

**OREGON STATE BOARD OF EXAMINERS
FOR
ENGINEERING AND LAND SURVEYING
DRAFT**

Minutes of Meeting
May 10, 2005

CALL TO ORDER

President Albright called the meeting to order at 9:00a.m. in the conference room of the OSBEELS Office, 728 Hawthorne Ave., N.E., Salem, Oregon.

Members Present:

Stuart Albright
Edward Butts
Grant Davis
Steve Dyrnes
Mari Kramer
Susanna Laszlo
Dan Linscheid
Bob Neathamer
Dave Taylor
Ron Stuntzner

Visitors Present:

Gary Anderson, PLS, PLSO Liaison
Russell Lawrence, PE, StreamFix
Clarence Epperly
Julia Rask

Others Present:

Mari Lopez, OSBEELS Executive Secretary
Brian Halfman, OSBEELS Investigator
J.R. Wilkinson, OSBEELS Investigator
Sheli Dumas, Administrative Specialist
Kathi Dahlin, Assistant Attorney General

APPROVAL OF AGENDA

Ms. Laszlo requested to replace Item B. Industrial Exemption with Summary of DEQ meeting held on May 5, 2005. She also requested to add the following: Item C. Summary of Water Rights Department meeting held on May 9, 2005, Item D. Summary of May 6, 2005 meeting with Oregon State Board of Geologist Examiners (OSBGE), and Item E.

Summary of April 2005 Japan visit. Mr. Taylor requested to discuss an electronic communications proposal package under External Relations. It was moved and seconded (Dyrnes/Laszlo) to approve the agenda as amended. The motion passed unanimously.

PUBLIC INPUT

President Albright welcomed guest Gary Anderson, PLSO Liaison and Clarence Epperly. President Albright allowed public input from Clarence Epperly, complainant in case 2313. Mr. Epperly made a brief statement about his concerns with the respondent's actions and the possible closure of the case. It was moved and seconded (Neathamer/Dyrnes) to modify the agenda and move the discussion of case 2313 to the top of the agenda. The motion passed unanimously. *The result of the discussion is summarized within the Law Enforcement – Recommended Board Actions section of the minutes.*

APPROVAL OF MINUTES

It was moved and seconded (Taylor/Laszlo) to approve the minutes of the meeting of March 8, 2005. The motion passed unanimously.

EXECUTIVE SECRETARY'S REPORT

Examination/Registration – Ms. Lopez informed the Board that the April examinations are over and test materials were returned for scoring. She stated that despite the hectic preparations for the April 2005 examinations, the administration went fairly well. She noted that annual renewal activity for June is also in progress.

Committee Activities – Ms. Lopez stated that the Examinations and Qualifications Committee, Law Enforcement Committee, Professional Practices, and Rules and Regulations Committee each met during the interim and committee reports were included in the packets.

Administrative Activities – **2005 Western Zone Meeting**

Ms. Lopez noted that the 2005 Western Zone Meeting has been scheduled on May 19-21, 2005 in Anchorage, Alaska at the Anchorage Marriott Hotel. Mr. Linscheid, Mr. Neathamer, Mr. Davis and Mr. Taylor were chosen as the delegates to attend. Ms. Lopez stated that she would also be attending this event.

NCEES 84th Annual Meeting

The Board was informed that arrangements have been made for the NCEES conference on August 24-27, 2005 in Memphis, TN at the Peabody Hotel. Delegate notification response is needed by June 10, 2005. Ms. Lopez also noted that the Council bears the travel expenses for one voting delegate from each Member Board to attend the Annual Meeting.

OSBEELS' Line of Credit

Ms. Lopez advised the Board that the office operates one credit card for miscellaneous expenses. When she attempted to purchase the airline tickets to Alaska, the credit card was declined. She stated that she immediately contacted Customer Service and was notified that the maximum line of credit was set at \$5,000.00. The total airfare amount came to \$4,705.74. Since the credit card was used during the examination administration in Eugene, she was unable to purchase the airline tickets with the OSBEELS credit card. Ms. Lopez utilized her personal credit card to proceed with the purchase. She requested Board approval for reimbursement of \$4,705.74 and approval to increase the OSBEELS line of credit. It was moved and seconded (Laszlo/Neathamer) to approve reimbursement of \$4,705.74 to Ms. Lopez. The motion passed unanimously. It was moved and seconded (Laszlo/Neathamer) to approve an increase to the OSBEELS line of credit to \$10,000.00. The motion passed unanimously.

Staffing – Ms. Lopez informed the Board that Jennifer is expected to return to work on June 1, 2005.

PRESIDENT'S REPORT

President Albright briefed the Board on the meeting with Senator Metzger in which he attended along with Mr. Linscheid and Mr. Halfman. Senator Metzger wanted to discuss case 2291 which involved a long time friend and constituent. He was informed that the Board was following the normal procedures and would continue with the case. Senator Metzger also wished to briefly discuss Senate Bill 55. He was assured that there would be professional support for the Bill present at the hearing. The Bill was subsequently moved through the Senate.

FINANCIAL REPORT

The Finance Committee did not hold a formal meeting in April.

Ms. Lopez reported that as of April 30, 2005, the Board had a reserve of approximately \$605,110. Ms. Lopez also provided the Profit & Loss Budget vs. Actual statement for the period July 1, 2003 through April 30, 2005. She commented that the two-year fiscal period is now approximately 92% complete.

LAW ENFORCEMENT COMMITTEE

The Law Enforcement Committee met on April 13, 2005 to discuss the following matters. Mr. Neathamer reported the following to the Board:

Consent Calendar

The cases on the consent calendar included 2316 and 2323. It was moved and seconded (Neathamer/Laszlo) to approve the consent calendar. The motion passed unanimously.

Recommended Board Actions

2313 – *Richard Montgomery*: This case was moved up on the agenda and a decision was made during the public input portion of the meeting. The complainant in the case made a brief statement concerning the case. AAG Dahlin presented the legal issues including that the Board had taken previous disciplinary action against Mr. Montgomery. The surveying activity in this case preceded the sanctions handed down by the Board. No complaints against Mr. Montgomery have been received since. It was moved and seconded (Davis/Laszlo) to close the case and issue a letter of concern. The motion passed with Mr. Taylor dissenting.

2336 – *Michael Boyce*: Mr. Boyce failed to request a hearing or informal conference. The LEC recommended that a Final Order upon Default be issued assessing a civil penalty of \$1,000. It was moved and seconded (Neathamer/Laszlo) to issues a Final Order upon Default. The motion passed unanimously.

Miscellaneous

Disciplinary Procedures: Staff and the LEC are continuing to review and revise the policies and procedures used by the Board. Discussion of any newly drafted documentation will be discussed at the next LEC meeting.

Professional Coursework: Staff was unable to gather useful information regarding possible courses from FEMA. President Albright suggested that ASCE offers courses several times a year and that the Board should keep options open regardless of the distance required to travel. Mr. Neathamer reported that work on the OIT ethics program was continuing.

Jackson County Letter: The Board office received a letter from the Jackson County Surveyors Office commending Richard Templin on improvements made to the quality of work following disciplinary action. The letter also commended the Board on a job well done.

Doug Gilbertson Letter: Copies of a letter from Mr. Gilbertson regarding cases 2317 and 2324 were distributed to the Board members. It was decided that the letter did not merit a discussion since it pertained to an open law enforcement case and would be dealt with by the LEC.

Notice of Intent Updates: AAG Dahlin reported that the Notices of Intent were complete for cases 2327 and 2340. The Notice of Intent for case 2291 was nearing completion.

Case Status Report/Settlement Agreement Monitoring

Mr. Neathamer noted that the Board packets included a copy of the case status report and the settlement agreement monitoring report. There were no additional questions for Mr. Neathamer.

PROFESSIONAL PRACTICES COMMITTEE

Joint Meeting with the Architect Board

Brief discussion was held regarding the previous nights social dinner with members of the Architect Board and staff. The event was deemed a success in efforts to further open communication that will aide in resolving issues of overlapping practices.

The Professional Practices Committee met on April 12, 2005 to discuss the following matters. Ms. Laszlo reported the following to the Board:

Guest Discussion

The Committee held a forum to discuss the Engineering Law and Exemptions and how it may relate to industry/agency and permitting. Ms. Laszlo summarized the discussion for the Board. Among the topics of concern were permitting of stream restoration projects and construction on government and privately owned land. The purpose of the forum was to help OSBEELS understand how ORS 672 is being interpreted in the community and permitting agencies.

Compliance Question – Joe Sweeney Email dated March 30, 2005

Ms. Laszlo reported that the Committee received a question from Joe Sweeney regarding OAR 918-311-000. Mr. Sweeney read in the recent Reference Manual for Building Officials, that all construction documents must be stamped and signed by the appropriate professional. Mr. Sweeney believes that ORS 479.860 and OAR 918-311-000 may be in conflict with the engineer rules. After a brief discussion and review of previous correspondence to Jennings Ruffing regarding similar issues, staff replied stating that customers of an electrical contractor are persons who purchase the service of having an electrical installation made. Correspondence from staff explained that the authorization under ORS 479.860 is limited to a supervising electrician designing, planning or laying out electrical installations for persons who will purchase the service of having those installations made. ORS 479.860 does not authorize an electrical supervisor to prepare drawings for contactors, architects or developers where those persons will not be purchasing the electrical installation services, called for by the drawings, from the supervising electrician's employer-contractor. Therefore there is not a conflict with the laws. Ms. Laszlo also pointed out again that OAR 820-040-0010 (Practice of Electrical Engineering) is inadequate. It was suggested that the Rules and Regulations Committee consult with a few electrical engineers to provide input for improvement.

House Bill 3092 Oregon Association of Plumbing-Heating-Cooling Contractors

Ms. Laszlo reported that the Professional Engineers of Oregon (PEO) has approached the Board requesting an opinion on House Bill 3092. This bill exempts complex structure plumbing systems designed and stamped by professional engineer or registered architect from review for plumbing specialty code compliance. It also provides that the municipality administering the enforcing building inspection program is not required to review plans for plumbing specialty code compliance. HB 3092 would also prohibit a department or municipality from ordering work halted on plumbing system based on noncompliance with plumbing specialty code if the system is being installed in

accordance with the plumbing system plans designed and stamped by a registered professional. At this time, no further action will be taken, however, Ms. Lopez will continue to track the progress of this bill and keep the Board informed.

House Bill 2725 Design Professional Liability

Ms. Laszlo informed the Board that House Bill 2725 has also been brought to the attention of the Board. She stated that upon review, the Committee did not see any issues with HB 2725. After a brief discussion, it was determined that no further action is necessary.

ODOT Policy Regarding Professional Engineering – Doug Spencer Follow-up email dated March 29, 2005

Ms. Laszlo stated that Mr. Spencer had two items he requested clarification from the February Professional Practices Committee meeting. The first was confirming that the Board expects that engineering media, such as “standard drawings”, for the use of construction contain a stamp and signature of the engineer responsible for the design supervision. Staff replied that the Board expects to see final designs, per ORS 672, contain a stamp and signature of the engineer with responsible charge.

Mr. Spencer also questioned whether standard drawings should be considered Preliminary until the design engineer determines that the content is appropriate and then places their stamp and signature on the drawing; therefore, determining the drawing as final. The Committee recommended that agencies consider identifying those standard drawings as "preliminary" or "not for construction" when offering such drawings to the public.

Limitations of Professional Practice – Andy Stricker

Ms. Laszlo reported that a response has been sent to Mr. Stricker regarding his questions that specifically focused on the overlap between engineering and architecture. Based upon the Assistant Attorney General’s review of the Oregon Statutes, Oregon case law, and case law from other jurisdictions, the conclusion was that a registered professional engineer may design buildings such as apartments, hotels, retail shopping centers, churches, warehouses, and other residential commercial and industrial buildings without unlawfully practicing architecture. The registered professional engineer must still practice within his or her bounds of competency and may not hold himself or herself out as an architect.

Engineering Ethics- Josh Bjornstedt

Mr. Davis stated that he called Mr. Bjornstedt regarding his request for an interpretation of an engineer/developer/contractor relationship. He explained to Mr. Bjornstedt that the Board could only respond to issues of misconduct. Mr. Davis also stated that this appeared to be a contract issue and should be discussed and agreed upon by all parties involved. He further suggested to Mr. Bjornstedt that if the city was one of the parties, the issue might be discussed with the owner if they have specific concerns.

Department of Environmental Quality (DEQ)

Ms. Laszlo complimented Ed Butts on the success in getting parties to meet with DEQ. Mr. Butts and Ms. Dumas were anticipated to attend the meeting scheduled on May 5, 2005. However, due to unfortunate circumstances, Mr. Butts was unable to attend. Ms. Dumas summarized the discussion to the Board. It was noted in the meeting that previous attempts to clarify issues were unsuccessful due to miscommunication and DEQ appreciated the Board's current attempts to work together and move forward. She also informed the Board that OSBEELS has been invited to future DEQ manager's meetings to present any further information. Mr. Butts has offered to follow-up on this offer.

Water Rights Examiner

Ms. Laszlo complimented Ed Butts again on the success of communicating with the Water Resources Department (WRD) regarding the process of certifying and regulating Water Right Examiners. Mr. Butts reported that after several meetings, the consensus of this group came up with two options: eliminate the Water Rights Examiner specialty certification or transition the entire process to WRD. However, before any decisions are reached, it was requested that a survey be sent to registrants gathering their opinion on the issue. A survey that addresses specific information will be included in the next issue of the Oregon Examiner. President Albright also complimented Mr. Butts on the great progress.

Oregon State Board of Geologist Examiners (OSBGE) – Meeting of May 6, 2005

Ms. Laszlo reported to the Board that she and Mr. Halfman met with Suzanna Knight, Administrator of OSBGE and Mr. Gary Peterson, OSBGE Board Member regarding the recently suspended Memorandum of Understanding (MOU) between the two Boards. It was discussed to reactivate the MOU to clear current cases while clarifying the roles and responsibilities of each Board. It was noted that since Board members are transitory, staff must be involved in all discussions; however, Board members are necessary to facilitate meetings and provide expertise. It was moved and seconded (Laszlo/Taylor) to reactivate the suspended MOU. The motion passed unanimously.

Due to the timeframe and the attendance of Ms. Julia Rask, it was moved and seconded (Laszlo/Stuntzner) to hold the remaining portion of the Professional Practices agenda until after lunch and discuss Ms. Rask's application for licensure. The motion passed unanimously.

Mr. Stuntzner briefly summarized Ms. Rask's education and engineering experience. Ms. Rask submitted a comity application for licensure with OSBEELS based on her passage of the National exam in California. AAG Dahlin explained that this case couldn't be considered a true comity application due to the fact that she is not licensed in another jurisdiction. However, after her review, AAG Dahlin determined that Ms. Rask's application provided the necessary requirements for licensure and would recommend granting initial licensure. She also noted that the current rules do not correctly characterize work experience and may be in the best interest of the Board to reconsider the language. It was moved and seconded (Linscheid/Taylor) to grant Ms. Julia Rask initial licensure. Mr. Stuntzner noted that Ms. Rask has not completed the take-home

exam. Mr. Taylor made a friendly amendment to grant licensure after successful passage of the take home exam. Mr. Linscheid accepted the friendly amendment. The amended motion passed unanimously.

Discussion centered on the current policy to accept future applications for examined applicants that do not hold a license. Ms. Lopez stated a new application and revised fee would be needed.

EXTERNAL RELATIONS COMMITTEE

The External Relations Committee scheduled for April 12, 2005 was cancelled. Mr. Taylor reported that the bills he intended to discuss were covered in other Committee meetings.

Mr. Taylor presented information to the Board regarding the electronic transmittal of information to members. He proposed that the Board purchase each member a notebook computer to alleviate the paperwork. Mr. Taylor believes this would ease the member's organization and accessibility of information.

President Albright suggested prior to making a decision, the members should read through the information provided by Mr. Taylor to discuss further at the next Board meeting.

RULES AND REGULATIONS COMMITTEE

The Rules and Regulations Committee met on April 12, 2005 to discuss the following matters. Mr. Linscheid reported the following to the Board:

Update on Legislation

Mr. Linscheid updated the Board on Senate Bills 55, 83 and 86. SB 55-A Engrossed passed in the Senate and has moved to the House. Ms. Lopez informed the Board that a hearing is scheduled on May 12, 2005 for SB 55.

SB 83 has been passed and is awaiting final vote, but SB 86 has not moved forward. Ms. Laszlo has submitted a letter of support to the Committee.

Size of Seal Definition

Mr. Linscheid stated that staff is in the process of preparing a draft to define the size of the seal in OAR 820-010-0620 that will be reviewed at the next Rules and Regulations Committee meeting in June.

Exam Administration Fee

Mr. Linscheid directed the member's attention to the draft modifications of the fee rule presented in their packets. Ms. Laszlo proposed to amend OAR 820-010-305 (Fees) and include a new line item for applicants who have successfully passed an examination but did not receive licensure in another jurisdiction. After discussion, several minor adjustments were developed to include the new line item. It was moved and seconded

(Kramer/Laszlo) to proceed with the rulemaking process. The motion passed unanimously.

Revocation and Re-issuance of License

After the Committee reviewed and discussed various rules from other jurisdictions regarding the re-issuance of a revoked license, Mr. Linscheid requested that AAG Dahlin review the draft prepared by staff prior to the next Committee meeting in June.

Amend OAR 820-010-0325 – Budget

Mr. Linscheid directed the member's attention to the draft staff provided to amend OAR 820-010-0325 – Budget. A budget narrative and charts utilized to anticipate the 2005 – 2007 biennium were also provided for the Board's review. After discussion, it was moved and seconded (Linscheid/Laszlo) to proceed with the rulemaking process. The motion passed unanimously. Mr. Neathamer commented on the beneficial use of funds delegated for the Assistant Attorney General. AAG Dahlin also informed the Board of a proposed increase in the cost of assistance from the Department of Justice. Ms. Lopez stated that the Agency has not received any notification of an increase, however, if necessary, adjustments can be made in the future. Ms. Lopez also commented that revisions will be necessary due to the implementation of several processes and possible relocation that will occur in the next biennium.

EXAMINATION AND QUALIFICATIONS COMMITTEE

The Examinations and Qualifications Committee met on April 12, 2005 to discuss the following matters. Mr. Stuntzner reported the following to the Board:

In regards to the information received on the application filed by Ms. Julia Rask, Ms. Lopez posed additional questions to AAG Dahlin: Suppose an applicant from another jurisdiction applies through comity for a discipline not found in OAR 820-010-0450 but is a nationally established test (i.e. Naval Architecture and Marine Engineering) set forth by the National Council of Examiners for Engineering and Surveying (NCEES). Does OSBEELS have the authority to grant licensure in that discipline by Comity? AAG Dahlin replied that OSBEELS does not have authority to grant licensure for a nationally recognized branch of engineering that is not recognized by OSBEELS. ORS 672.255(1)(d) specifies that there will be branches, established by Board rule, "for registration of individuals." She stated that if there is no Oregon branch, there could be no registration in that branch. Thus, there is no basis, for example, comity registration in Oregon in the branch of Naval Architecture and Marine Engineering. A person wishing to have the Board establish a new branch of engineering in Oregon may petition the Board to amend its rules and add the particular branch of engineering. Ms. Lopez then noted that several licenses have been issued in disciplines that were not established by the Board. A possible way to manage this issue would be to rename the rule. Staff will research this issue for further discussion at the next Examinations and Qualifications Committee meeting.

Ms. Lopez also requested the AAG opinion regarding an applicant from another jurisdiction applying through comity for a discipline, which is a state specific examination and found in OAR 820-010-0450 (i.e. Acoustical Engineering). Suppose the applicant did not take and pass the Oregon specific examination but did so for another jurisdiction. Can OSBEELS accept another jurisdictions state specific examination and grant licensure by Comity? AAG Dahlin replied that OSBEELS could accept a passing grade in an examination in another state in branch of engineering recognized by OSBEELS, even if the examinations are not identical. ORS 672.125 provides that OSBEELS may register (without examination) a person who is registered in that other state. The only condition is that the other state's registration requirements must be "substantially equivalent" to those in Oregon at the time the registration issues. If the state-specific examination in the other state were similar to Oregon's examination, there would be no problem with a comity registration.

Finally, Ms. Lopez also inquired about applicants from other jurisdictions that apply through Comity for a discipline, which is a state specific examination and not found in OAR 820-010-0450. Can OSBEELS accept another jurisdictions state specific examination and grant licensure by Comity? AAG Dahlin replied that OSBEELS does not have authority to grant licensure for a state specific branch of engineering not recognized by OSBEELS.

Structural III

Mr. Stuntzner updated the Board on the process of obtaining the Structural III Exam from the Washington Board. OSBEELS will enter an MOU with the Washington Board similar to that between Washington and British Columbia. A sample MOU was included in the packets for review. Mr. Davis will provide Ms. Lopez with a minimum of two Structural Engineers to assist with the exam.

OSU Bioengineering Program Request

Mr. Stuntzner informed the Board that Kenneth Williamson, Professor and Department Head, of OSU's Chemical Engineering Department submitted a request to the Examinations and Qualifications Committee to allow graduates from the Bioengineering program to take the FE exam during the ABET accreditation process.

JPEC

Mr. Stuntzner directed the member's attention to the correspondence from Mr. Hiroshi Uchida of JPEC outlining several areas of concern. The response was also provided the packets. Ms. Laszlo summarized her trip to Japan this past April. Her understanding is JPEC's major concern is with the 4th year undergraduates. JPEC would like the Board to waive the re-application fee for those whose equivalency reports were unable to determine their qualifications due to the fact that they have not completed a degree program. Ms. Laszlo also discussed several action items and questions that the Board has answered in past communications. Ms. Lopez will reiterate the Board's policy and procedures in a letter to Mr. Uchida touching upon these issues.

Mr. Stuntzner directed the attention of the Board to the list of 102 applicants for licensure by Comity. It was moved and seconded (Stuntzner/Dyrnes) to approve the list of 102 applicants. The motion passed unanimously.

October 2004 4-Hour Exam By Appeal

Mr. Stuntzner directed the attention of the Board to the applicant for licensure for Professional Land Surveying. Mr. Neathamer explained to the Board that this applicant's exam was scored incorrectly and he did in fact pass the Oregon 4-Hour Specific Examination. It was moved and seconded (Neathamer/Laszlo) to approve the applicant. The motion passed unanimously.

Geotechnical by Prior Practice

Mr. Stuntzner directed the attention of the Board to the applicant for licensure for Geotechnical Engineering by Prior Practice. It was moved and seconded (Stuntzner/Laszlo) to approve the applicant. The motion passed unanimously.

Consent Calendar

Mr. Stuntzner directed the attention of the Board to the Consent Calendar. AAG Dahlin explained to the Board the application of Lily Nguyen and hearing process It was moved and seconded (Neathamer/Laszlo) to approve the President to sign the Final Order for Case 52322. The motion passed unanimously. AAG Dahlin also noted that two additional hearings are scheduled for Mr. Burke and Mr. Gilbertson.

NEW BUSINESS

The office received correspondence regarding the State's use of the title "engineer" after AAG Dahlin received a phone call from Diana Peccia, Department of Administrative Services (DAS). It is AAG Dahlin's understanding from their conversation that since it is difficult to recruit employees in certain positions due to the pay and benefits, the state offers the title of "engineer." She explained that disciplinary actions would fall on the person holding the title if they are not qualified. Overtime, the state has also revised position descriptions but did not change the title of the position. AAG Dahlin mentioned that an opinion was written in 1983 regarding the same topic and this is not a new issue to the Board. Ms. Lopez inquired if the Professional Practices Committee would like to hold a forum to discuss this issue with other agencies. The Board agreed that this might be a good opportunity to discuss a future plan of action and evaluate any subsequent problems. To assist in discussion, staff will request a listing of classifications slated for change and any additional information regarding this issue.

ADJOURN

The meeting was adjourned at 3:30p.m.

NEXT MEETINGS

Next Board Meeting:

July 12, 2005

Next Committee Meetings:

EXTERNAL RELATIONS:

Monday, June 20th at 9:00a.m.

EXAMINATIONS & QUALIFICATIONS:

Monday, June 20th at 10:00am.

RULES & REGULATIONS:

Monday, June 20th at 1:00p.m.

PROFESSIONAL PRACTICES:

Monday, June 20th at 2:00p.m.

LAW ENFORCEMENT:

Tuesday, June 21st at 9:00a.m