

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

Minutes of Meeting
September 14, 2004

CALL TO ORDER

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

Members Present:

Stuart Albright
Edward Butts
Grant Davis
Mari Kramer
Dan Linscheid
Bob Neathamer
Dave Taylor
Ron Stuntzner
Susanna Laszlo (was excused)
Steve Dyrnes (arrived at 1:00p.m.)

Visitors Present:

Lloyd Tolbert, PLS, PLSO Chair
Marv Pyles, PE, Associate Professor at Oregon State University

Others Present:

Mari Lopez, OSBEELS Executive Secretary
Jennifer Gilbert, OSBEELS Executive Assistant
Brian Halfman, OSBEELS Investigator
J.R. Wilkinson, OSBEELS Investigator
Kathi Dahlin, Assistant Attorney General

APPROVAL OF MINUTES

It was moved and seconded (Linscheid/Butts) to approve the minutes of the meeting of July 13, 2004, as distributed. The motion passed unanimously.

PUBLIC INPUT

President Albright welcomed Mr. Takanori Oka, PE the representative from JPEC and Lloyd Tolbert and invited any comments. Mr. Oka briefly summarized the operation status of JPEC, concerns and information needed by JPEC that would be discussed further during the Examinations and Qualifications portion of the meeting.

APPROVAL OF AGENDA

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

EXECUTIVE SECRETARY'S REPORT

Examination/Registration – Preparation for the October examinations are underway and most applications have been reviewed for admission. As of September 3, 2004, the Board has 286 applicants scheduled to take exams in Oregon and 398 scheduled to take exams outside Oregon. Once again, proctors will be needed to facilitate the administration of the exams in Eugene and Board members are invited to participate. Representative(s) should be selected for the Tokyo examinations.

Committee Activities – Examination and Qualifications Committee, Law Enforcement Committee, Professional Practices, and Rules and Regulations Committee each met during the interim. Committee minutes were included in the packets.

Administrative Activities – As a courtesy to the examinees, staff is currently negotiating a special rate for a hotel nearby the examination site. Examinees are responsible for their own arrangements and fees associated with staying at the hotel.

On August 24, 2004 Ms. Lopez and Ms. Gilbert attended a record retention training tailored for Boards and Commissions.

ABET has scheduled a site visit at Oregon Institute of Technology (OIT) on October 3 through 5, 2004. Mr. Neathamer has volunteered his time to serve as the observer from OSBEELS.

ABET has also scheduled a site visit at George Fox University (GFU) October 10 through the 12, 2004. Mr. Linscheid and Ms. Dumas have volunteered their time to serve as the observers from OSBEELS.

President Albright inquired as to whether the Board office has heard any outcome from Adrienne Sexton on behalf of the JLAC (Joint Legislative Audit Committee). Ms. Lopez informed the Board that no word has been received yet.

Mr. Linscheid also inquired about the potential of a new tenant to sublet the current office space and relocating to Creekside Corporate Center. Ms. Lopez is waiting to hear from Donna Speakes and will follow-up with her by the end of the week.

Ms. Lopez informed the Board that the 2004 Holiday Gathering is scheduled to be held during the lunch session at the next Board meeting.

PRESIDENT'S REPORT

President Albright informed the Board that he recently established a private consulting business. Congratulations! As a result, he informed the members of the Board that he is currently working on matters that were previously assigned to him and will report accordingly.

FINANCIAL REPORT

The Finance Committee did not hold a formal meeting in August. The Governor's Office is still looking for a public member to replace Mr. Hester's position on the Board.

As of July 31, 2004, the Board had a reserve of approximately \$654,410. Staff provided the Profit & Loss Budget vs. Actual statement for the period July 1, 2003 through July 31, 2004; the two-year fiscal period is now about 50% complete.

President Albright noted that OSBEELS is currently more on track than in prior years.

LAW ENFORCEMENT COMMITTEE

The Law Enforcement Committee (LEC) Chair, Bob Neathamer, informed the Board that the LEC held a meeting on August 6, 2004. Mr. Neathamer presented the following report concerning the activities of that meeting.

Consent Calendar

There were no items on the consent calendar for this meeting.

Recommended Board Actions

2240 – *Robert Bly*: The LEC recommends that the Board close the case as the Board lacks authority. It was moved and seconded (Neathamer/Butts) to close the case, Board lacks authority. The motion passed unanimously.

2242 – *Mark Mitchell*: Following an informal conference a settlement agreement was reached. That agreement states that Mitchell will no longer use the business name "Land Survey Technical Services" or any similar name that would imply that Mitchell is a licensed surveyor. The LEC recommends that the Board approve the settlement agreement as drafted. It was moved and seconded (Neathamer/Linscheid) to approve the settlement agreement. The motion passed unanimously.

2294 – *Scott Nettleton*: No exceptions were filed to the proposed order from the Office of Administrative Hearings. The proposed order finds in favor of OSBEELS and thus denies the structural application by prior practice. The LEC recommends that the Board approve the final order as drafted. It was moved and seconded (Neathamer/Taylor) to approve the settlement agreement. The motion passed unanimously.

2206 – *Troy Rambo*: The LEC recommends closing the case as compliance has been met. It was moved and seconded (Neathamer/Stuntzner) to close the case, compliance met. The motion passed unanimously.

Miscellaneous

Les Killingsworth: Killingsworth plead guilty to wire fraud in Federal Court for actions associated with his engineering company in Washington. Staff to wait for the judgment of conviction from the court before proceeding with opening a case file and drafting an NOI to revoke his license.

Astoria Landslide: Information concerning a landslide in Astoria has been received by the Geology Board and OSBEELS. More information is needed from the complainant. OSBEELS may also wait for forensic evidence gathered during the course of any litigation. President Albright insists that this is a highly visible issue and that the Board must look into it. Staff will continue to gather information.

Case Status Report/Settlement Agreement Monitoring

Mr. Neathamer noted that included in the Board packet was a copy of the case status report and the settlement agreement monitoring report. There were no questions concerning these items.

PROFESSIONAL PRACTICES COMMITTEE

The Professional Practices Committee met on August 26, 2004 to discuss the following matters. The following was reported to the Board:

Several questions were posed to the Board regarding the professional seal on environmental reports; who can perform hydrology and hydrogeology work and the use of the title hydrologist. Since it came to the attention of the Committee that the source of these concerns originate at DEQ (Department of Environmental Quality) in regards to their procedure in accepting engineering stamps on hydrology reports, Mr. Butts volunteered to contact DEQ and initiate dialogue regarding this matter. After the initial conversation with a representative from DEQ, Mr. Butts stated that DEQ is adhering to guidelines set by the Geology Board in accepting reports only from Geologists on groundwater studies. OSBEELS position is that a competent engineer, Civil or Environmental, can also do these reports. As a result of this conversation, Mr. Butts requested Ms. Lopez to begin dialogue with the administrator of the Geology Board. Ms. Lopez informed the Board that the result of her conversation with the Geology Board administrator, Ms. Susanna Knight will possibly lead to a joint meeting with members of OSBEELS, Geology Board and DEQ. Ms. Knight will contact Ms. Lopez on the position of the Geology Board after their regularly scheduled meeting that, by coincidence, is being held simultaneously with the OSBEELS board meeting. President Albright expressed an interest in being a part of this joint effort.

President Albright briefly mentioned that he has responded to Merlyn Hough, Western Region Manager at DEQ, regarding clarification of the MOU (Memorandum of Understanding) between OSBEELS and the Geology Board. Mr. Hough is inquiring on the importance of becoming registered as a geotechnical engineer in order to meet the intent of the MOU. Mr. Hough is a civil and environmental engineer that supervises the underground storage tank cleanup program in the Western Region for DEQ. President Albright has yet to hear a response back from Mr. Hough to discuss his concerns and will follow-up.

The Board office received correspondence from Doug Holdt, Program Coordinator at ORMAP (The Oregon Map Program) regarding a program to fund county projects to develop statewide

property tax parcel based maps. These maps are digital, publicly accessible, and continually maintained. ORMAP has inquired if these projects constitute the practice of land surveying and if there are any conflicts with statutes or administrative rules before the project and funding become approved. ORMAP would also appreciate guidance, if any conflicts exist, on how to adjust the project to comply with statutes or administrative rules. AAG Kathi Dahlin and Mr. Linscheid briefly gave the members of the Board insight on the history and method of this program and also informed the Board that they have received phone calls from different counties regarding the same matter. After further discussion, the Board determined that land survey work has been described in the information provided. Mr. Linscheid and AAG Kathi Dahlin will prepare a letter of response with reference to ORS 209.250(5) to Department of Revenue Director Elizabeth Harchenko with a copy to Doug Holdt.

REFERENCE MANUAL FOR BUILDING OFFICIALS:

Ms. Lopez informed the Board that the copy of the Reference Manual in their packets is complete in content. Ms. Laszlo incorporated comments from several Board members after their review from the email dated July 23, 2004. It was moved and seconded (Linscheid/Taylor) to approve the draft for print. The motion passed unanimously. This version of the Reference Manual will be financed by OSBEELS Printing and Publication expense budget. Mr. Neathamer and Mr. Stuntzner complimented the committee and staff on their efforts. President Albright also noted that there was much improvement on this version from previous efforts. He also commented that it is in the best interest of the Board for building officials to bring illegal practice to our attention. Many thanks were also given to the Architect Board for their joint efforts.

Mr. Taylor initiated discussion on the topic of using the title “Engineer” in an industrial environment. After discussion, AAG Kathi Dahlin commented that this is a fact specific issue. Mr. Stuntzner also remarked that due to the many questions on the Industrial Exemption article in the Summer/Fall 2003 Oregon Examiner, he will be contacting interested parties to the December Professional Practices committee meeting. AAG Kathi Dahlin also accepted an invitation to attend the meeting. Mr. Stuntzner will conduct a survey requesting specific scenarios and concerns prior to the meeting.

Mr. Neathamer posed a question at the July Board meeting in regards to the updating of code requirements in the City of Ashland and the City of Medford. This update includes preparing and filing as-built surveys to be required on all development projects which prompted the question: is this considered strictly land surveying since the work done will include depicting subdivision boundaries and relating to it, or can an engineer perform this work without a land surveyor? After research, AAG Kathi Dahlin presented her findings to the Board. She explained legislative history that took place in 1977 by the enactment of Senate Bill 416. According to the Senate Bill summary, the legislation would “prohibit engineers not registered as land surveyors from establishing or reestablishing boundaries, corners or monuments between lands not held in common ownership.” The focus of the legislation was only to cover “boundary surveys” and not to limit engineers from performing building surveys and similar work that they ordinarily performed. Unless creating “as built” or “record” drawings for a subdivision specifically requires performing a boundary survey, the prohibition does not extend to work ordinarily performed by an engineer. Presumably the drawings are not designed to depict boundaries or in deeds of conveyance; thus, they do not fall within the prohibition. She also noted that the Board

might want to revisit legislation to adapt to the scope and speed of change in the profession of land surveying.

EXTERNAL RELATIONS COMMITTEE

Mr. Taylor stated that the External Relations Committee did not meet during the interim. He attended the 2004 NCEES Annual Meeting along with Mr. Linscheid, Ms. Lopez and Ms. Dumas. Mr. Taylor summarized the topics discussed at the various workshops and business sessions.

Several items highlighted from the meeting were:

- An exam fee increase will be effective October 2006 for all exams.
- Member Boards and Affiliate Board membership fees will increase effective January 2007.
- Oklahoma Board member George T. Gibson, PE presented a motion that moved: “That the Council require a sole-source administrator for all NCEES examinations no sooner than 2009, and that the NCEES Board of Directors be charged with developing an appropriate action plan for implementation.” David Tuttle, associate member and counsel for the North Carolina Board, offered an amendment to the motion, which read as follows: “That NCEES package the exams and exam administration as a single source for all NCEES exams no sooner than 2009, and that the NCEES Board of Directors be charged with developing an appropriate action plan for implementation.” A vote was then taken, and the motion, as amended, was approved by Council. Since the Annual Meeting, the NCEES Board of Directors received a letter from a test administration company threatening potential legal action against NCEES should it adopt a sole source policy. Therefore, the NCEES Board has voted to rescind this action of the Council.

Ms. Lopez informed the Board that during the Annual Meeting, Dave Curtis, administrator of the Idaho Board, offered to present the Canadian resolution at OSBEELS’ November Board meeting.

Mr. Linscheid distributed information from the Surveyor’s Forum at the Annual Meeting. Information provided statistics regarding the volume of FLS and PLS exams administered, FLS pass rates, and PLS pass rates. Mr. Linscheid noted that the pass rates were higher for those with a 4-year ABET surveying degree. He also noted that the land surveying examinations are not calculator dependant. An average of 30-35% of the FLS questions and 10-15% of the PLS questions require a calculator, however, all of the questions can be solved with a simple scientific calculator.

Ms. Lopez noted during the Promotion of the Professions workshop, due to the decline in the interest of becoming a land surveyor across the nation, NCEES, through its outreach efforts in conjunction with ACSM/NSPS (American Congress on Surveying and Mapping/National Society of Professional Surveyors), is in the process of developing a land surveying speaker’s kit tailored for the middle school and high school audience. Ms. Lopez informed the Board that the office will be receiving a kit for use as soon as it becomes available.

RULES AND REGULATIONS COMMITTEE

The Rules and Regulations Committee met on August 5, 2004 to discuss the following matters. The following was reported to the Board:

Discussion took place regarding the Committee's initial draft of rules for professional conduct and examination subversion. AAG Kathi Dahlin will review and offer comment regarding the draft rule for professional conduct. She also advised the Committee that further consideration is needed in regards to the consequences and remedies if an examinee is found guilty of exam subversion.

Mr. Linscheid informed the Board that the Committee is currently improving the draft rule to modify documents prepared by another registrant.

The Committee was asked to review and clarify the maximum amount of professional development hours (PDH) a registrant may claim under OAR 820-010-0632(3)(g). After review and discussion, the Committee determined that a registrant may claim up to a maximum of 6 professional or technical societies. Two professional development hours are allowed per each society of which the registrant is a member, for a maximum of 12 PDH. A retraction article will be placed in the next newsletter to correct an article in the November 1999 Oregon Examiner.

AAG Kathi Dahlin will work with Mr. Linscheid and review the Legislative Concept draft for legislative proposal relating to the definition of land surveying. They will also contact Chuck Taylor, Deputy Legislative Counsel for discussion.

EXAMINATION AND QUALIFICATIONS COMMITTEE

The Examination and Qualifications Committee met on August 27, 2004 to discuss the following matters. The following was reported to the Board.

Comity Applications – Mr. Stuntzner directed the members' attention to the list of applicants seeking registration by comity. It was moved and seconded (Stuntzner/Neathamer) to approve the list of 89 applicants as presented. The motion passed unanimously.

Michael Schwob - Mr. Schwob is requesting an Acoustical license by Comity based upon his membership in the Institute of Noise Control Engineers (INCE). The Committee denied his request per OAR 820-010-0450(1)(a) and invited Mr. Schwob to take the October 2004 exam.

Ajit Gokhale – Mr. Gokhale is requesting a civil license by Comity, based on his licensure in Connecticut for 8 years, with a waiver of the FE examination. The Committee is unable to grant his request under OAR 820-010-0200(3)(c). Based on AAG Kathi Dahlin's advice, the Board cannot waive the requirements of its rules. ORS 672.092 states that as "minimum evidence of qualification for registration as a professional engineer, an applicant shall: (1) Successfully pass the fundamentals in engineering examination".

Maud de Bel – Based on the documentation submitted, Ms. de Bel has been licensed in the United Kingdom since February 21, 2003. Per OAR 820-010-0200(3)(c) no less than 12 years of qualifying experience as a registered professional or a chartered engineer in a jurisdiction

identified as approved by the Board. The Committee will invite Ms. de Bel to take both the FE and PE the examinations.

GEOTECHNICAL APPLICATION BY PRIOR PRACTICE – Timothy Collins

Mr. Collins requested a review of the rules regarding the requirement of a civil license; he currently holds a license in the discipline of mechanical engineering. The pre-qualification of a civil engineer for the geotechnical registration was discussed in detail. During the Committee meeting, Ms. Lopez brought in a copy of the Summer/Fall 2003 newsletter for review; inside the newsletter was an article with a description of how to become licensed as a geotechnical engineer. The article stated, "Prior Practice applications are available to all Civil Engineers". Based on AAG Kathi Dahlin's advice, a "geotechnical engineer" is, by definition, "a professional engineer especially qualified in civil engineering, licensed to practice in the state of Oregon" as stated in OAR 820-040-0040(2). If a registered engineer wishes to become licensed to practice geotechnical engineering in Oregon, the engineer must be a civil engineer who passes the geotechnical examination offered by the Board (OAR 820-010-0200(5)). An engineer may qualify for registration as a geotechnical engineer without taking the examination if the engineer, within one year after the date the Board first administers the geotechnical examination, submits an application that demonstrates "qualifying experience" to the satisfaction of the Board (OAR 820-010-0200(6)). Although this rule, OAR 820-010-0200(6), does not specifically state that the engineer be a civil engineer, when read in context with OAR 820-040-0040, the logical inference is that the engineer must first be a civil engineer. It was moved and seconded (Stuntzner/Taylor) to begin the process to amend OAR 820-010-0200(5) to add "or other branch as approved by the Board." The motion passed unanimously. The Rules and Regulations Committee will draft language for Board approval.

EXAM APPLICATIONS:

Charles Oppenheimer – Mr. Oppenheimer requested to take both the FE & PE exams in October 2004. His request was approved.

Michael Chung – Mr. Chung has submitted a PE application for the October 2004 exam and requested a waiver of the FE exam based upon his education and experience. His request was denied per OAR 820-010-0230; Mr. Chung must take and pass the FE exam before taking the PE exam.

Han Seok Kwon – Mr. Kwon has submitted a PE application for the October 2004 exam and requested a waiver of the FE exam based upon his education and experience. His request was denied per OAR 820-010-0230; Mr. Kwon must take and pass the FE exam before taking the PE exam.

Ryan Christie – Mr. Christie applied for the FE examination with a BS degree in Engineering Geology. His application was denied per OAR 820-010-0225(3)(a). However, Mr. Christie may qualify for a future exam under OAR 820-010-0225(3)(c).

Sheryle Quinn – Ms. Quinn applied for the FE examination with a BS degree in Geology. Her application was denied per OAR 820-010-0225(3)(a). However, Ms. Quinn may qualify for a future exam under OAR 820-010-0225(3)(c).

Joseph Mansanti – Mr. Mansanti applied for the FE examination based upon both education and experience. His application was approved under OAR 820-010-0225(3)(d) and (E).

David Jardin – Mr. Jardin applied for the FE examination based upon both education and experience. His application was approved under OAR 820-010-0225(3)(d) and (E).

ELSES UPDATE:

Ms. Lopez informed the Board that Susan Whitfield, Director of Engineering and Land Surveying Exam Services (ELSES) is currently reviewing a revised version of the ELSES agreement, incorporating changes that AAG Kathi Dahlin made after reviewing the document. Although language regarding the administration of the exam in Japan, Korea, and other countries was not included, staff requested information on the assistance that ELSES could provide. President Albright affirmed that OSBEELS could utilize ELSES no earlier than October 2005 and no later than April 2006. As a result of the possibility of engaging in the services of ELSES, it was noted that a modification of OSBEELS rules must take place.

JPEC UPDATE:

President Albright informed the Board that exam results for the April 2004 JPEC examinees have not been released. Examinees were given an extension date of November 1, 2004 to submit evidence of graduation since JPEC failed to inform the examinees that this document was required by September 1, 2004.

President Albright stated that Mr. Linscheid and Mr. Dyrnes would be the OSBEELS representatives to attend the October 2004 JPEC FE exam administration in Tokyo, Japan.

Ms. Gilbert requested clarification on the requirement of equivalency evaluations required by examinees with non-ABET degrees. Will the results be released if the equivalency evaluation is found to be deficient in subject areas deeming the degree non-ABET equivalent? The Board determined that if an equivalency evaluation shows the degree to be deficient in a subject area, the Examinations and Qualifications Committee will review the evaluation and determine if the degree has met a curriculum satisfactory to the Board before releasing the examination results for the October 2004 exam administration only. For entrance to the April 2005 and upcoming exam administrations, applicants with non-ABET degrees must submit equivalency evaluations with their application packet prior to being admitted to the examination. AAG Kathi Dahlin agreed that as the rule is written, required material to show eligibility for the FE or FLS examination must be submitted before being admitted to the examination and not after taking the examination (OAR 820-010-0225). No exceptions will be made.

Yokosuka examinations will be further discussed after the contract with ELSES is received.

FOREST ENGINEERING MOU:

A draft copy of the MOU between Oregon and Washington was distributed for review. The Committee suggested changing the verbiage on the MOU to state “mutually agreeable locations”. Marv Pyles, Assistant Professor at Oregon State University (OSU), informed the Board that sufficient time must be given to the Committee developing the exam due to the additional intricacies that the MOU requires. It was moved and seconded (Stuntzner/Neathamer)

to approve the MOU as amended. The motion passed unanimously. Mr. Stuntzner stated that the Committee would consist of himself, Mr. Pyles and Ms. Dumas to represent OSBEELS. Mr. Pyles informed the Board that Steve Tesch, PhD is interested in developing a MOU between OSU and OSBEELS that outlines each party's responsibilities.

REVIEW EXAM REAPPLICATIONS:

The Committee reviewed 58 reapplication forms from applicants that were reapplying for a third time or more (OAR 820-010-0465). Of those reviewed, 35 showed sufficient evidence of study and were readmitted to the exams.

The Committee sent denial letters to the remaining applicants. It was noted that applicants should use the diagnostic breakdown, from NCEES, to assist in studying for a future exam. Those that take the state specific exams do not receive a diagnostic breakdown; they are allowed to review their failed exam. Ms. Lopez confirmed that the applicants who were denied admittance to the examinations due to insufficient evidence of preparation for reexamination would not be entitled to a refund per OAR 820-010-0300. The Board concurred.

REVIEW PDH AUDIT FORMS:

On May 17, 2004 approximately 350 audit letters were mailed to a random 3% of total surveyors and 3% of total engineers. A large percent of those audited submitted the required documentation and showed sufficient evidence of continuing professional development hours. However, several individuals were sent a letter requesting additional documentation and/or justification. Those who did not respond to the initial request will receive a second letter, referencing OAR 820-015-0026, by certified mail requesting their documentation.

ADJOURN

The meeting was adjourned at 2:42 p.m.

NEXT MEETINGS

Next Board Meeting:
November 9, 2004

Next Committee Meetings:

LAW ENFORCEMENT: Thursday, October 14th at 9:00a.m.

EXAMINATIONS & QUALIFICATIONS: Friday, October 15th at 8:00a.m.
RULES & REGULATIONS: Friday, October 15th at 11:00am.
PROFESSIONAL PRACTICES: Friday, October 15th at 1:00p.m.
EXTERNAL RELATIONS: Friday, October 15th at 3:00p.m.