



# Oregon

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

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**LAW ENFORCEMENT COMMITTEE**

**Meeting Summary**

**June 10, 2010**

Members Present:

Dan Linscheid, Chair

Carl Tappert

Ken Hoffine

Ed Butts

Staff Present:

Mari Lopez, Executive Secretary

Jenn Gilbert, Executive Assistant

James R. (JR) Wilkinson, Investigator

Allen McCartt, Investigator

Others Present:

Grant Davis, PE (observer)

Katharine Lozano, AAG

Joanna Tucker-Davis, AAG

Bob Neathamer, PLS

The meeting was called to order at 8:00 a.m. in the conference room of the Oregon State Board of Examiners for Engineering and Land Surveying (OSBEELS) office at 670 Hawthorne Avenue SE, Suite 220, Salem, OR 97301.

**Informal Conferences**

2553

The Law Enforcement Committee (LEC) met with the respondent to discuss a Notice of Intent of Assess a \$1,000 Civil Penalty for violations of Oregon Revised Statute (ORS) Chapter 672.020(1), ORS 672.045(1),(2), and Oregon Administrative Rule (OAR) Chapter 820-010-0720(1). The Board received an anonymous complaint that the respondent was offering engineering services through his firm of Walpole Industrial Engineering, LLC.

The respondent explained that it was not his intention to provide engineering services for anyone other than for the company he has worked. Since 1964, he has been a journeyman tool and machine designer and die maker for various manufacturers. For the last 26 years, he has worked for a Bakersfield, CA company as their tool and die maker and then as their production manager. His experience came about by working with on-site engineers. Prior to retiring, he began training an apprentice. As part of his responsibility, he would design a production part and determine how the die is going to progress towards a finished product and then build a

specialized machine. He admitted that his work could have been defined as the practice of engineering. The Bakersfield firm left the design work to him because he was familiar with the procedures and parts, but his designs went through review engineers. When he retired, the company hired him as a consultant. In order to pay him, they requested he start a company for contracting purposes; the company name included engineering in the title.

Other than consulting for a Bakersfield company making irrigation systems, the respondent also admitted to making hobby hot rod parts. He retired in August 2006 and was placed on company retainer in January 2007. The company subsequently was sold and the contract stopped. He contended that anyone tinkering in their shop could be considered practicing engineering.

In response to a question, the respondent stated he is only making hot rod parts at this time. He does some plasma arc welding, but has sold nothing. He also added that he was willing to change the name of his company, but was told to wait by his attorney. In addition, he does not advertise his work. A recent Google search failed to reveal his company; however, it does show up on a third party Web site that the respondent did not authorize or solicit. The respondent added that he does not have a Web site.

Upon consideration, the LEC determined to recommend compliance met if the respondent would change the name of his company and submit proof of the Corporate Division request to the Board by July 2, 2010. If he failed to submit the proof, then the \$1,000 civil penalty would become due and payable. The respondent agreed. LEC member Carl Tappert observed that the respondent when contracting with the Bakersfield firm is under an ORS 672.060 industrial exception, while his hobby hot rod parts may also be covered because he is not selling engineering, but a final product. Staff agreed to work with the respondent to complete the settlement agreement. **The LEC recommended the Board approve the settlement agreement.**

#### 2545

The LEC met with the respondent, a PE, in a second informal conference to discuss a Notice of Intent to Assess a \$1,000 Civil Penalty for violations of ORS 672.025(3), ORS 672.045(1),(2), and OAR 820-010-0720. The Board received a complaint alleging that the respondent conducted a boundary survey of the adjacent property.

The respondent began by noting his “old school” interpretation of ORS 672.025(3). The 2009 edition of the statute states “*a registered professional engineer not also registered as a professional land surveyor shall not establish, reestablish or restore land boundaries, corners or monuments between lands not held in common ownership or intended for conveyance.*” He believed engineers could do surveying as long as they did not set monuments, which he did not do. The respondent explained that the local homeowner’s association requested that he show them their property lines since the property he manages on behalf of the County is adjacent to an easement they use to access the Willamette River. The respondent added that the County’s property was surveyed about four years earlier, so he showed their representative the property corners. The association next wanted the respondent to survey a straight line between monuments in order to build a fence to define their 15’ easement. The easement was overgrown

with trees and brush and difficult to see through. A conflict arose because the complainant, a neighbor adjacent to the easement on the other side, asserted ownership.

The respondent continued that he worked with the association's representative and together they set lath to mark the boundary between the County property and the easement. He was not acting as a County employee. He also explained that a tree was on-line, so he set a railroad spike next to the tree to show where the line went. The complainant then built his fence diagonal across the easement. In an effort to clarify boundary lines, the County hired a surveyor to resurvey. The respondent concluded his remarks by stating he blurred the line between an engineer and surveyor by defining a line for the boundary. His only defense was that the monuments were already in place.

In response to a question, the respondent admitted that he showed the representative where the property corners were and that he was paid to survey the "straight line" between monuments. In addition, he prepared a map for the association to depict their efforts to find monuments and stake the common boundary. LEC member Ken Hoffine, PLS, inferred from the respondent's comments that he had made an authoritative determination about where the boundary line was located, which is the practice of land surveying.

Chair Linscheid observed that the respondent had changed his perspective about the matter since his first informal conference in April. In response, the respondent stated that it was the Board's interpretation that he went too far, but the "old school" perspective is out there and prevalent. That perspective is that monuments had been established by a licensed surveyor and his only effort was to convey what was done four years prior. Therefore, the respondent communicated an authoritative position for the monuments. However, he now understood that the association did not know where the boundary line was until he showed them. Upon consideration, the LEC determined to reduce the civil penalty to \$500, which is due and payable by August 2, 2010. Furthermore, the LEC reminded him to remain current with changes to statutes and rules that are related to the professions and are published in the Board's *Oregon Examiner*. **The LEC recommended the Board approve the settlement agreement.**

#### 2554

The LEC met with the respondent, a PE, PLS, and Certified Water Right Examiner (CWRE), to discuss a Notice of Intent to Revoke Registration and to Assess a \$1,000 Civil Penalty (NOI) for violations of OAR 690-014-0100(1) and OAR 820-020-0015(8). The Board received a complaint from the Oregon Water Resources Department (WRD), alleging that the respondent had not completed a corrected Claim of Beneficial Use (COBU).

The respondent agreed that the NOI was factual. He stated the conflict was with a client over the costs of his CWRE services. He explained that the project began in 1994 when he gave the client a price quote to complete a COBU. He finished his work and submitted the claim to the WRD, but the final order from WRD was not issued until January 2005. That order contained an error and WRD subsequently reissued it in May 2005. The order set a finish date of October 2005. He completed the COBU in August 2005 and gave it to the client to submit to WRD. The client paid the invoice. However, WRD sent it back with the correct form. The respondent admitted it was his responsibility to use the correct form.

The updated form required additional information not previously required. As a result, he needed further data. He called to discuss the matter with his clients, but they refused to negotiate and did not notify him that they had submitted the complaint. The dispute is contractual in that the 2005 form required information not agreed to in his 1994 scope of work.

The respondent admitted he should have responded to Board inquiries. He explained his teaching schedule at a local community college. He got very busy with the school year and failed to respond.

He also described what additional COBU work needed to be completed. Once that data is gathered, he can complete the updated form and submit the claim. The respondent stated he would surrender his CWRE at the close of this case because he gave them a bid over ten years ago and things changed. In response to a question, he expressed hope that the weather would cooperate and allow him to collect data by July 1<sup>st</sup>. However, that may not happen. Another LEC member reminded him that WRD recently updated the forms and would not accept the prior versions, which he was aware.

Chair Linscheid stated that the important issue was his failure to communicate with the Board. The respondent agreed he should have responded, but he was willing to complete the COBU at his cost and surrender his CWRE. Upon consideration, the LEC would assess a \$1,000 civil penalty and waive \$600 unless he fails to submit the COBU to WRD. The LEC would also stipulate to his intention to surrender his CWRE certification. **The LEC recommended the Board approve the settlement agreement.**

#### 2526

The LEC met in a teleconference with the respondent, a PE, to discuss a Notice of Intent to Assess a \$2,000 Civil Penalty for violations of OAR 820-010-0635(5) and OAR 820-020-0015(8). The Board issued the respondent the NOI due to his failure to comply with an audit of his professional development hour (PDH) units and failure to cooperate with the Board.

The respondent stated that he was working for the Army Corps of Engineers (ACOE) during the audit period and was based out of Hawaii. He had not received the audit letters due to stationing in Korea and was unaware of the audit until contacted by Board Investigator Allen McCartt. In response to a question, Investigator McCartt observed that due to unique circumstances the respondent was required to submit only 7.5 hours for the audit period. The respondent explained the difficulty in accessing the ACOE records, but once they had been received and evaluated by the LEC they showed more than enough hours to comply with the requirements.

The discussion turned next to his failure to cooperate and to submit a change of address. The respondent stated he had not practiced engineering in Oregon and had not thought to submit a change of address. Regardless, he “dropped the ball” and should have submitted the PDH documentation and change of address. He also inquired about how the Oregon action might affect his Hawaii registration. Executive Secretary Lopez commented that he would need to contact the Hawaii board about any potential issues with their disciplinary requirements. Upon

consideration, the LEC determined to reduce the civil penalty to \$250 due and payable by August 2, 2010. **The LEC recommended the Board approve the settlement agreement.**

## **Cases Reviewed**

### 2562

The LEC discussed that respondent, a PE, allegedly was offering land surveying services without employing a land surveyor. Chair Linscheid noted that the LEC was scheduled to discuss the case in April; however, Board President Grant Davis recused himself from any discussion as the company was his former employer. Because the LEC did not have a quorum, the case was set aside. In review, the firm offered land surveying on its Web site, but the offer included an office location that did not have a resident land surveyor.

LEC member Ken Hoffine recalled a prior case that involved similar circumstances where there were questions about the definition of “working time” under OAR 820-010-0720(3). LEC member Carl Tappert added that electronic tools greatly aid real-time communication and questioned the rule’s application to this particular case.

The LEC recognized that the respondent had a professional land surveyor on staff, just not at the second office location. To discuss whether or not there was a violation, the LEC interpreted the OAR 820-010-0720(3) phrase “duties require that the person be elsewhere” to mean assigned field duties and not the assignment of a professional to a separate office. However, the respondent argued that his firm has a licensed surveyor on staff, that all surveying personnel are operated out of the Portland office, and that their duties require they be present in the Portland office. Therefore, he offers surveying services through two office locations and assigns staff as required. The LEC discussed that the rule is meant to prohibit the unlicensed offering or performance of professional services, including land surveying. The LEC concluded that the respondent did not have a survey crew stationed at the second office without a registrant in responsible charge. Given the supervision and control apparent in this case, **the LEC determined that the respondent was compliant and to close the case as allegations unfounded.**

### 2565

The LEC discussed that the Board received an anonymous complaint alleging that the respondent, President of a construction company, engaged in the unlicensed practice of engineering by advertising for and offering to perform engineering services on his company Web site without identifying the registered professional engineer that will perform the services constituting the practice of engineering. According to OAR 820-010-0715(2), a licensed construction contractor can offer engineering services given the following conditions: 1) the contractor holds an active contractor license; 2) the engineering services are appurtenant to the construction services; 3) the engineering services are performed by a registrant; and, 4) the contractor discloses in writing that the contractor is not an engineer and identifies the engineer(s) who will perform the services. Board Investigator McCartt explained that he worked with the respondent’s attorney to cause changes to the company Web site to ensure compliance with the four requirements. Upon consideration, **the LEC determined to close the case as compliance met because the respondent made the appropriate changes.**

2567

The LEC discussed that the complainant alleged that the respondent, a PLS, violated several Rules of Professional Conduct when he knowingly aided the complainant's unlicensed practice of land surveying. The complainant also alleged that the respondent engaged in deceptive business practices as evidenced by the sanctioning from the Washington Board for illegally conducting business in Washington without obtaining a Certificate of Authorization to offer and/or perform land surveying services in the State of Washington.

The LEC learned that the complainant allegation that the respondent "knowingly aided" his unlicensed practice resulted from a case when the complainant was suspended. During his suspension, the complainant was found to have engaged in unlicensed practice when he completed a survey project using the respondent's plastic caps. However, the LEC determined the respondent was unaware that the complainant was suspended at the time and did not knowingly aid the complainant's illegal activities.

On May 15, 2009, the respondent submitted a copy of the *Stipulated Findings of Fact, Conclusions of Law, and Agreed Order* issued to him by the Washington Board of Registration for Professional Engineers and Land Surveyors on April 30, 2009. The Washington Board sanctioned the respondent a \$5,000 civil penalty for conducting surveying activities without a certificate of authorization. The LEC found that neither the violation nor the sanction rose to a level required under OAR 820-020-0015(6) for the Board to take action. **Upon consideration, the LEC determined to close the case as allegations unfounded.**

2568

The LEC discussed that the Board received a complaint alleging that the respondent, President of a survey supply company, engaged in the unlicensed practice of land surveying by using a Light Detecting and Ranging camera (LiDAR) to investigate a fire and by using company staff to conduct "Laser Scanning Control." The LEC reviewed a preliminary evaluation in June 2009 and determined that the use of LiDAR on the fire was a forensic investigation and was excepted under either ORS 672.060(18) or ORS 672.060(19).<sup>1</sup> However, the LEC questioned whether "Laser Scanning Control," which would provide "an accurate control network," met the definition of land surveying under ORS 672.005(2). As a result, the LEC directed that an investigation be opened.

Chair Linscheid observed that "an accurate control network" is an authoritative statement implying that surveying methodology was used to measure between LiDAR work stations to ensure precision. The question the LEC examined was the issue of geo-referencing the LiDAR data to the existing state plane coordinate system. LEC member Hoffine added that one example of LiDAR application is to determine the total square feet of a large building for estimating painting needs. There was also discussion about its use to detail a sunken Civil War ship. As a result of these examples and others, there were additional questions about LiDAR defining the physical or legal features of the earth pursuant to ORS 672.002(2)(A)(a)(i).

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<sup>1</sup> ORS 672.060 was renumbered in 2009. As a result, the original citations were to ORS 672.060(17) and ORS 672.060(18).

The LEC reiterated its position that the tool LiDAR is not the issue, but how it is applied and for what purpose, which must be used to determine whether or not LiDAR falls within the practice of land surveying, photogrammetry, or engineering. When authoritative statements are made, as in this case “an accurate control network,” it appears to cross into the professional practice of land surveying. The LEC noted that Devine has removed the “accurate control network” from his Web offerings.

The LEC also discussed the respondent’s assertion of an exception under ORS 672.060(15).<sup>2</sup> LEC member Hoffine commented that LiDAR is similar to remote sensing in photogrammetry, but LiDAR equipment emits signals that are bounced off objects to generate a computer point cloud that gives “shape” to the object. In response to a question about the term “precise” in ORS 672.060(15), it was noted that the manufacturer gives precision specifications for an instrument. However, this raised questions about whether a specification can lead to a “precise location” as contemplated under the exception. Also, there were further comments that LiDAR is not remote sensing under photogrammetry.

After a discussion about how LiDAR data geo-referenced to the state plane coordinates might result in a violation, the LEC determined that further investigation was needed. The LEC suggested that Board Investigators work with Chris Aldridge, RPP, as an expert to review case file information. In addition, the LEC also requested that the respondent continue to cooperate with the Board to resolve the outstanding questions.

#### 2569

The LEC discussed a complaint from a PLS, alleging that the respondent, a PLS and PE, wrote untruthful statements in a “*Thoughts on Public Land Survey Corners Evidence Evaluated on August 26, 2008*,” which was filed in Grant County as map of survey number 1844. The respondent wrote in his *Thoughts* of a need “to scrutinize the recovery of [original corner] evidence more than usual in cases where the complainant is involved.” He filed #1844 in regards to the ¼ Corner for Sections 6/7, Township 13 South, Range 30 East, Willamette Meridian and the ¼ Corner for Sections 12/7, T13S, R29/30E. The respondent examined the stone that the complainant claimed was an original marker for the ¼ Corner for Sections 6/7 and could not find any marks that appeared manmade. He also examined the stone marking the ¼ Corner for Sections 12/7 and found the stone clearly marked.

The LEC learned that the case is substantially related to case #2571 and about the considerable history between the involved parties. From 1981 until 1983, the respondent conducted a cadastral survey for the U.S. Forest Service in T12S, R30/31E and set approximately 120 monuments. The record of survey was filed as #785. In May or June 2001, the complainant alleged that he found evidence of three original corners that the respondent missed in #785 and filed his record of surveys #1601 and #1607. The Board investigated six cross complaints involving the complainant, the respondent, and another PLS. The Board closed the cases as Board lacks jurisdiction and/or allegations unfounded. In this case, the LEC found that the respondent formulated his opinion on an adequate knowledge of the facts and on his experience

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<sup>2</sup> ORS 672.060(15): A person preparing maps or compiling databases depicting the distribution of natural or cultural resources, features or phenomena, if the maps or data are not intended to indicate the authoritative location of property boundaries, the precise shape or contour of the earth or the precise location of fixed works by humans.

and could therefore express his opinion in #1844. **The LEC determined to close the case as allegations unfounded.**

2571

The LEC discussed that complainant, a PLS, alleged that the respondent, a PLS, set a second monument seven years after the complainant found the original corner stone and re-monumented that position. The complainant surveyed Government Lots 1 through 4, Section 6, T13S, R30E and monumented original corner stones at the S $\frac{1}{4}$  and E $\frac{1}{4}$  of Section 6, T13S, R30E and at the NW corner of Section 12, T13S, R29E. The complainant wrote that the respondent exhumed the original corner stone at the S $\frac{1}{4}$  corner and could not identify the marks, so the respondent set a second monument by proportion. The respondent's monument bears N87°01'30"E, 41.43 feet from the complainant monument.

Prior to further discussion, LEC member Hoffine stated he had unsuccessfully tried to hire the respondent. In addition, they occasionally exchange personal communications about non-surveying interests that they share. He believed there was no conflict of interest.

The LEC discussed that the respondent had other surveyors accompany him to examine the S $\frac{1}{4}$  corner stone and they found the evidence inconclusive that it was an original corner stone. Hoffine related his experience that there are "a couple of" surveyors who practice in his area and he will spend additional time to evaluate their surveys and evidence. As a professional, he must judge other surveyor's work and determine whether or not to accept their work. Every surveyor should. In this case, the respondent questioned the complainant's corner and made a reasoned determination based on the evidence. Chair Linscheid added that the LEC can not determine if the corner is in the correct position. It was the respondent's decision and before he decided he reached out to other surveyors, including the complainant. The complainant rebuffed him, so the respondent set his corner where he believed it should be positioned. Linscheid concluded that the respondent followed proper procedure and it was a disagreement of professional judgment. **The LEC determined to close the case as allegations unfounded.**

However, the LEC questioned the evidence that the complainant used to establish the S $\frac{1}{4}$  corner and determined to open a case against the complainant. The LEC will evaluate the evidence that the complainant used and those findings would help determine whether the complainant was competent or negligent in setting the monument. If the evidence is inconclusive that it was an original corner position, then it would aid in that determination. Chair Linscheid reminded the members that the case would not be opened to evaluate whether the complainant was correct in his corner position, but rather an evaluation of the evidence he used to claim that he had found the original corner. Given the Board's jurisdictional limits, the LEC believed that the evidence should be conclusive. There can be a difference of opinion as to the evidence, but did the complainant accept inconclusive evidence and therefore go below the competence threshold. Additional questions arose regarding whether anyone benefited from his placement of corners.

Chair Linscheid offered that a field review of the evidence be coordinated with Bureau of Land Management (BLM) and U.S. Forest Service representatives. Agency personnel with tenure and decision authority should make a determination of whether or not they would instruct their surveyors to accept the corner evidence. If they accept the complainant's evidence, then there is

no issue. However, if they do not accept the evidence, then their determination would aid the LEC in examining the complainant's standard of care. The LEC directed that Board Investigators work with appropriate agency staff to schedule a site visit. Chair Linscheid and Hoffine expressed interest in attending.

#### 2572

The LEC discussed that respondent submitted a complaint against the City of St. Helens Engineering Department for excluding his building's sump pump and storm drainage lines from the City's sewer line improvement project. Staff conducted a preliminary review and found that the respondent wanted the Board to intercede because he wanted the City to connect his building's downspouts to the sanitation system while a permanent connection was made to the storm system. Staff determined that his request for the Board to intercede was outside the Board's authority. However, the preliminary conclusion also found that the respondent used the title of professional engineer without registration in his letters to the Board. As a result, the respondent was informed of the preliminary conclusions by his respond to allegations letter.

The LEC discussed that the respondent used the PE designation as a means to enhance his credentials with the City. While he was a Maryland registrant at one time, he was not registered in Oregon or in Maryland. As a result, the LEC determined to issue the respondent a Notice of Intent to Assess a \$1,000 Civil Penalty for violation of ORS 672.007(1)(a).

#### 2573

The LEC discussed that OSBEELS opened a case against the respondent, a PE, for the use of an unauthorized geotechnical seal design. Board Investigators received a copy of the stamp that the respondent placed on a document he asked a third party to peer review. The reviewer wrote the Board asking where he could get a similar stamp and was told that the respondent, by including a "Geotechnical" banner on his PE seal, was in violation of OAR 820-010-0620(2). The LEC recognized the respondent's creativity and desire to call-out his engineering specialty; however, the rule prohibits using a seal design not compliant with the rule and Exhibit 1. For all engineering disciplines, the only authorized variation from the PE seal is the structural seal. Board Investigators commented that they had received several calls from geotechnical engineers wanting the banner. Each person was told it was in violation. LEC member Ed Butts added that he also had received calls. **The LEC determined to issue the respondent a letter of concern.**

#### 2575

The LEC discussed that OSBEELS opened a case against the respondent due to a July 2009 article he wrote for the Professional Surveyor magazine wherein the respondent referred to himself as a "surveyor," but was not a registrant. The article recounted his firm's efforts to survey the range lands of Eastern Oregon using GPS and horses. The LEC found that the respondent worked under the supervision and control of a PLS and referred to the organization that he jointly owns with two PLS's. In addition, he did not represent himself as a licensed surveyor, nor did he intend to convey himself as such. **The LEC determined to close the case as allegations unfounded.**

#### 2576

The LEC discussed that the complainant a County Surveyor, alleged that the respondent was engaged in the unlicensed practice of land surveying when the respondent used the title “PLS” without registration. The LEC learned that the respondent called the Board, spoke with a Board Investigator, and explained that he presented the complainant his business card when he prepared a business proposal for the County Surveyor. The respondent concluded stating that he would remove “PLS” from his business card to comply with Oregon law. The LEC found that the respondent was an Idaho registrant who recently transferred to Oregon and was unaware of the rule, but took immediate action to comply even before the complaint was received. **The LEC determined to close the case as compliance met.**

#### 2577

The LEC discussed that the complainant alleged that the respondent, a PLS, was negligent in his duties when he surveyed lot lines for a Florence, Oregon development. The complainant, a lot owner in the development, alleged that the respondent did not ensure setbacks were in compliance with relevant city codes. The respondent was hired to survey the property and prepare the plat that was subsequently reviewed and approved by the City Planning Commission, City Planning Director, and Lane County officials on May 15, 2000. The LEC found that a Planned Unit Development (PUD) was approved by the City of Florence using a flexible zoning regimen under which the respondent conducted his survey. Furthermore, there were no buildings on the lot at the time of his survey and subsequent construction of the condominiums might not have accurately placed buildings on the lot with respect to the approved set backs. **The LEC determined to close the case as allegation unfounded.**

#### 2578

The LEC discussed that the complainant a County Surveyor, alleged that the respondent, a PLS and PE, was negligent or incompetent in the practice of land surveying by continuously submitting incomplete survey work for review.

To evidence his allegations, the complainant submitted a copy of a property line adjustment (PLA) filed with the County and the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> submittals of the subsequent partition plat. When the PLA survey and the four individually submitted partition plats were evaluated, they all contained multiple violations of ORS 209.250, including incomplete descriptions of monuments, incomplete narratives, failing to explain the elements controlling the lines established, and failing to explain the basis of bearing. As a result, the respondent failed in his methodology for properly determining the location of the property boundaries in violation of OAR 820-020-0015(1) and (2) and ORS 672.200(2) and (4).

Chair Linscheid observed that the respondent was not operating with a standard of care expected of surveyors. Upon consideration, the LEC determined to issue the respondent a Notice of Intent to Revoke Registration and Assess a Civil Penalty of \$5,000 for violations of ORS 209.250(2) and (3), ORS 672.200(2) and (4), OAR 820-020-0015(1) and (2), and OAR 820-020-0025(2).

### **New Business**

#### Preliminary Evaluation

The LEC discussed that the Board received a complaint from a County Surveyor, regarding the respondent. Board Investigator McCartt explained that when asked by his employer the

respondent signed and sealed a plat, but it was not until the employer tried that same day to file the plat was he informed by County Surveyor that the respondent was revoked. The County Surveyor called the Board to verify the effective date of the respondent's revocation, which was approximately six weeks prior. The preliminary evaluation was to determine whether to reopen the revocation case, or to open a new case using the allegation of unlicensed practice of land surveying. The LEC determined to open a new case against the respondent at which point the terms of the revocation settlement in case #2494 can be discussed, including the waiver of \$16,500 in civil penalties.

#### Preliminary Evaluation

The LEC discussed that the Board received a complaint regarding a report prepared by an Architecture/Engineering firm. The report scopes repairs needed for 152-unit apartment complex and the complainant asked whether the report constituted the practice of engineering and whether it should have been stamped. The LEC recognized that architects are excepted under ORS 672.060(1). While the work could have been done by either an architect or engineer, the report was prepared by a licensed architect and is not within the purview of OSBEELS. The LEC determined to not open a law enforcement case.

#### Preliminary Evaluation

The LEC discussed that the Board received a complaint from a City regarding the respondent a PE. Board Investigator Wilkinson explained that the Board had previously investigated the respondent, but closed the case because his work was excepted under ORS 672.060(10). With the change to remove the exception for engineers under ORS 672.060(10) and (11), his work can now be evaluated. The question before the LEC was whether there were life/safety concerns that suggest the need to prioritize the case for an expert reviewer. Board President Grant Davis, SE, commented that the review of the respondent's earlier engineering efforts leads him to believe that the case should be prioritized. Upon consideration, the LEC determined to prioritize the case and to have staff work with a SE as a professional reviewer.

#### Preliminary Evaluation

The LEC discussed that the Board received a complaint regarding the respondent, a PLS. The complainant alleged that the respondent misled him about the expenses to conduct a survey of his property. Board Investigator Wilkinson stated that the complainant called the Board office and it was explained to him that the issue appeared outside the Board's jurisdiction. The complainant submitted his complaint, including original maps and aerial photos. Regardless, the LEC determined that the Board lacks jurisdiction and to not open the case.

### **Unfinished Business**

#### Settlement Agreements: Cases Subject to Collections and Cases Subject to Monitoring

Chair Linscheid observed that Dale Marx (#2291) does not seem interested in completing his course work to close his law enforcement case. In addition, a new case was opened against George Cathey, PLS, for failing to submit records of survey that were part of his settlement agreement. It was also noted that Edward Tanner, PE, has paid his civil penalty and his renewal and delinquency fees and that Stephen Swinehart, PLS, has made his first payment.

Furthermore, the LEC authorized the referral of two monitoring cases for collections to the Oregon Department of Revenue (DOR), including Robert Demers (#2496) and David Roshau (#2544). In response to an inquiry about waived fees or interest, it was noted that Demers was a Default Final Order and was hit for full amount. However, Roshau negotiated a reduced civil penalty, so the settlement agreement will need to be checked. Also, staff is waiting on the appeal period to end for Crowley (#2539) before moving ahead with next steps.

The LEC discussed that the respondent in case #2558 is required to notify the Board when the civil court case has closed. A letter to that effect was sent to the respondent. Lastly, the LEC learned that the hearing for the respondent in case #2465 was held on May 19<sup>th</sup> and that the Administrative Law Judge will issue a proposed order. After that, it will become a matter for the Board to decide.

### **Case Status Report**

The LEC reviewed the Case Status Report and offered no comments. However, Executive Secretary Lopez noted three cases that will go for review to the Joint Compliance Committee (JCC), including #2589, #2590, and #2615.

The meeting adjourned at approximately 1:50 p.m.