mr. Linscheid reported that the Committee met in an informal conference with respondent Dwayne Kliewer, PE, in a second informal conference to discuss a Notice of Intent to Assess a \$1,000 Civil Penalty for violations of ORS 672.025(3), ORS 672.045(1),(2), and OAR 820-010-0720. The Board received a complaint from Tom Stiglich that Mr. Kliewer was a professional engineer who had conducted a boundary survey contrary to the provision of ORS 672.025(3).

Mr. Linscheid observed that Mr. Kliewer had changed his perspective between his first and second informal conferences. He noted the Mr. Kliewer held the “old school” attitude that an engineer could survey property and convey the location of property lines to a client. Mr. Kliewer managed property for Clackamas County that was previously surveyed. At the request of the adjoining neighborhood association, Mr. Kliewer found the common monuments and placed lath along the boundary. Mr. Kliewer was in violation because he physically located the boundary line, prepared a map depicting monument positions, and conveyed the information to the association; thus, he authoritatively located and reestablished the boundary. However, only a registered land surveyor can determine the precise location of boundary lines and convey their position. The Committee reached a settlement agreement that reduced the civil penalty to \$500, which is due and payable by August 2, 2010. Mr. Linscheid also noted that Mr. Kliewer is to remain current with changes to statutes and rules that are published in the Board’s *Oregon Examiner*. A motion to approve the settlement agreement with Mr. Kliewer was moved and seconded (Linscheid/Tappert). The motion passed unanimously.

#### *2554 – David H. Krumbein*

Mr. Linscheid reported that the Committee met in an informal conference with respondent David H. Krumbein, PE, PLS, Certified Water Right Examiner (CWRE) and Umatilla County Surveyor, to discuss a Notice of Intent to Revoke Registration and to Assess a \$1,000 Civil Penalty for violations of OAR 690-014-0100(1) and OAR 820-020-0015(8). The Board received a complaint from Dwight French, Oregon Water Resources Department (WRD), alleging that Mr. Krumbein

had not completed a corrected Claim of Beneficial Use (COBU). In addition, Mr. Krumbein failed to cooperate with the Board by failing to respond violating OAR 820-020-0015(8).

Mr. Linscheid stated that Mr. Krumbein was before the Board because of the WRD allegations against his CWRE certification. The investigation revealed the responsibilities of OSBEELS to administer the CWRE certification process, but it also revealed the need to clarify the regulatory scheme between OSBEELS and WRD regarding CWRE sanctioning. In addition, he noted that Mr. Krumbein is a teacher at Blue Mountain Community College.

Regardless, Mr. Linscheid explained that Mr. Krumbein prepared a cost estimate for his client in 1994 and subsequently prepared the COBU. It was submitted to WRD. In May 2005, WRD issued an amended order that required the correct form and additional data. The client did not want to pay Mr. Krumbein for the additional work and Mr. Krumbein was reluctant to perform the work without compensation. Mr. Krumbein acknowledged his responsibility to complete the COBU, but the Committee found that it was a contractual dispute outside the Board's authority. Mr. Linscheid emphasized that the issue became his failure to cooperate with WRD and the Board.

The Committee negotiated a settlement agreement wherein Mr. Krumbein would be assessed a \$1,000 civil penalty with \$600 waived contingent upon Mr. Krumbein submitting a correct COBU to the WRD. The Committee would also stipulate to his intention to surrender his CWRE certification. Prior to voting, Ms. Newstetter recused herself due to her acquaintance with Mr. Krumbein. A motion to approve the settlement agreement with Mr. Krumbein was moved and seconded (Linscheid/Tappert). The motion passed unanimously.

#### *2526 – Deron A. Jyo*

Mr. Linscheid reported that the Committee met in an informal teleconference with respondent Deron A. Jyo, PE, to discuss a Notice of Intent to Assess a \$2,000 Civil Penalty for violating OAR 820-010-0635(1),(7) and OAR 820-020-0015(8). Mr. Jyo was an Oregon registrant and Hawaii resident selected to participate in an audit of his PDH units. He failed to respond to Board inquiries until contacted by a Board investigator. Mr. Linscheid stated that Mr. Jyo admitted to “dropping the ball” when he should have responded to the audit request. Upon reviewing his PDH units, the Committee found he was in compliance. However, since he failed to cooperate with the audit the Committee reached a settlement agreement wherein Mr. Jyo would pay a \$250 civil penalty due by August 2, 2010. A motion to approve the settlement agreement with Mr. Jyo was moved and seconded (Linscheid/Tappert). The motion passed unanimously.

### **Cases Reviewed**

#### *2562 – Michael Schmid / OSBEELS*

Mr. Linscheid reported that the Committee discussed an anonymous complaint alleging that the respondent Michael Schmid, PE, was offering to practice land surveying without employing a registrant in responsible charge. The Committee learned that KPFF Consulting Engineers, with Mr. Schmid as Principle/Division Manager, was offering land surveying services from its Eugene office, but did not employ there a resident professional land surveyor. Mr. Linscheid stated that the Eugene office is operated and managed by a registered professional engineer. He continued that KPFF's professional land surveyors work out of the Portland office and are assigned as duty requires. Since KPFF does not station a separate survey crew in Eugene, supervision and control

of surveying activities was apparent. As a result, the Committee determined that Schmid/KPFF was in compliance with OAR 820-010-0720(3). A motion to close the case as allegations unfounded was moved and seconded (Linscheid/Tappert). The motion passed unanimously.

*2565 – William Gee / OSBEELS*

Mr. Linscheid reported that the Committee discussed an anonymous complaint alleging that the respondent William Gee, President of WRG Fire Training Systems, Inc. (WRG), engaged in the unlicensed practice of engineering by advertising for and offering to perform engineering services on his company's Web site without identifying the registered professional engineer that will perform the services constituting the practice of engineering. Mr. McCartt explained that Gee/WRG is a licensed contractor who had failed to identify his engineer as required by OAR 820-010-0715(2). Mr. Linscheid added that Gee's attorney worked with Mr. Gee to remove the offering from his Web site thus achieving compliance. A motion to close the case as compliance met was moved and seconded (Linscheid/Tappert). The motion passed unanimously.

*2567 – Thomas Nelson / Ruben Martinez*

Mr. Linscheid reported that the Committee discussed that complainant Ruben Martinez alleged respondent Thomas Nelson, PLS, violated several Rules of Professional Conduct when he knowingly aided Mr. Martinez' unlicensed practice of land surveying. Mr. Martinez also alleged that Mr. Nelson engaged in deceptive business practices as evidenced by the sanctioning from the Washington Board for illegally conducting business in Washington without obtaining a Certificate of Authorization (COA) to offer and/or perform land surveying services in the State of Washington.

Mr. Linscheid remarked that Mr. Martinez had been suspended by the Board. When Mr. Martinez was discovered to have engaged in the unlicensed practice of land surveying during his suspension, Mr. Martinez requested a hearing on the matter, but failed to appear and was revoked. Mr. Martinez alleged that Mr. Nelson was aware he had been suspended, but the evidence supported that Mr. Nelson was not aware. In addition, Mr. Linscheid confirmed that Mr. Nelson was sanctioned by the Washington Board because his COA had expired. Since Oregon does not require a COA, Mr. Nelson was not in violation of Oregon statute or rules. A motion to close the case as allegations unfounded was moved and seconded (Linscheid/Newstetter). The motion passed unanimously.

*2568 – Doug Devine / OSBEELS*

Mr. Linscheid reported that the Committee discussed that respondent Doug Devine, President of Epic Scan, Inc., engaged in the unlicensed practice of land surveying by using a Light Detecting and Ranging camera (LiDAR) to investigate the Shelton Fire and by using Epic Scan staff to conduct "Laser Scanning Control." A preliminary evaluation determined that the use of LiDAR on the Shelton Fire was a forensic investigation and was excepted under either ORS 672.060(18) or ORS 672.060(19), but left open whether "Laser Scanning Control" that provides "an accurate control network" met the definition of land surveying under ORS 672.005(2). An investigation was opened to resolve the question.

Mr. Linscheid informed the Board that there was extensive Committee discussion about Laser Scanning Control and geo-referencing LiDAR data to the state plane coordinate system. He

reiterated that LiDAR is a tool and not the issue, but how it is applied and for what purpose. Given the outstanding questions, the Committee recommended further investigation, including a site visit. Mr. Linscheid also stated that the Committee suggested a professional reviewer be involved and recommended Chris Aldridge, RPP. Ms. Lopez informed the members that Mr. Wilkinson had already sent information to Mr. Aldridge.

*2569 – Doug Ferguson / Jack Watson*

Mr. Linscheid reported that the Committee discussed that complainant Jack Watson, PLS, alleged Douglas Ferguson, PLS, PE, wrote untruthful statements in a “Thoughts on Public Land Survey Corners Evidence Evaluated on August 26, 2008,” which was filed in Grant County as map of survey number 1844. Prior to discussion, Ms. Newstetter declared a conflict of interest and recused herself.

Mr. Linscheid commented that the case began nearly ten years ago with a series of cross complaints involving Mr. Watson, Mr. Ferguson, and Robert Bagett, PLS. He observed that the Board had an investigator at the time that complicated matters. The complaints subsequently were closed as allegations unfounded and/or as Board lacks jurisdiction.

In case #1844, Mr. Ferguson questioned the evidence Mr. Watson claimed for the recovery of original Public Land Survey System section corners. Mr. Ferguson filed case #1844 as an evaluation of the found evidence. Mr. Ferguson wrote that he accepted the evidence Mr. Watson found at one corner, but rejected the evidence at another corner. Given the conflicted history between Mr. Watson and Mr. Ferguson, it appeared that the complaint was a reaction in a chain of events. Regardless, Mr. Ferguson expressed a professional opinion based on adequate knowledge of the facts. A motion to close the case as allegations unfounded was moved and seconded (Linscheid/Tappert). The motion passed unanimously.

*2571 – Jason Hatfield / Jack Watson*

Mr. Linscheid reported that the Committee discussed the complaint from Mr. Watson as being substantially related to case #2569. Mr. Watson alleged that the respondent Jason Hatfield, PLS, set a second monument seven years after Mr. Watson had found the original corner stone and re-monumented that position. Mr. Hatfield exhumed the original corner stone claimed by Mr. Watson and could not identify the marks, so Mr. Hatfield set a second monument by proportion that bears N87°01’30”E, 41.43 feet from the monument set by Mr. Watson. Prior to discussion, Ms. Newstetter declared a conflict of interest and recused herself.

Mr. Linscheid observed that Mr. Hatfield followed proper protocol by involving other surveyors in evaluating the evidence claimed by Mr. Watson as to the original corner position. He stated that surveyors need to evaluate prior work. If that work is questionable, then the surveyor should take appropriate action, which is what the Committee believed Mr. Hatfield did. The case is a professional disagreement. A motion to close the case as allegations unfounded was moved and seconded (Linscheid/Tappert). The motion passed unanimously.

However, Mr. Linscheid also noted Committee concerns about the evidence Mr. Watson used to establish his corner position. As a result, the Committee directed that a case be opened against Mr. Watson. The Committee would not evaluate whether the corner was in the correct position, but

would evaluate in cooperation with appropriate agencies the evidence used by Mr. Watson to establish his position. He informed that staffs are to work with decision authority representatives from the Bureau of Land Management (BLM) and U.S. Forest Service to schedule a site visit.

*2572 – Stephen Topaz / OSBEELS*

Mr. Linscheid reported that the Committee discussed that respondent Stephen Topaz submitted a complaint alleging the City of St. Helens Engineering Department excluded his building's sump pump and storm drainage lines from the City's sewer line improvement project. Mr. Linscheid stated that Mr. Topaz wanted the Board to intercede in his disagreement with the City, but his request was outside the Board's authority. However, Mr. Topaz signed his complaint as a PE. He was once registered in Maryland, but not in Oregon. The Committee believed that Mr. Topaz enhanced his credentials by using the title and determined to issue him a Notice of Intent to Assess a \$1,000 Civil Penalty for violation of ORS 672.007(1)(a).

*2573 – Jeffery Tucker / OSBEELS*

Mr. Linscheid reported that the Committee discussed that respondent Jeffery Tucker, PE, used an unauthorized geotechnical seal design on a report he asked a third party to review. The third party contacted the Board about where to get a similar design and was informed that Mr. Tucker, by including a "Geotechnical" banner on his PE seal, was violating OAR 820-010-0620(2). Mr. Linscheid added that the Committee found the seal design creative; however, the rule prohibits using a seal design not compliant with the rule and Exhibit 1. Board members also have received calls about creative seals designs that are in violation. The Committee will issue Mr. Tucker a letter of concern that the Official Seal rule approved only those designs as shown by Exhibit 1.

*2575 – Chase King / OSBEELS*

Mr. Linscheid reported that the Committee discussed that respondent Chase King wrote a July 2009 article for the Professional Surveyor magazine wherein he referred to himself as a "surveyor," but was not a registrant. Mr. King wrote about surveying Eastern Oregon range lands using GPS and horses. However, Mr. King worked under the supervision of a PLS and jointly owns a firm with two licensed surveyors. A motion to close the case as allegations unfounded was moved and seconded (Linscheid/Tappert). The motion passed unanimously.

*2576 – Matthew Burrell / James Elam*

Mr. Linscheid reported that the Committee discussed that complainant James Elam, PLS and Washington County Surveyor, alleged that respondent Mathew Burrell was engaged in the unlicensed practice of land surveying when Mr. Burrell used the title "PLS" without registration. Mr. Burrell recently relocated to Oregon and contacted Washington County about a proposal using a company business card that showed him as a PLS. He was a registrant in Idaho and not in Oregon, but he took immediate action to submit a comity application prior to the complaint being filed. A motion to close the case as compliance met was moved and seconded (Linscheid/Tappert). The motion passed unanimously.

*2577 – Eugene Wobbe / Ed Walling*

Mr. Linscheid reported that the Committee discussed that complainant Ed Walling alleged respondent Eugene Wobbe, PLS, was negligent when he surveyed lot lines for a development and the setbacks were found not in compliance with code. Mr. Linscheid explained that the Planned

Unit Development Mr. Wobbe surveyed was under a flexible zoning regime and that there were no buildings on the lot at the time of his survey. The Committee believed that subsequent construction of the condominiums might not have accurately placed buildings on the lot with respect to the approved set backs. A motion to close the case as allegations unfounded was moved and seconded (Linscheid/Tappert). The motion passed unanimously.

*2578 – Robert Boyer / R. Charles Pearson*

Mr. Linscheid reported that the Committee discussed that complainant R. Charles Pearson, PLS and Clackamas County Surveyor, alleged respondent Robert Boyer, PLS, PE, was negligent or incompetent in the practice of land surveying by continuously submitting incomplete maps of survey for filing. The Committee evaluated a property line adjustment (PLA) and a partition plat and the iterations for each effort all contained multiple violations of ORS 209.250, including incomplete descriptions of monuments, incomplete narratives, failing to explain the elements controlling the lines established, and failing to explain the basis of bearing. Mr. Linscheid stated that the Committee determined that Mr. Boyer was not operating with the expected standard of care and to issue him a Notice of Intent to Revoke Registration and Assess a Civil Penalty of \$5,000 for violations of ORS 209.250(2),(3), ORS 672.200(2),(4), OAR 820-020-0015(1),(2), and OAR 820-020-0025(2).

### **New Business**

*Preliminary Evaluation: Riggins Complaint*

Mr. Linscheid reported that the Committee discussed a complaint received from Mark Riggins, PLS and Marion County Surveyor, regarding Thomas Swart. He pointed out that Mr. Swart was revoked to settle case #2494, but Mr. Swart signed a plat approximately six weeks afterwards that his employer then attempted to file. The Committee discussed whether to reopen the case under which Mr. Swart was revoked or to open a new case as unlicensed practice. He stated the Committee determined to open a new case against Mr. Swart. This would include revisiting the \$16,500 civil penalty waiver.

*Preliminary Evaluation: Williams Complaint*

Mr. Linscheid reported that the Committee discussed a complaint received from Gerald H. Williams regarding a report prepared by Western Architecture, Forensic Architects and Engineers. The Committee found the report that scoped repairs for a 152-unit apartment complex was prepared by a licensed architect and was excepted under ORS 672.060(1). He stated the Committee determined to not open a law enforcement case.

*Preliminary Evaluation: City of Bend Complaint*

Mr. Linscheid reported that the Committee discussed a complaint received from the City of Bend regarding respondent Steven Banton, PE. He explained that the Board investigated a prior complaint against Mr. Banton and found his work substandard. However, his engineering work was focused on the excepted structures under ORS 672.060(10),(11) and the Board was unable to take action. Mr. Linscheid added that the statute has changed and the Committee believed the case should be prioritized by the use of an expert reviewer, Ed Tornberg, SE. Board President Davis added that he reviewed Mr. Banton's prior work and believed the case should be prioritized.

*Preliminary Evaluation: Oldfield Complaint*

Mr. Linscheid reported that the Committee discussed a complaint received from Jim Oldfield regarding Neil Hibbs, PLS. Mr. Oldfield alleged that Mr. Hibbs had misled him about the cost to conduct a survey. Since contract disputes are outside the Board's jurisdiction, the Committee determined to not open a law enforcement case.

### **Unfinished Business**

Mr. Linscheid reported the Committee had no unfinished business to discuss during the June Committee meeting.

### **Settlement agreements, Cases Subject to Monitoring, and Cases Subject to Collections**

Mr. Linscheid observed that Mr. Dale Marx in case #2291 did not seem interested in closing the case. Regardless, he can not survey unless he has a registrant in responsible charge. Mr. McCartt replied that Mr. Dan Bauer, PLS, allegedly works for Mr. Marx. In addition, Mr. Linscheid confirmed that the Committee authorized the referral of two cases to the Department of Revenue for collections, including case #2496 – Demers and case #2544 – Rashau.

### **Case Status**

Ms. Lopez informed the Board that three cases are scheduled to be referred to the Joint Compliance Committee (JCC), including #2589 – Marcella Boyer, #2590 – James Rodine, and #2615 – Andrew Goodell. The JCC is scheduled to meet on August 17, 2010, in the OSBEELS conference room at 9:00 a.m.

President Davis called for an Executive Session to consult with legal counsel Assistant Attorney General (AAG) Joanna Tucker-Davis regarding the Proposed Order by the Administrative Law Judge (ALJ) in case #2465. When called back into open session, Mr. Davis observed no decisions were made in executive session. Upon further discussion, the Board determined to have its land surveying members other than Mr. Linscheid review the Proposed Order and hearing evidence and to report their individual opinions to the Board during its September meeting. A motion to conduct the review was moved and seconded (Newstetter/Seward). The motion passed unanimously.

### **PROFESSIONAL PRACTICES COMMITTEE**

Ms. Newstetter reported that the PPC met on June 11, 2010, to discuss the matters contained in the Committee minutes. It was briefly noted that AAG Katharine Lozano would be providing advice related to the electrical engineering for discussion during the next committee meeting. There was no further discussion.

### **Standards of Land Surveying Practices Committee**

Mr. Linscheid reported that the Standards of Land Surveying Practices Committee met on June 11, 2010 to discuss the matters contained in the Committee minutes. There was no further discussion. However, after a brief discussion, it was noted that the Standards of Land Surveying Practices Committee would not meet during the month of August and reconvene in October.

### **RULES AND REGULATIONS COMMITTEE**

Mr. Seward reported that the R&R Committee met on June 11, 2010, to discuss the matters contained in the Committee minutes.

It was moved and seconded (Seward/Butts) to approve the rulemaking process to amend the following rules as presented. The motion passed unanimously.

- *OAR 820-010-0209 – Applications for Certification as a Water Right Examiner*
- *OAR 820-010-0215 – Forms of Applications*
- *OAR 820-010-0427 – Nature of Examination for Registered Professional Photogrammetrist (RPP)*
- *OAR 820-010-0463 – Cutoff Scores for Examinations*
- *OAR 820-010-0305 – Fees*
- *OAR 820-010-0210 – Applications 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 820-010-0400 – Application for Registration as a Geotechnical Engineer*

#### **ADJOURN**

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

**NEXT MEETINGS**

Next Board Meeting:

September 14, 2010

Next Committee Meetings:

LAW ENFORCEMENT:

Thursday, August 12<sup>th</sup> at 8:00 a.m.

PROFESSIONAL PRACTICES:

Friday, August 13<sup>th</sup> at 8:00 a.m.

RULES & REGULATIONS:

Friday, August 13<sup>th</sup> at 9:00 a.m.

EXAMINATIONS & QUALIFICATIONS:

Friday, August 13<sup>th</sup> at 10:00 a.m.

Oregon Specific Examination Task Force:

Friday, August 13<sup>th</sup> at 12:00 p.m.

FINANCE:

Friday, August 13<sup>th</sup> at 1:00 p.m.

EXTERNAL RELATIONS:

Friday, August 13<sup>th</sup> at 2:00 p.m.