



Oregon

**State Board of Examiners for
Engineering & Land Surveying**

670 Hawthorne Ave. SE, Suite 220

Salem, OR 97301

(503) 362-2666

Fax (503) 362-5454

E-mail: osbeels@osbeels.org

LAW ENFORCEMENT COMMITTEE

Meeting Summary

June 11, 2009

Members Present:

Dan Linscheid, Chair

Ed Butts (excused 3:37)

Grant Davis

Ken Hoffine

Staff Present:

Mari Lopez

Jenn Gilbert

James R. (JR) Wilkinson

Allen McCartt

Others Present:

Katharine Lozano, AAG

Romey Ware, PLS

Bill Lulay, PLS, PE

The meeting was called to order at 1:00 p.m. in the conference room of the Oregon State Board of Examiners for Engineering and Land Surveying (OSBEELS) office at 670 Hawthorne Ave. SE, Suite 220, Salem, OR 97301. Chair Linscheid announced that four informal conferences were scheduled prior to the meeting of the Law Enforcement Committee (LEC).

Informal Conferences

2476

The LEC met in an informal conference with the respondent a PLS and PE, to discuss a Notice of Intent (NOI) to Assess a Civil Penalty of \$1,000 for failing to cooperate with the Board violating Oregon Revised Statute (ORS) 672.200(4) and Oregon Administrative Rule (OAR) 820-020-0015(8). The original complaint against the respondent was a right of entry allegation. At the start of the investigation, Board investigators wrote the respondent to request that he submit any documents relevant to explaining his position. The respondent informed investigators that his agent received permission to enter the property, but he did not provide evidence of that permission. Rather, during his informal conference he submitted an email to evidence that permission was given. It was examined to confirm his statements. As a result, the LEC determined the right-of-entry allegation was unfounded. On the other hand, the date of the email also showed that the respondent received the email at the very beginning of the investigation, yet failed to provide it when requested. The LEC asserted that the respondent, by not providing the email during the investigation, failed to cooperate with Board investigators.

The respondent informed the LEC that he provided a detailed response to the allegation. He stated he did not obstruct the investigation. To document his claim, he provided a portion of his firm's work schedule for the week in question to show that Don Devlaeminck, PLS, was the land surveyor of record who filed the record of survey. The respondent then pointed out that he was the engineer of record for the project and was not in responsible charge of land surveying.

With regard to the original allegation of right of entry, the respondent checked with field crews and the client. He observed that the email date shows how much time it took to get the information. The respondent also expressed some confusion because he attended the first informal conference and provided the email to the LEC when there was no quorum. He later was informed that the Board decided that he had obstructed the investigation.

The respondent added that the case was cold when he recovered the email. He commented that it was unclear as to what would suffice as evidence of right of entry permission. He noted that the Board offers no evidentiary criteria. The respondent reiterated his understanding that permission had been granted at the time and email verified permission, but he was unable to produce the email for investigators until the informal conference. He recounted the difficulty in contacting his client and securing a copy. After dialogue about getting the evidence, the respondent noted that once he was able to reach his client the email was received and brought to the hearing.

There was also discussion regarding the requirement to cooperate with the Board: OAR 820-020-0015(8), "Registrants shall cooperate with the Board on all matter subject to the Board's jurisdiction." The respondent contended this was an open-ended requirement that gives the Board broad authority that is subjective and can be interpreted in different ways. He believed the case had been going on for two years and should be set aside.

The discussion then turned to how to provide proof of notice of right of entry. The respondent was concerned that door-hangers as notice might blow away. He asked if a photograph of the door with the notice attached was enough. He then stated that a picture could be taken of any door with a notice stuck to it and provided as proof. The respondent also inquired of the LEC for how long he should keep evidence. He stated his firm has been sending letters as notification and observed how few persons call or write in response. He then inquired as to how long they should keep the letters or how to prove that notice was received by the recipient.

The LEC and the respondent discussed the date of the email and his interviews with investigators. The respondent explained that he had received the email dated September 9, 2008, prior to the October 2008 informal conference. However, the LEC noted that the email string from his client showed the original email was sent to him on August 29, 2007, within days after he received a request from Board investigators to respond to the allegations. The respondent did not include the email in his response. Furthermore, in a July 2008 interview with a Board investigator, the respondent made reference to the email, but again did not submit it for evidence. Chair Linscheid emphasized that from July 2008 to the November 2008 informal conference the respondent did not take action to resolve the complaint despite having the email as evidence. In response to a question, the respondent acknowledged his role as the President of the company. He also stated that sometimes emails are received and other times not. He stated the email was not in the file and he did not have it until the informal conference.

The respondent also responded to questions regarding notice. A LEC member noted that ORS 672.047(4) requires that a professional land surveyor, or their employee or agent, must first attempt to provide notice **in person** and not by mail. The respondent replied they use the Professional Land Surveyors of Oregon (PLSO) door hangers. He continued that the crews place door hangers while the office sends written notice because most often people are not at home during the day when surveyors are in neighborhoods.

Another LEC member stated that Board investigators are to also help registrants. If the respondent had problems getting the evidence because he had not seen the client for months, then notify investigators. The respondent commented that he was confused about the process and about what would constitute proof. A LEC member replied that communication with investigators was important. The respondent remarked he had not received the email and it was not in the file records.

Upon consideration, the LEC was not convinced by the arguments the respondent put forth. The LEC would recommend that the Board issue a \$1,000 civil penalty for not cooperating. In response, the respondent asked the LEC to reconsider its decision because he disagreed with the outcome. He did not obstruct the investigation. The LEC explained that a recommendation will go to the Board to approve issuing the civil penalty since an agreement was not reached. He will need to decide whether to pay the civil penalty as a default order or to request a contested case hearing with the Office of Administrative Hearings (OAH). If a contested case hearing is requested, Board staff will work with him and the OAH to schedule one. The respondent stated his disappointment in the decision as an almost frivolous application of the rules.

* Update: On June 26, 2009, the respondent called the Board to inform that he will accept a Default Final Order rather than a hearing.

2480

The LEC met with the respondent to discuss a Notice of Intent to Assess a Civil Penalty of \$1,000 for failing his professional duties to properly monument a property corner violating ORS 209.250(1), ORS 672.200(2), and OAR 820-020-0015(1),(2). The respondent was hired to perform a corner search to verify if a neighbor's fence under construction was in the correct location. The respondent conducted his survey and set stakes to mark the common boundary line for the fence and a stake at the approximate corner location. In a report to his client, he recommended a high precision survey prior to any investment that would require an exact property corner location. The respondent informed his client that the stake set at the approximate lot corner is likely within +/- 0.5 feet of where a high precision survey would determine the true corner to fall. The true position fell into the sidewalk.

The respondent stated he had difficulty establishing what he did wrong. It appeared to him he properly monumented corners and was unclear as to what required him to set a property monument. He was not hired to do a boundary survey. He explained that he works with homeowners to provide the first steps in land surveying, which are thorough research and site reconnaissance. Once these steps are completed, he writes a report for the land owner and educates them on what needs to be done. The respondent gave an example; if a surveyor goes to a subdivision and finds all four lot corners he could report to his client that additional work was not necessary.

In this survey, he found original subdivision corners, occupied an original subdivision corner, and turned the plat angle to set stakes along the common boundary. He reported to his client that the fence was being built into his property. The respondent reiterated that he had sufficient information to determine the property line: 1) he had a back lot corner that was an original plat monument; 2) the subdivision was regularly platted; 3) he found monuments along the back subdivision line to confirm the line; and 4) he turned the plat angle to stake the fence line. The respondent stated he did not set property corners, but stakes along the boundary line. He believed he fulfilled his professional obligation with preliminary research, investigation, and reporting. He claimed to have taken additional steps to diffuse a very bad situation because he showed them where the fence should be built. The stakes showed the property line for fence construction.

The respondent next inquired as to the requirement to set property monuments. He noted there is nothing in statute or rule to support the requirement other than ORS 209.250. If a surveyor sets a permanent survey monument, then they must record a survey. Had he set a permanent monument, he would have filed a record of survey. However, his work was prior to the client deciding whether or not to have a boundary survey.

A LEC member asked if the respondent had tied in enough points of the plat to know that a mistake was not there to forgo proportioning. The respondent replied that he had several monuments along the back line. He talked with neighbors and did thorough research. He used a metal detector to search for monuments. In response, the LEC member asserted there was not enough information to set boundary lines. It appeared to him that the respondent set on one point, did a back sight to another point along the subdivision line, turned one angle, and staked the property line. However, this method would not have revealed if there was a problem with the plat. The respondent replied that his preliminary measurements to reestablish the front corners had them falling into the sidewalk, which was not an issue because his client only wanted the property line staked.

A debate ensued regarding accepted surveying practices as a standard of care. The question arose that the respondent staked a boundary line, but did not establish the front property corner. The respondent believed it was an acceptable practice to turn the plat angle and stake the fence line to reestablish the boundary line because there was sufficient subdivision monumentation. The staked line was accurate and the front corner was staked to within a half of foot. He explained that had the client wanted the front corner established, which the client did not want, he would have set the monument in the exact, true location. The respondent was asked if he had discussions with peers about his methodology. He responded that he used original subdivision monuments to reestablish subdivision boundary lines. He insisted that in a cul-de-sac with the front monuments gone, the best evidence is subdivision corners. He replied to another question that the platted information was strong with monuments along the back line, so he did not tie other points of the plat because the sideline came from the monumented back line.

The inquiry turned to the respondent's request to not make the survey information available to the neighbor. He responded that the Rules of Professional Conduct (OAR 820-020-0015(3)) required him to keep information confidential because of the hiring reasons and the feud. A LEC member observed that he staked a common boundary line where a conflict was occurring, so how was that confidential? He answered that he did work beyond what was needed because

neighbors were feuding and he staked the property line. He staked the fence line as if construction staking and did not establish a property corner.

As per his agreement with the client, the respondent prepared a report that included all research. If the client chooses not to use him, the research is available to the hired surveyor. He also stated that he was surveying because he informed the client of the property line location. Anyone can use a metal detector to find a metal rod, but it takes a surveyor to say that it is a boundary monument.

Another LEC member asked if the respondent could determine a boundary line without defining endpoints. He replied "yes," and stated he set accurate points along the boundary line for fence construction.

A LEC member noted that the statute and rules do not distinguish between a high-precision survey and a low-precision survey. The respondent remarked that he has found it easier to describe a boundary survey as a high-precision survey meant to establish true property corner positions and the filing of a record of survey. He expressed a willingness to use boundary survey rather than high-precision survey. However, a LEC member observed that the respondent staked a high-precision boundary line for fence construction, but did not set a boundary corner.

Upon consideration, the LEC had strong concerns about what the respondent communicated to the client and to the Board about high-precision and low-precision surveys. Furthermore, after learning of the procedures he used to conduct his survey, it was apparent that he applied methods that were incompetent or negligent. However, the NOI was not issued for that reason. The NOI was issued because he failed to set a monument, which the respondent disagreed with due to no requirement. Since a settlement agreement was not reached, the respondent was informed that the LEC will recommend that the Board move forward with \$1,000 civil penalty.

After discussing the informal conference as an alternative dispute resolution process to a contested case hearing, it was explained that the respondent has retained his right to a hearing through the Office of Administrative Hearings (OAH). The respondent expressed his intent to appeal. The OAH hearing, however, will focus on the NOI and the failure to properly set monuments. The respondent concluded that if another surveyor searched for the subdivision monuments, found the monuments, saw the lines of occupation and street construction, split the curbs, split the cul-de-sac, and established the center of the cul-de-sac like he had, everything would work out with the plat. He said proportioning was a last resort, not a first resort. First resort was to follow the steps of the original surveyor.

Due to the methods the respondent used, the LEC also will be requesting a list of his clients for the last year, which will be a separate investigation. The list would be due in 60 days, or on August 10, 2009. Board staff will send a letter to the respondent with the request.

2546

The LEC met in an informal conference with the respondent, a PLS, to discuss a Notice of Intent (NOI) to Assess a Civil Penalty of \$9,000 for failing to file nine maps of survey violating ORS 209.250(1),(3), ORS 672.025(2), ORS 672.200(2),(4), OAR 820-010-0620(1), OAR 820-020-

0015(9),(10), and OAR 820-030-0060. The respondent signed an agreement with the Board on March 9, 2004, to settle similar matters in a past law enforcement case. A clause in that settlement agreement stated that if the Board notified the respondent of surveys or maps that needed to be filed, the Board would allow him 45 days to complete and file maps of survey. The investigation for this case showed that the surveys subject to the 2546 complaint were done prior to the past law enforcement case settlement dated March 9, 2004. Upon receipt of the respond to allegations letter, the respondent filed the maps and submitted documentation to investigators showing that he either filed maps of survey or recorded affidavits of correction within 45 days.

The respondent began by apologizing. He has worked hard since the past law enforcement case settlement to meet his obligations. He reorganized company operations to avoid problems caused by failure to file timely maps. He noted the current violations occurred prior to his last visit. As per the agreement, his staff went through files, but didn't catch all missed filings. He pointed out that staff found maps not apart of the complaint that were completed and filed. Narratives were written to explain the date of setting monuments and the date of filing the map. The respondent was unclear however as to one allegation, but "plead guilty" to the remaining ones. Upon review of the evidence, the respondent agreed that he had faxed an unsigned map to the title company and understood the allegation.

The respondent continued that under the previous agreement he was given 45 days to file any maps. However, he asserted that the previous County Surveyor was neglectful in notifying him of the unfiled maps. It appeared to him that the County Surveyor collected the maps and submitted them in a manner to bring attention to a dramatic situation. In addition, he denied that the County Surveyor contacted him about filing the complaint. He has made every effort to not appear before the Board again by taking steps to keep any new situations from coming up. He reminded the LEC that the current violations were before the past law enforcement case settlement.

In response to a question about the civil penalty, the respondent admitted that like many his company is in a difficult situation and asked for a reduced amount. They cut field crews to one and one-half and reduced working hours. He took a salary cut. The company has incurred additional expenses to do research and file maps and to send crews for field work. The firm is not billing clients. He replied to another question that they keep computerized daily time records. When a crew charges a client for an iron rod and cap, it sets a 45 day reminder to file the map. He also uses a white board to track projects. The biggest problem is coming from clients shutting down projects when he has maps of survey submitted for review. Just recently, he had to request extensions because clients stopped projects.

Upon consideration, the LEC offered the respondent a reduced civil penalty of \$4,500. He agreed and asked for a nine-month payment program. The LEC reiterated its frustration that he returned, but they also recognized his candor and attitude. The respondent also expressed frustration because he also thought it was over. He would have taken care of the matter immediately had the County Surveyor notified him. **The LEC recommended approving the settlement agreement.**

The LEC was scheduled to meet in an informal conference with the respondent, a PE, to discuss a Notice of Intent (NOI) to Revoke Registration for negligence or incompetence in the practice of engineering violating ORS 672.200(2),(4), OAR 820-020-0015(2), and OAR 820-020-0020(2). However, due to a staff notification oversight the respondent did not attend the informal conference. Rather, the LEC will meet with the respondent prior to the Board meeting on July 14, 2009.

For background, the LEC met with the respondent for an informal conference on April 9, 2009, and were unable to reach a settlement. The respondent was issued the NOI because he did not address technical issues raised during plan reviews for a non-exempt structure. After three plan reviews, the client hired another engineer to complete the project. It appeared the respondent did not understand what plan reviewers were looking for because of a potential lack of code knowledge and/or engineering competency.

During the April 9, 2009, informal conference, LEC member Grant Davis, SE, noted that the NOI allegations were not based on plans reviewers' issues with code compliance, but on Davis' concerns where the respondent's engineering may affect life, health, and property. The respondent readily accepted responsibility for the plans and calculations, but Davis reminded him that when sealed he was ensuring his plans were buildable and safe. Davis identified the major issues as follows:

1. The storage load in a mechanical room. On some plan sheets it was a storage room while on other sheets and plans it was a mechanical room. Structural loads for these two room uses are different. His calculations and drawings were not clear.
2. The design of main floor glu-lam beams. The respondent's calculations showed no concentrated roof loads on the first floor beams. In fact, the original calculations used a uniform load from the floor only and the shear was at the maximum. This was not proper.
3. The respondent designed a roof that called for three diaphragms in a step pattern. Davis noted the discontinuous diaphragms the respondent had designed and the lack of showing a concentrated load applied to tall walls.
4. The 16-foot high basement retaining wall. Davis remarked that for a wall to work as a pure cantilever wall, the shear and overturning events need to react at the footing, but he didn't see the calculations. Further, there would need to be movement at the top of the wall. This assumption was not justified in his calculations.
5. The wall was not properly detailed. Davis expressed concern about rebar tearing out of footings because the respondent had a simple hook in the rebar that goes into the top of the footing. The respondent replied that the rebar goes into the middle of the footing, but the plans appear to have not changed. Davis also indicated that the footing did not appear to be properly designed for the base wall moment.

The LEC recognized that the respondent had prepared revised calculations to address the concerns raised by the last plan review. However, the revised calculations were not reviewed as part of the investigation. He provided the Board his revised calculations on May 1, 2009, which were emailed to LEC members. Since the LEC will meet for a continuation of his informal conference prior to the Board meeting on July 14, 2009, the LEC will discuss its findings with the Board during its scheduled session.

Cases Reviewed

2332

The complainant was a former Plans Examiner who submitted plan review letters to show that the respondent, a PE, was not competent to do proper structural analysis or to produce calculations showing compliance with code requirements. However, the complainant was no longer available to assist investigators with additional information. The last LEC review was June 7, 2007, so the LEC discussed an updated case summary.

In response to a Board investigator inquiry on March 5, 2009, the respondent submitted a list of his clients for the last three years. However, the request was for a list of his engineering projects, which was received on April 14, 2009. The list of thirty projects was compiled and it showed the majority were for exempt, single-family residences. Three projects were for non-exempt structures including Domino's Pizza in Cottage Grove, Domino's Pizza in Roseburg, and Glide High School grandstand cover. Plans and calculations from relevant building departments were requested, received, and provided to Grant Davis for review. His analysis should be available for review at the LEC August 2009 meeting.

When the investigator conducted a preliminary review of the Glide High School grandstand cover, questions arose regarding whether the building official who examined the plans should have submitted a complaint against the respondent. The building official is a registrant whose professional engineering obligation is also the protection of public health and safety. If he had concerns with the plans, or any plans, he should submit them with a complaint. However, he did not, so the LEC discussed if registrants who are also building officials have a higher responsibility to submit complaints against engineers who are doing substandard engineering.

It was noted that building departments across the state have employees qualified to examine plans and calculations prepared by an engineer and to point out substandard engineering. Building departments verify that engineering plans and calculations for construction meet code; however, the Board is empowered to discipline engineers who perform substandard engineering on non-exempt structures. Without complaints and evidence from building departments, the Board faces difficulties investigating engineers. The Board seeks building department cooperation because they often hold the evidence necessary to investigate engineers who are not meeting the standards of practice. After discussing the building official's role in this case, the LEC determined to issue the building official a letter thanking him for his cooperation and reminding him of his obligation as a registrant. As a PE, he should notify the Board when he sees engineering that would negatively affect the life, health, and property of the public (OAR 820-020-0015). The LEC encourages all building officials to submit complaints when they encounter substandard engineering. The Board will review a draft of the letter.

2461

The complainant, a PLS, alleged that the respondent, a PLS, violated ORS 209.250, OAR 820-020-0015, and OAR 820-020-0020 by setting monuments in error and failing to amend the corresponding filed map of survey. In 2003, the respondent submitted a map of survey that was filed by the County Surveyor's office. In April 2006, another PLS submitted a survey for the adjacent property showing that several of the respondent's monuments were set in error of their correct position. After resetting monuments, the respondent submitted an Affidavit of Correction

to the County Surveyor who determined that the Affidavit of Correction was not the appropriate method to correct the errors. Rather, they requested an amended survey from the respondent who did not comply. The complainant alleged that the respondent set monuments that were in significant positional error.

The LEC observed that when notified of the problem, the respondent responded in a determinative manner. It is an administrative function of the County Surveyor's office to review Affidavits of Correction. The respondent had an obligation to submit an Affidavit of Correction for approval to the County Surveyor, which he did. When the County Surveyor reviews an affidavit to make sure it is complete and approves it, the affidavit is returned to the surveyor for filing in the County Clerk office. If the County Surveyor does not approve an affidavit of correction, as is the case here, it cannot be filed. However, the authorizing statute ORS 209.255, Amendment of survey map or narrative by affidavit of correction, is outside the Board's jurisdiction. The authority of the Board for ORS 209 extends only to sections one through nine of ORS 209.250. **The LEC recommended closing the case as Board lacks jurisdiction.**

2465

On December 28, 2004, the respondent, a PLS, prepared, sealed, and signed a partition plat that was submitted and filed with the County Surveyor. During the survey, the respondent set monuments for the corners of Tax Lot 1000 disregarding senior monuments of record called for in deeds of properties adjacent to and south of the partition. By ignoring found evidence of prior surveys, the respondent approved and sealed a map of survey that was not safe for public health, property, and welfare in conformity with accepted land surveying standards violating ORS 672.200(2),(4) and OAR 820-020-0015(1),(2).

Chair Linscheid stated he filed the complaint based on his opinion that damage was done to the public. He noted that in 1962 another PLS set the S.W. corner of the East ½ of the N.W. Quarter (CW1/16) of Section 24, Township 6 South, Range 3 West of the Willamette Meridian. Since that time, subsequent surveyors have held the 1962 corner position when performing surveys in the area. The respondent correctly pointed out that the CW1/16 was incorrectly established in 1962, yet he ignored the monuments of record and the physical evidence to recalculate the CW1/16 position and set his client's property corners. Surveyors prior to the respondent had found the error and called it out on their maps of survey, yet held the Paynter position. Contrary to past practices, the respondent used only measurements to set property monuments and ignored junior/senior rights issues.

After discussing the technical aspects of the survey, the LEC learned that the survey was not a retracement of a government survey. Fences were built in approximately 1972 after a plat survey set monuments to create the senior parcels. The respondent ignored senior deed and field evidence to establish his client's junior property. However, he claimed to have given all the lands that were deeded to the adjacent properties. The LEC emphasized that senior monuments should hold. The LEC also discussed that the violations are of the standard of practice and determined to issue the respondent a Notice of Intent to Revoke Registration and Assess a \$2,000 Civil Penalty for negligence or incompetence violating ORS 672.200(2), OAR 820-020-0015(1),(2), and OAR 820-020-0025(1).

2473

Chair Linscheid read a script announcing that the LEC would go into executive session to consider legal counsel from Assistant Attorney (AAG) General Katharine Lozano. Upon reconvening, the LEC learned that the Board received an anonymous complaint regarding the respondent. The evidence was a Grants Pass *Daily Courier* newspaper article. In the article, the respondent stated, "I am an engineer so maybe I look at things a little bit differently."

Subsequent to the complaint, the Board received a computer disk from a land use consultant in Rogue River. He included on the CD two DVD recordings of hearings. The recordings show that on two separate occasions before the Josephine County Planning Commission or its related committees, the respondent introduced himself as an engineer and testified for neighbors in opposition to specific land use projects. The consultant also included a copy of a report the respondent prepared in opposition to one project. The respondent dated the report March 5, 2007, and it presented his analysis of BLM testimony and of a traffic study completed by an engineering firm. Board investigators questioned whether or not the respondent engaged in the unlicensed practice of engineering when he prepared the report.

While LEC members were not clear as to whether the report was the practice of engineering or not, the LEC discussed issuing the respondent a Notice of Intent (NOI) to Assess a Civil Penalty of \$3,000 for referring to himself as an engineer on three occasions. Regarding the report, the LEC noted that the respondent apparently used data generated by the engineering firm to critique their report and findings. The respondent cited in his report the engineering firm's violations of ORS 672.002(10) and of OAR 820-020, Rules of Professional Conduct. No complaint was received. However, the LEC remained concerned with his use of the title of "engineer" to tout himself in hearings as if claiming the title carried additional weight. **The LEC determined to issue the respondent a NOI pending Board discussion.**

2481

The complainant alleged that the respondent, a PLS, was negligent or incompetent by setting a monument in the wrong location and by mislabeling several monuments on a map of survey. In July 1991, a Partition Plat was filed with the County Surveyor to partition property into two parcels thus creating a Parcel 2 as a flag lot. The respondent was hired in the spring of 2006 by the owner of Parcel 1 to locate the corners of his property for a landscaping project. On February 21, 2007, the respondent filed a map of survey with the County Surveyor. Because the complainant disagreed with the accuracy of the survey, he hired another PLS to check the respondent's survey for errors. The complainant's PLS provided him with a "Survey Sketch" on April 23, 2007, which noted corner positional and labeling mistakes. When notified of the mistakes, the respondent corrected the problems.

The respondent failed to sign his seal or mark his map of survey preliminary when he submitted it to another surveyor for review. This sparked discussion about county surveyors accepting unsigned maps because the surveyor wants to get the process started. While a map of survey may not be complete, it will start the review process to identify what is needed for the final map. Since monumentation on large surveying projects can take longer than 45 days to complete, a map of survey is submitted to begin the review process. If a map was not signed, then that oversight would be redlined for the surveyor to correct on the final map of survey.

The LEC observed that the respondent admitted making the mistakes and took action when notified of the problems. However, the LEC also noticed on the filed map that the respondent showed measured distances equaling plat distances, which was highly unusual and may indicate substandard practice. The respondent had his Basis of Bearing going to a point on the map of survey that was not marked as a monument. In addition, the point is an unmarked distance beyond a held monument. The LEC determined to issue the respondent a Notice of Intent to Assess a \$2,000 Civil Penalty for negligence or incompetence for violating ORS 209.250(3)(e), ORS 672.200(2), ORS 672.025(2), OAR 820-010-0621(2), and OAR 820-020-0015(10).

2482

The complainant alleged that a registered professional engineer (PE) gave testimony as an expert regarding a floodplain on August 27, 2007, and violated the rules of professional conduct. The complainant alleged that the PE used a discharge volume for water that was 40% of the value determined by the Federal Emergency Management Agency (FEMA). The complainant also alleged that the PE allowed and took part in the switch of a section number so mining was permitted on a property with no such permit. However, the complainant did not submit evidence of the allegations, so a letter was sent to the complainant notifying him of the preliminary evaluation and requesting that he provide evidence. No response was received. Because no evidence was received, the PE was not requested to respond to the allegations. **The LEC recommended closing the case as allegations unfounded.**

2483

The complainant alleged that an individual gave testimony to a Jackson County Hearing Officer on August 27, 2007, and that he was not a licensed engineer. He also alleged that a PE, who was in apparent responsible charge of the project, was not present at the hearing and did not supervise the individual's testimony. However, the complainant did not submit evidence of the allegations, so a letter was sent to notify him of the preliminary evaluation and requesting that he provide evidence. No response was received. Because no evidence was received, no response to the allegations was requested. **The LEC recommended closing the case as allegations unfounded.**

2485

The complainant, a PE, alleged that the respondent, a PLS, was in violation of OAR 820-020-0025, Rules of Professional Conduct, when he gave an erroneous interpretation of legal property descriptions and road vacation orders, made false statements, and committed perjury in a court of law. Prior to the respondent's involvement, the complainant hired another PLS to survey Tax Lot 1800 and as a result the complainant began placing fence posts along where the survey had determined the middle of the vacated county roadway to run (Old McKenzie Hwy). The owner of Tax Lot 2600, which is across the county road south of the complainant's property, disputed the complainant's actions and contacted an attorney. The attorney hired the respondent to review the new survey, the data concerning the 1942 vacation order of the county road, and the property deeds for Tax Lot 2600 and Tax Lot 1800. After reviewing the documents, the respondent concluded that the new survey's designated centerline of the disputed county road was in error. A lawsuit was filed.

The investigation revealed that the respondent admitted making an error when he stated that a 1988 Lane County road survey was never legalized. However, his error was based on information he received from the Lane County Surveyor. Immediately upon learning of his error, the respondent notified the attorney that the 1988 survey was legalized. The respondent also discovered during research that a 1947 survey referenced property deeds, but had not been filed. Due to his diligence, the survey was filed on November 8, 2006. The respondent was hired to review documents to offer his professional opinion. This was not a violation of ORS 672 or OAR 820. **The LEC recommended closing the case as allegations unfounded.**

2486

The Board received an anonymous complaint alleging that a PE was in violation of OAR 820-010-0620(4) when he used a computer generated seal and signature to stamp engineering documents. The PE's company was contracted in 2005 to provide planning and engineering services for a subdivision in North Plains. In 2007, Washington County received a plan set of engineering designs dated June 2005. The designs were drawn by the President of the company and sealed with the PE's seal and signature. However, the eight seals of the plan set showed the exact signature of the PE.

The LEC expressed concern about the PE's role managing his seal and signature. Board investigators explained that the case was originally opened against the PE, but when investigators met with the PE and the President of the company, the President admitted that the PE had no knowledge of when he affixed the PE's signature to the plans. Since no evidence was available to contradict the admission, investigators changed the respondent from the PE to President of the company. While the LEC remained concerned about their practices as shown by past disciplinary actions against the PE for similar violations, the LEC recognized that had the complainant included more evidence with which to investigate a more serious sanction might have been issued. Regardless, the LEC determined to issue the PE a letter of concern and to issue the President of the company a Notice of Intent to Assess a \$1,000 Civil Penalty for violating ORS 672.045(3).

New Business

Investigator memorandum

The Board received an anonymous complaint alleging that a set of plans issued for bid by the Bend Metro Park & Recreation District did not have an engineer's seal and signature. The bid documents to construct the Pine Nursery Parking, Landscaping, and Trail Construction Project were prepared and issued by two individuals. One individual informed a Board investigator that he is a licensed Landscape Architect and prepared the plans that were not final. He sealed and signed the final construction documents as per requirements of the Landscape Architect Board. The LEC determined to not open a case and to refer the case for consideration to the Landscape Architect Board.

Investigator memorandum

An individual emailed the Board office about his eligibility to sit for the PE exam. He wrote that he has been employed by the Bonneville Power Administration (BPA) as an Environmental Engineer and signed the email as "Environmental Engineer." Regarding his use of the "engineer" title, he stated the job title was given to him by the BPA and he works under the supervision and control of a licensed professional engineer. The LEC discussed that the BPA

and the individual fall under the industrial exception in ORS 672.060(6) and determined to not open a law enforcement case.

Investigator memorandum

The Board received a complaint alleging that a company in Medford, OR, offered unlicensed land surveying or photogrammetric services when they published a brochure. Past investigations found that the company is a vendor of Light Detection and Ranging (LIDAR) equipment. Two services offered by the company were alleged to be an offering including the use of LIDAR to conduct fire forensic scanning and to provide accurate laser scanning control networks. Regarding the first offering, an ORS 672.060 exception allows law enforcement agencies, including fire professionals, to gather data. The second was an offering to perform Laser Scanning Control. While LIDAR use may fall under an ORS 672.060 exception due to excepted staff using the equipment for an excepted purpose, the offering for company staff to perform certain work such as a control network may not fall under the exception. The LEC determined to open a law enforcement case based on the second offering.

Investigator memorandum

The Oregon Board of Architect Examiners (OBAE) alleged that a PE directed a designer in the preparation of proposed tenant improvements for a church in Medford, OR, but did not seal and sign the plans. The OBAE levied the designer a \$10,000 civil penalty for the unlicensed practice of architecture and alleged that the PE lacked responsible charge of the designer under ORS 672.020. When the plan set was examined, the PE failed to sign mechanical and electrical sheets. The investigation found, however, that the mechanical work was a design-build by a mechanical contractor not under the PE's supervision. In addition, an electrical contractor's supervising electrician signed the electrical plans. Lastly, the PE was found to have correctly sealed and signed two plan set cover sheets. As a result of the findings, the LEC determined to not open a law enforcement case.

Investigator memorandum

The Board received a complaint from an individual alleging that a PLS conspired to have him pay more for a survey than his neighbor. The complainant alleged various violations of OAR Chapter 820, Division 20, Rules of Professional Conduct. The allegations stem from a property line adjustment that originally was to be completed by another PLS. The property owner desired to partition her lot in 2004 and sell a portion to the complainant. The owner showed the PLS where to establish the lot line, but the complainant did not approve. The project stalled, so the PLS pulled his monuments before the 45-day period ended. The parties went to court where a judgment property line was determined. In late 2008, a second PLS was hired to complete the project, but the complainant did not return the paperwork and the PLS was refused access to the property. The complaint against the second PLS showed that it was submitted without evidence to substantiate the claims and that the allegations appear outside the Board's jurisdiction. The LEC determined to not open a law enforcement case.

Investigator memorandum

The Board received an anonymous complaint alleging that a city had two employees who were working in the Engineering Division of the Community Development Center that have the Project Engineer title, but were not registrants. A letter of inquiry was sent to the City Manager.

The City Engineer called to inform that he was given the letter and tasked to review the allegations. Later, he wrote that only one City employee within the Public Works Engineering section did not meet the strict interpretation of ORS 672.007(1)(b), so the City would be changing job titles of the affected positions to 'project manager' and modifying any business cards to reflect the change. Upon review, the LEC determined that compliance was met and to not open a law enforcement case.

Investigator memorandum

The Board received correspondence from a PE regarding a Stipulation and Consent Order (Order) he signed to settle a law enforcement action with the Idaho Board of Licensure of Professional Engineers and Professional Land Surveyors. On behalf of an Idaho firm, he was developing a well for a new source of domestic water. A test hole was drilled to determine subsurface geology and hydrogeology. Two well logs were prepared. The draft log was issued with the specifications and bidding documents and the final log was filed with the Idaho Department of Water Resources. The draft log showed consolidated material where the final log indicated unconsolidated formations. As a result, potential bidders were possibly misled to their detriment in determining the type of equipment that could be used and the potential cost of the overall project. The PE acknowledged his work was below the acceptable standard of care. The Idaho Board assessed him a civil penalty of \$1,000. However, the Oregon Board can take action only upon the "*conviction of a felony without restoration of civil rights, or the revocation or suspension of the license of a registrant in another jurisdiction, if for a cause which in the State of Oregon would constitute a violation of ORS 672.020 to ORS 672.310 or of these rules, shall be grounds for a charge of violation of these rules.*" The violations appear within the Board's jurisdiction, but since the PE was fined a \$1,000 civil penalty, the violations do not rise to a sanction level. The LEC determined to not open a law enforcement case.

Unfinished Business

2462: Payment plan modification

The Board and the respondent reached a settlement agreement wherein the respondent would retire his land surveying registration effective January 31, 2007, and would agree not to reapply to practice land surveying in Oregon. No civil penalty was assessed. Subsequently, the Board received two complaints that the respondent was surveying while in retired status. The Board took action and issued the respondent a Final Order Incorporating Settlement Agreement that assessed him a \$2,000 civil penalty for engaging in the unlicensed practice of land surveying. He was given a payment plan and made regular payments until November 2008. He recently informed the Board that he was incapacitated due to a car accident and wanted to make a single, final payment of \$833.38 on September 5, 2009. The LEC discussed that his request modifies the settlement agreement and would require Board approval. However, he did not provide documentation of his car accident or of the nature of his incapacity. The LEC asked staff to secure documentation from the respondent for discussion during the Board meeting on July 14, 2009.

2478: Default Final Order

On January 5, 2009, the LEC issued the respondent a Notice of Intent (NOI) to Assess a \$2,000 Civil Penalty for negligence in the practice of land surveying and for failing to respond to Board inquiries. At the time, the LEC determined to not allow him to renew his registration. Upon further consideration, the LEC decided to issue the respondent an Amended Notice of Intent that

would leave in place the \$2,000 civil penalty, but revoke his registration. The LEC would need to authorize the Board President to sign a Default Final Order for the Amended NOI. **The LEC recommended that the Board approve the Default Final Order.**

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

At the LEC meeting on April 9, 2009, the members discussed a recent article for *The Oregon Surveyor* penned by Douglas County Surveyor Romey Ware entitled “Right of Entry, Or Not?” and published by the Professional Land Surveyors of Oregon (PLSO). Ware wrote that the LEC has issued civil penalties against land surveyors for violating right of entry ORS 672.047, but felt it was a matter of trespass for the civil courts to review. The LEC also discussed a response submitted to PLSO by Chair Linscheid. The response was not reviewed by OSBEELS, but was prepared based on his LEC experiences. Linscheid answered that ORS 672.047 provides a land surveyor lawful right of entry to conduct surveying activities. He observed the Legislature mandated that notice be given prior to entry and that if not done correctly then a violation of notification under ORS 672.047 occurred, not trespass. At the end of the April meeting, the LEC wanted to clarify the issues by inviting Ware to attend the June LEC meeting.

Ware accepted the invitation and a lively exchange ensued regarding applications of the ORS and OAR to various law enforcement situations. For example, ORS 672.200 provides the Board with statutory authority to “*refuse to issue, restore, or renew, or may suspend or revoke a certificate or permit, or reprimand any person enrolled as an intern or holding a certificate or permit.*” In contrast, ORS 672.045, Prohibited activities relating to the practices of engineering and land surveying, applies to everyone including non-registrants. AAG Lozano explained that “discipline” is applied to registrants for violations under ORS 672.200, but the assessment of civil “penalties” can be applied against anyone for violations under ORS 672.045. Likewise, a non-registrant can not be disciplined under ORS 672.200.

Ware encouraged the Board to leave right of entry as trespass violations to the courts, which he argued is where it belongs. Linscheid responded that land surveyors who provide notice have a right to enter any lands under ORS 672.047 and are exempted therefore from the trespass law. Rather than being in civil court over a trespass complaint, a violation of right of entry under ORS 672.047 becomes a Board regulatory matter when a surveyor fails to provide proper notification. Ware did not have an issue with the law, which is a good law, but with the Board determining land ownership. He asserted that right of entry is a trespass issue based on claims of ownership by property owners. He continued that ownership is determined by property owners coming to an agreement or by a civil court issuing a decision.

Ware emphasized that right of entry cases are boundary disputes between neighbors with surveyors caught in the middle. He noted that a complaint against the surveyor is one way for a property owner to go after a neighbor since there is no monetary cost to the land owner to file a complaint against the surveyor. In reply, Linscheid stated that a land surveyor must respond to a right of entry violation with the Board or respond to a trespass suit in circuit court. Responding to a circuit court suit will cost more than responding to the Board. Ware claimed that more of the public know about right of entry and are using it as a means in a fight with their neighbor over a boundary. Linscheid replied that it’s not reasonable to ask the Board to not enforce a law.

After discussing options to change the law, including surveyors working through the legislative committee of PLSO, Linscheid noted that the Board is policing notification and right of entry to curb any misuse. The law must be protected because it requires only notification before entering property. If misused and not policed, surveyors will lose the right.

A recent case in Christmas Valley was discussed where no one lived to provide notice. Rather, the surveyor mailed written notice. While the violation of right of entry stood in that case because mailing is not notice "in person," the Board recognized the difficulty in rural areas to implement the law and only issued the surveyor a letter of concern. Ware acknowledged that the statute is fine, but held the belief that it belongs with the courts due to the inherent determination of land ownership. Linscheid replied that the Board has to balance the issues of statutory compliance and the given facts of any individual case to reach a justified outcome. At the conclusion, Ware believed surveyors are caught between conflicted property owners in a right of entry complaint. He added that as a result of his attendance he is more educated and has a better understanding of how the LEC operates.

Settlement Agreement Monitoring

LEC Cases Subject to Monitoring and LEC Cases Subject to Collections:

The LEC discussed that Dale Marx #2291 is status quo. Regarding case #2472, the Board received a call from a Gold Beach plans reviewer who called because Porior had been working on a project and now there was another engineer. Board Investigator Wilkinson informed Gold Beach that Porior had signed a settlement agreement that include a registration suspension and another engineer was to complete any outstanding projects. Another member inquired if Porior had made his scheduled payment and he had not. Upon investigation, it was learned that Porior telephoned his payment to Board staff, but failed to submit a required signature form. The LEC also suggested referring Calvin Bontrager, #2540, to collections.

Case Status Report

The Committee briefly reviewed the case status list and inquired as to the status of case #2494. Investigators informed members that the case is under active investigation and will be ready for the August LEC meeting.

The meeting adjourned at approximately 4:07 p.m.