



Oregon

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

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LAW ENFORCEMENT COMMITTEE

Meeting Summary

October 8, 2009

Members Present:

Dan Linscheid, Chair

Ed Butts

Ken Hoffine

Carl Tappert

Staff Present:

Mari Lopez

Jenn Gilbert

James R. (JR) Wilkinson

Allen McCartt

Jill Jamros

Others Present:

Joanna Tucker-Davis, AAG

Grant Davis, SE

Larry Anderson, PE

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 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

2494

The LEC was scheduled to meet in an informal conference with the respondent a PLS, to discuss a Notice of Intent to Revoke Registration and Assess a \$16,500 Civil Penalty (NOI) for violations of Oregon Revised Statute (ORS) 672.200(2),(4); ORS 672.025(1),(2); ORS 672.045(1),(4),(6); ORS 209.250(1),(3),(4); Oregon Administrative Rule (OAR) 820-010-0605; OAR 820-010-0620(1),(4); OAR 820-010-0621(1),(2); OAR 820-020-0015(9),(10); OAR 820-020-0020(1),(2); OAR 820-020-0025(1); OAR 820-030-0060; and OAR 820-030-0070. However, the respondent did not show. Chair Linscheid asked what happened.

Board Investigator McCartt replied that when the respondent replied to the NOI he did not request an informal conference, so he called the respondent to discuss the matter. The respondent verbally requested an informal conference and was told to put his request in writing as per the NOI. Based on his verbal request, the informal conference was scheduled. When the respondent did not write, McCartt called him to remind him to submit the request. The respondent did not respond, nor did he respond to a third request. On the day prior to the informal conference, the respondent called to inform McCartt that he was unable to attend

because of health reasons. McCartt told the respondent that it was too late to reschedule at this time, but he would see what could be done. McCartt called Assistant Attorney General (AAG) Joanna Tucker-Davis and Chair Linscheid to inform them of the situation, but no decision was reached.

Chair Linscheid expressed concern that the delay in resolving the complaint allows the respondent to continue to practice land surveying. Linscheid understood that the respondent has a right to the informal conference, but there is concern in the surveying profession about his competency. Furthermore, the respondent had an obligation to cooperate with the Board. In reply, AAG Tucker-Davis stated that the LEC offers the informal conference as a courtesy, so the LEC can proceed to a hearing with the Office of Administrative Hearings (OAH). The hearing process can begin and a settlement can be reached anytime up to the point of the hearing. However, the OAH currently is scheduling hearings for March 2010. A LEC member observed that if going to a hearing it should be submitted as soon as possible. Another LEC member asked if a Default Order could be issued.

AAG Tucker-Davis stated that the NOI was issued and the respondent verbally requested an informal conference. The LEC honored the respondent's verbal request since time was scheduled, but the respondent did not appear, so AAG Tucker-Davis suggested an option of moving forward with the hearing and if the respondent wants to settle then schedule another informal conference. She continued that the respondent has a right to a hearing, but the OSBEELS offers to settle cases through informal conferences. A Default Order would be issued if he does not want a hearing or if he fails to appear for a hearing with the OAH. Then the NOI allegations, violations, and penalties would stand as written. She offered the LEC three options, including rescheduling another informal conference, scheduling a hearing with the OAH and offering the respondent another informal conference, or not scheduling a hearing and litigate over the respondent failing to submit a written request for a hearing as per the NOI. Given these options, the LEC determined to schedule a hearing with the OAH.

2465

The LEC met with the respondent a PLS, and his attorney Wesley Hill in an informal conference to discuss a Notice of Intent to Revoke Registration and Assess a \$2,000 Civil Penalty (NOI) for negligence or incompetence violating ORS 672.200(2), OAR 820-020-0015(1),(2), and OAR 820-020-0025(1). On December 28, 2004, the respondent sealed and signed a partition plat that was filed as Partition 2005-20 with the Marion County Surveyor. The LEC found that the respondent had set monuments in disregard of senior monuments of record called for in the deeds of properties adjacent to and south of the partition.

Hill introduced himself and started a series of questions for the LEC. His first question was to clarify an allegation made in the NOI that the respondent made an untruthful statement when he wrote the Board, "I have given Tax Lots 1100, 1500, & 1600 all the land they were deeded." He asserted that the respondent was repeating a statement made to another PLS, in the dispute, and the statement was truthful since he said it. The disputing surveyor was hired to survey tax lot 1500. Hill continued that the respondent expressed his opinion to the disputing surveyor. How was this untruthful?

In response, Chair Linscheid read OAR 820-020-0025(2), Obligation of Registrants to Issue Statements only in an Objective and Truthful Manner, “*Registrants may express a professional opinion on technical subjects only when that opinion is founded upon adequate knowledge of the facts and the registrant is competent in the subject matter.*” After discussing how OAR 820-020-0025(2) might relate to damage to the public or not, Hill reiterated that the respondent stands by the statement as it was his professional opinion.

AAG Tucker-Davis observed that the discussion was getting more complicated than needed. She stated that the Board’s position is that tax lots 1100, 1500, and 1600 were not given all the land they were deeded. OAR 820-020-0025(2) is based on competent surveying and the Board is questioning the respondent’s competency. Hill maintained that the respondent made a truthful statement in that he made the statement to disputing surveyor. AAG Tucker-Davis responded that the statement itself is untrue. Hill countered that the LEC reached the conclusion that it is untrue and since the cited OAR is about giving an opinion without all the pertinent facts, apparently the LEC believed the respondent did not provide all the facts. Clarification was needed in the record.

Hill next asked about the NOI allegation of “disregarding the found senior monuments of record” and the violation that the respondent was not in conformity with accepted land surveying standards. The NOI did not state what that standard was or how the respondent failed to follow that standard.

Chair Linscheid responded by noting *Dykes v. Arnold*, 129 P.3d 257 (Ore. 2006).¹ He stated the Lincoln County case is used in Oregon and nationally. Hill was familiar with the case and it appeared to him that because another surveyor prior to the respondent had different results and the respondent did not blindly follow those steps that he is now in violation of Board standards. Hill asked whether the LEC analyzed *Dykes v. Arnold* as it’s basis of issuing the NOI. In reply, Chair Linscheid admitted that the LEC did not conduct that level of analysis. Nevertheless, *Dykes v. Arnold* sets a standard of practice for Oregon and the nation. Hill also observed that analysis was not presented in the complaint. Chair Linscheid responded that the standard of practice in Oregon is based on *Dykes v. Arnold*.

Hill expressed other concerns about the case. He alleged the LEC has allowed itself to be used as a means to settle a boundary dispute between two parties. The Board does not have that jurisdiction because the courts determine boundaries. He continued that the complaint is a difference of opinion between two surveyors about the results of their surveys on behalf of their clients. He claimed bias and a “result waiting for a reason.” He reached this from examining witnesses, the complaint, and prior actions between the complainant, the disputing surveyor, and the respondent.

¹ The court found that an erroneous center of section was set in 1899 and subsequent surveys to establish property lines were based on that center. The *Dykes* surveyor retraced and reestablished the erroneous center of section that matched the lines of occupation while the *Arnold* surveyor applied modern methodology and techniques to reset anew the center of section that disregarded deeds, fence lines, county road location, and lines of occupation. The Oregon Court of Appeals determined, “*that an original county survey marking the center of a section, despite a flawed methodology, should be deemed an original survey, one that is ‘left in repose’ and given legal effect.*”

In addition, the complaint contains errors in both fact and law. Hill believed the analysis in the complaint is incorrect because it applied a different standard to the respondent than to other surveyors. He continued this is a difference of opinion between two surveyors, which cannot be the basis of incompetence or negligence.

As an example, Hill noted the complaint states, “*Beginning over forty years ago, surveyors have consistently held the S.W. corner of the East one-half of the N.W. one-quarter of Section 24, Township 6 South, Range 3 West of the Willamette Meridian [by] basically ‘following in the footsteps’ of those surveyors who have been on the ground before.*” Hill asserted that the disputing surveyor reviewed less evidence than the respondent because his Partition Plat shows not every surveyor held prior monuments, including the surveyor of who completed MCSR 20359 on May 4, 1968, and the surveyor who complete MCSR 019537 on December 13, 1966. In addition, the surveyor who completed MCSR 017398 on October 25, 1962, did not provide enough information to know whether he set the SW ¼ as discussed in the complaint. Hill concluded it was not true that all other surveyors simply held the monuments. This was referenced on the respondent’s plat.

There was also a discussion in the complaint about the application of ORS 93.310. Hill argued that the complaint, however, does not discuss whether the deed was ambiguous, which was required for an analysis under ORS 93.310. He believed the reference to ORS 93.310 was not an accurate statement of law.

Hill also pointed out that the LEC ignored natural monuments taking precedence over physical monuments. He noted that the deed for tax lot 1500 made a call to an iron pipe on the north line, but the monuments were not on the north line as shown by the respondent’s Partition Plat. Hill claimed there was no LEC discussion on this point.

A LEC member asked, what are natural monuments? Hill responded that it’s to the north line. Replying that is wrong, a member added that a natural monument means a stone, rock, or tree. A line is not a monument. A stone could be a monument as a natural artifact, but it was likely moved and placed into position. Hill continued that he understood the north line was a natural monument and the call to the iron pipe had to be on the north line and since it was not true it created a latent ambiguity. Chair Linscheid asked Hill to cite where a line is a natural monument. Hill could not, but explained their retained expert has advised him as such.

Hill observed that the standard is not to blindly follow the steps of surveyors who had been there before. He believed it is a false statement, or misrepresentation, that the respondent ignored prior surveys. Based on the records, the respondent was the only person who looked at all the evidence, including prior surveys. He referred the LEC to Partition Plat 2005-20 where the respondent found two monuments close together as shown in Detail D. There were lines of occupation, mow lines, and fence posts that ultimately weighed in the dispute, which was started over the lines of occupation and the way the property was used. The parties to the dispute have elected to maintain the respondent’s survey line as the correct line.

The disputing surveyor prepared MCSR 37392 and a letter for the LEC that were also discussed. Hill pointed out that the disputing surveyor stated in the letter that his client (owner of tax lot 1500) erected a fence in 1972 and that it was placed between the two northern monuments.

MCSR 37392 does not show the fence. The respondent determined the line was not where the fence post was located, but was some distance north. Hill also suggested that the disputing surveyor was not in conformance with ORS 209.250 because he did not show a mathematical relationship between the fence post, the found iron pipe, and the monument he set.

In reply, the disputing surveyor explained that the neighbors tore out the fence posts. His client was losing ground. By the time the survey was done, the fence had been removed. He also stated he was hired to reset as accurately as possible the monuments set in 1972 by the surveyor of MCSR 22706. He retraced MCSR 22706 and the tax lot 1500 deed, which showed bearings and distances to iron pipes, and reset monuments where they had been removed along the north line. The disputing surveyor stated that he did not show the distance between posts because they were gone with only one left. He also added that he did not tie the iron pipe to his set monument because the iron pipe did not appear to be an original monument.

Hill also inquired why the surveyor of MCSR 37392 did not mention the three surveyors who called off the relevant monuments. The disputing surveyor pointed out that the first line of his narrative states the purpose, which was to retrace the MCSR 22706 and reset tax lot 1500's deed monuments. In response to a question about evidence prior to or after the partition plat, the surveyor restated his purpose and added that a review of the deeds, and there was a number of them, would show his retracement survey was consistent.

A LEC member asked whether MCSR 017612 completed on April 28, 1963, was the property partitioned by the respondent. With clarification that it is the "top" parcel, it appeared to him that MCSR 017612 created the parcel that the respondent partitioned. He questioned whether the monuments in MCSR 017612 were properly set. Hill asked how he came to believe that this was the original survey. Chair Linscheid responded there was no reason to believe that the surveyor of MCSR 017612 did not set the monuments. After a discussion about analysis of surveys, Chair Linscheid observed that the goal of the informal conference was to reach a settlement and discussions were not getting there.

Hill commented that it appeared to him the LEC did not review some of the evidence brought forth. He asserted that the standard put forth in the NOI and the complaint is not the standard the LEC intends to hold. If wrong, he misunderstood what the respondent was charged with violating. He also reviewed other surveys done by the disputing surveyor and a letter from the Yamhill County Planning Department that involved the respondent and Linscheid while the respondent was on suspension. He reiterated his concern about bias.

A LEC member declared that the evolving discussion was irrelevant to the current case. He continued that he saw some gross problems with the respondent's analysis and the discussion was not aiding the process and situation. Hill asked, what were those concerns? The LEC member replied that the discussion on natural lines shows a basic misunderstanding of the practice of land surveying, including the original survey of the property and the following of senior rights.

Another LEC member added that MCSR 017612 created the parcel that the respondent partitioned. Somehow, the respondent reached the conclusion that those monuments were set in error, so he set his monuments by a different analysis and created an overlap of 3 feet or more

along the south boundary and a similar-sized gap along the north boundary. He continued that the respondent's analysis was flawed, erroneous, and a harm to the public because the neighbor's fence was torn out and he lost property. He would have preferred that the respondent explain how he reached a conclusion that was very different from what most, if not all, surveyors would have determined as the proper solution.

Hill replied that not every surveyor has held that opinion. He stated the respondent looked at the evidence and made his determination. Hill disagreed with the suggestion that MCSR 017612 established the parcel. Other surveyors had already reached the decision to not hold those monuments. As a result, this case is a difference of opinion that should not rise to a level of incompetence or negligence. If cases are based on a difference of opinion, he has found records of survey where people have done essentially the same thing. He believed the respondent was being held to a different standard than other surveyors.

In response to a question, Hill stated the civil suit was resolved and if the problem of reaching agreement with the LEC is miscommunication, the problem should be addressed. He added that an acceptable lesser sanction would be a letter of concern. A LEC member countered that the respondent has not explained why he did what he did. Perhaps after hearing the discussion the respondent has reconsidered his approach, but he has not made any statements. The LEC does not have a good understanding from the respondent. The disputing surveyor has answered questions, but the respondent has not.

Hill responded that he attempted to articulate the respondent's position. The respondent provided statements to explain his actions, yet glaring evidence was ignored. Furthermore, the charge against the respondent was ignoring evidence, but the respondent was the only one who looked at all the evidence. Hill concluded that two reasonable surveyors can come to different conclusions. And, for the record, he denied the characterizations that the respondent was unwilling to discuss the matter. He did so in an appropriate manner during mediation and not in a law enforcement case. The Circuit Court case was settled through mediation.

2332

The LEC met in an informal conference with the respondent a PE, PLS, and CWRE to discuss a Notice of Intent to Revoke Registration (NOI) for negligent engineering violating ORS 672.200(2) and OAR 820-020-0015(2). The respondent designed a grandstand cover for Glide High School and foundations for two separate Domino's Pizzas. Board President Grant Davis, SE, reviewed the designs for all three and reported concerns he had to the LEC in a prior meeting.

The respondent admitted that he did engineering work that was outside his area of expertise. He added that he reviewed the June 2, 2009, wind storm information to evaluate the building. The constructed building experienced no problems. He also reviewed the snow load and, as a sports official for 20 years stated it is up to the school's Athletic Director to certify that the field is ready for a game. According to him, a game would not be played in 25 pounds of snow or half that. The equipment to remove that much snow would probably ruin the field. People would not be able to get there. He expressed doubt that a game would happen with that much snow since no one would be in the bleachers. He also claimed a hundred mph wind would not be safe for a

team to be out. The respondent disagreed with the NOI allegation that the structure was unsafe for people as there would be no games played during high winds or high snow fall levels.

The respondent also discussed that he works with a contractor to primarily build exempt structures. The non-exempt grandstand cover was over his head, so he stopped this type of work. He agreed that he should be censured, but not to the point of losing his license. He replied to a question about access to the field by stating the gate is locked to keep people from driving in there because the baseball, softball, soccer, and football fields were in one complex. The respondent speculated that people would not be on the field in hundred mile winds. Davis reminded the respondent that he has the responsibility to design a safe structure, particularly a public structure.

Davis inquired if the respondent knew of anyone who completed an analysis on the grandstand's wind uplift and torsion. The respondent answered no, and noted that he asked Davis and Larry Ellenwood to do calculations, but they were not done. Davis agreed that he had not done the calculations, but his 35 years of engineering experience revealed problems in the design within minutes of review. For example, the design called for 26-gage roofing that likely is not a diaphragm and the fasteners between the roofing and structure were unknown. In addition, there is significant wind uplift by current code and the beams that receive compression were not properly braced. Davis continued that the respondent stamped the design, but nothing shows that he looked at lateral stability. Davis acknowledged he has designed grandstand covers that were difficult to make work. By code, an engineer can use only 60% of the dead load to resist uplift and there was not enough weight to keep it on the ground. The respondent replied that a heavy concrete slab holds the structure down. Davis disagreed stating it was nothing compared to uplift.

Davis observed that the respondent did not respond to Board inquiries with an analysis to show how his design worked. Rather, it appeared to him that the respondent agreed it was not designed to code, but the code could be ignored because it "works." That's not good engineering and people get upset when an unsafe design involves a school. The respondent stated he was not ignoring code. After further discussion about the code, Davis believed that the respondent could be off on some of his design parameters by a factor of two. The respondent asked if he should have another engineer review the design. Davis could not say, and maybe the contractor took extra steps during construction that might counteract design problems, but it was a problem the respondent shares with Douglas County.

The respondent replied that the contractor who built the grandstand is experienced in agricultural buildings. Davis pointed out that agricultural building codes are different with loads half that of public structures. Importantly, agricultural buildings serve different purposes than buildings used at a school. The respondent stated his design used connections that were welded and the contractor used plenty of welds. Davis stated that is why the as-built structure should be evaluated and not just the respondent's designs.

Davis also discussed the Domino's Pizza foundations and the exchange the respondent had with Douglas County regarding the lateral design. The respondent stamped details for retaining walls that included a concrete option and a CMU option, but the rebar was shown in the wrong face of the wall. He explained that it should be on the outside face for a cantilever wall, but the floor

made it so that the rebar should be on the inside face. The respondent admitted that he used *Digital Canal* software to complete the design work. He gave the design sheets to the contractors. However, a Douglas County Building Official would not have his inspectors looking at design sheets to make a decision. In compromise, he made a typical drawing, so it made no difference whether it was a retaining wall or a basement wall because the contractor placed the rebar correctly. The building has not failed and his client is ready to open.

The respondent continued that he does not design big projects. His focus is subdivisions, water systems, sanitary systems, water rights, and flood plain certifications. Big projects are less than 10% of what he does a year. The respondent declared since experience is the best teacher and honesty is important here and in sports he would not do anymore. However, he reminded the LEC that the plans were approved.

A LEC member asked if a structural engineer would look more in-depth at different parameters in the designs than a civil engineer would. Davis replied that civil and structural engineers would evaluate the same factors. Chair Linscheid asked the respondent what would be an appropriate sanction. The respondent answered that a reprimand would be his “cease and desist” order.

Linscheid observed that the case has been going on for some time since the case was opened in 2004 and the grandstand was designed in 2008.

The respondent stated that he had issues with an inspector at the City of Roseburg. The inspector left the City and went to work for Douglas County. He explained that he has worked with a number of designers. When the respondent returned to Oregon in 2004, a designer had completed a rigid frame building with footings designed by another PE. The designer approached the respondent to engineer the interior wood structure. The respondent completed the prescriptive design with 2” x 4” walls that was submitted for approval. However, the inspector believed it was plan stamping and submitted a complaint against both the designer² and the respondent.

Board Investigator Wilkinson added that there were problems with the respondent answering Board inquiries. Case 2333 involved an exempt building and prescriptive design. No evidence was found to support the plan stamping allegation. While the plan stamping issue with the designer was resolved, the remaining issue was whether the respondent was competent to do engineering. The investigation continued when the respondent’s design work was found on three other projects, but he never responded to an inquiry. Based on LEC direction, the respondent was sent a letter requesting that he provide the Board a list of engineering projects for the last three years. The listed projects, including the two Domino’s Pizzas, were exempt structures except for the Glide High School. The continuing concern was his level of competence to practice engineering and evidence was needed one way or the other to make the determination. The difficulties of communicating with the respondent contributed to the delay.

The respondent requested a reprimand, but the LEC offered a settlement agreement wherein the respondent would retire his license, admit to the allegations, and not apply for an engineering

² The designer was the respondent in law enforcement case #2333. The metal building was 3,998 sq. ft and less than 20 feet in height. As an exempt structure, the case was closed as insufficient evidence on September 19, 2006.

registration again. The settlement would not affect his PLS registration or CWRE certificate. If he did not agree, the Board was prepared for a hearing to revoke the PE registration. If he agreed to retire, he could sign documents as “PE (retired)” rather than a revocation. The respondent stated that the sanction would stop 50% of his work. He asked if he could hire a structural engineer to review the structure. In response, the review could be presented as mitigation during the hearing. The respondent stated that he would be represented by an attorney at the hearing.

2487

The LEC met in an informal conference with the respondent to discuss a Notice of Intent to Assess a \$1,000 Civil Penalty (NOI) for the unlicensed practice of engineering violating ORS 672.007(1)(a) and ORS 672.045(2). The respondent signed as a “Senior Geotechnical Engineer” an investigation report for the geologic and geotechnical analysis of slope stability at a particular site in the City of Troutdale without being registered in Oregon.

The respondent admitted to the violations. He added that when he graduated from OSU he received his engineer-in-training (EIT) in Oregon, but he is not registered to practice in Oregon. He is registered as a civil engineer in Arizona and California and as a geotechnical engineer in California. At the time of the report, his firm did not have a geotechnical engineer in their Portland office. The respondent reviewed the report for completeness, which he did, and he signed it using an inappropriate title. He stated that he should have signed it as chief technical officer or as the senior vice president of the firm and not as the engineer of responsible charge.

In response to a question about a sanction, the respondent noted that the State of Arizona typically assesses penalties around \$500 dollars. He observed that Arizona has a stipulation similar to Oregon prohibiting the unlicensed practice, which he did not recognize. An EIT is a “staff professional” and not a staff engineer at their firm because they are not registered. He made the error and will accept the consequences. When asked, he also replied that he is not practicing engineering in Oregon.

The LEC offered the respondent a settlement agreement since he cooperated and was forthright with the Board. The settlement agreement was a \$250 civil penalty with the condition that he could not practice in Oregon until he applied by comity to practice in Oregon. **The LEC recommended the Board approve the settlement agreement.**

Cases Reviewed

2496

The Board received two anonymous complaints against the respondent. In addition, a PLS and CWRE filed a separate complaint. The complainants alleged that the respondent engaged in the unlicensed practice of land surveying without employing a licensed professional land surveyor by advertising for and offering to perform land surveying services in a company brochure he sent to area land surveyors. The respondent’s company Web site showed that the respondent was offering land surveying services to the public, including “partitions, subdivisions, and lot line adjustments.” Also on the Web site was an unsigned partition plat by another PLS.

After discussing the staff recommendation to issue the respondent a Notice of Intent to assess a \$2,000 civil penalty for unlicensed practice, the LEC discussed whether a postcard that the respondent sent to the public regarding him preparing flood certificates was also a violation. The

footnote at the bottom of the postcard read, “A licensed surveyor in Oregon would be responsible for performing all field work, mapping, and paperwork as required by FEMA, and any applicable local and state bodies.”

A LEC member asked if it is allowable for the respondent to act under a licensed surveyor as a contractor and separate business entity. In reply, an individual is prohibited from “working for the licensee or organization under a contract or as a consultant for specific projects” according to OAR 820-010-0720(3)(b), Advertising for or Offering to Perform Services without Employing a Licensee; Engineering, Land Surveying and Photogrammetry Offices. As a result, the respondent cannot offer and contract through the brochure “a self contained survey crew” that would set corner monuments, or offer through his Web site to prepare partitions, subdivisions, and lot line adjustments, or offer through postcards to prepare flood certificates for the public.

The LEC also discussed a comment the respondent wrote to the Board that “any citizen in Oregon can divide land.” It was explained that the respondent buys and develops property to sell. If his actions were for property he owned then an exception might apply. However, it appeared the respondent was expanding his business by offering land surveying services to the public by contracting certain services with one specific surveyor.

Chair Linscheid noticed that this surveyor compensates the respondent “by performing surveys for his company, and [by] finder fees” for referral business. This is a violation of OAR 820-020-0035(3), “A registrant may not offer, give, solicit or receive, either directly or indirectly, any commission or gift or other valuable consideration in order to secure work.” Further investigation revealed that the respondent is a corporate officer for the surveyor’s firm, but the surveyor is not a corporate officer for the respondent’s firm.

The LEC determined to issue the respondent a Notice of Intent to Assess a \$3,000 civil penalty for the unlicensed practice of land surveying violating ORS 672.025, ORS 672.045, and OAR 802-010-0720. In addition, the LEC directed that a law enforcement case be opened against the surveyor for violations of ORS 672.025; OAR 820-010-0620(4); OAR 820-010-0621(1); OAR 820-020-0015(8),(9),(10); OAR 820-020-0030(2); and OAR 820-020-0035(3).

2497

The LEC reviewed a Board initiated complaint that a business card distributed by the respondent, who is an LSI, was done so without him employing a licensed professional land surveyor. The cards the respondent issued showed a business name and listed “surveying/site work estimating” as one of business’ services. Since the respondent was an LSI, he could not alone offer the services. In his response to allegations, the respondent wrote that two professional land surveyors were part-time employees. The respondent also listed another professional land surveyor as a contractor. The LEC found that the respondent had a surveyor on staff during a time of tight market demands. **The LEC recommended closing the case as allegations unfounded.**

2498

Multnomah County Surveyor Robert Hovden, PLS, submitted a complaint against the respondent, a PLS, alleging that he failed to return a corrected map of survey within 30 days. The respondent submitted a record of survey to the Multnomah County Surveyor for a proposed

subdivision plat for property located in the West Hills of Portland, Oregon. After its second review, the record of survey was returned to the respondent for final corrections. The respondent did not return the record of survey to the Multnomah County Surveyor.

The respondent submitted at the same time a subdivision plat and a record of survey for review by the Multnomah County Surveyor. The plat and survey were for the same property. Redlines for the subdivision plat were returned to the respondent in late June 2007 separate from redlines for the record of survey. During the review cycle, the plat became a complicated process and the respondent became confused believing he had made corrections to the record of survey and had filed it when, in fact, it was the subdivision plat that was going through multiple reviews, revisions, and approval. When the respondent failed to return the corrected record of survey, Multnomah County sent a reminder to the respondent. The respondent thought the reminders were for the plat. Upon discussion, the LEC determined to issue the respondent a Notice of Intent to Assess a \$2,000 Civil Penalty for failing to return a corrected map of survey within 30 days violating ORS 209.250(1) and ORS 209.250(4)(b).

2499

Multnomah County Surveyor Robert Hovden, PLS, alleged that the respondent a PLS, failed to return a corrected map of survey within 30 days. In addition, a separate complaint from Marion County Surveyor Mark Riggins, PLS, alleged that the respondent failed to return a corrected map of survey within 30 days and failed to record a survey within 45 days of setting monuments. Hovden subsequently wrote and identified the respondent's negligence in centerline monumentation, including monuments out of place, missing monuments, the use of plastic caps instead of aluminum caps in asphalt, and improperly marked monument caps. After some delay, the respondent eventually corrected the errors.

When the records of survey were evaluated, multiple violations of ORS 209.250(3) were found, including incomplete descriptions of monuments, incomplete narrative, and basis of bearing not explained. These types of violations were on top of the failure to file a corrected map within 30 days. Furthermore, the respondent failed to notify the Board of his change of address. As a result, the LEC determined to issue the respondent a Notice of Intent to Revoke Registration and Assess a \$6,000 Civil Penalty for negligence or incompetence violating ORS 209.250(1),(2),(3),(4)b; ORS 672.200(2),(4); OAR 820-010-0605; OAR 820-020-0015(2); and OAR 820-030-0060.

2500

The complainant, a PLS, alleged that the respondent who is a County Assessor had required him to change his plat on two occasions when it did not agree with the County tax map. The complainant's evidence showed 18.5 feet for an easement where the respondent insisted the property was fee grant. The respondent required the complainant to change his plat after the County Surveyor had signed the plat. The complainant alleged that the respondent was not qualified to practice land surveying when they exercised the tax assessor's authority by dictating where a property boundary goes and by how a Surveyor's Certificate is written. The LEC discussed the allegations on February 6, 2008, and on April 8, 2008.

When the LEC reviewed its prior discussions, it was remarked that this was a convoluted issue. The complainant prepared three versions of the plat that the respondent reviewed. During the

review processes, the respondent contacted the title insurance company and had them change their title report. With the updated title report, the plat was in harmony with the underlying tax rolls.

Chair Linscheid prepared a report that also was part of the prior discussion. He explained he recommended an affidavit of correction, but his report was informal and done without the aid of an AAG. He added that if the respondent was authorized to do what she did, then there would be no sanction because the Board lacks jurisdiction. Each county is different in how plats are processed and approved and there is a good check and balance in the system. However, there was a conflict in that the respondent dictated to a surveyor what should be shown on the plat even though it did not conform to what the surveyor believed at the time. Upon discussion, the LEC determined that the AAG would provide a written opinion to the LEC on whether the changes the respondent required constitute the practice of land surveying.

2501

The respondent, a PE, attended the LEC meeting in order to answer any questions that the LEC may have during a review of his case. Chair Linscheid recused himself from discussion due to their acquaintance.

The respondent informed the LEC that when he discovered the lapse of his professional land surveying (PLS) registration and certified water right examiners (CWRE) certificate he halted his surveying activities and took immediate action to correct the problem and notify the Board. He accepted responsibility for maintaining his registration and certificate and should have discovered it sooner. However, there were mitigating circumstances and he hoped his actions would show that he did not deserve a civil penalty.

When the respondent received a telephone call from Board Investigator Wilkinson he knew the case was proceeding since the investigation had found five maps he recorded while in a delinquent status. The investigation was to recommend a \$5,000 civil penalty. As a result, the respondent researched former employer records at the City of Newberg to discover that payment records were no longer available. City records had been purged. The City Attorney's Office prepared an affidavit stating how they handled payments on his professional fees as part of his employment package. He commented that he would not want to forego that benefit.

The respondent added that he downloaded renewal forms for 2005 and paid all three licenses using a credit card. However, the transaction was never completed. In addition, he submitted a check to pay for his PE renewal in 2005. He received the notice to renew his PE, but waited to receive his PLS and CWRE notice believing each registration and certificate were mailed separately. When notices were not received, the respondent submitted the additional renewal payments in 2005. His PE registration was renewed, but his PLS and CWRE were not. The respondent asserted that his effort to pay the PLS registration and CWRE certificate were proof of intent to pay.

In response to questions, the respondent stated he stopped all surveying work. At the time, he had only one job and hired another PLS to finish the survey. He also responded that his professional development hours (PDH) are current. For example his a new business required him to take training in AutoCAD and other programs in order to become proficient.

The respondent also recounted an interview he had with former OSBEELS Executive Secretary Ed Graham. While Graham said no one knows for sure what happened, OSBEELS changed its computer system around 1995 and the transfer of data into the new system might account for a licensing glitch. In addition, the OSBEELS consolidated notices they send to registrants around 1993. Prior to that date, separate notices were sent. The respondent speculated that since the City of Newberg paid his renewals, the change from separate notices to a single notice might have created confusion since he was a multiple registrant. When notices were consolidated, it fixed the notice problem, but somehow his PLS and CWRE were missed.

The investigation revealed five maps of survey the respondent sealed and signed during delinquency. When asked about a proper sanction given the evidence of unlicensed practice, he replied that his integrity is important and he sincerely believed his registration and certificate were paid. The fact they were not is a mistake. If the City of Newberg had continued to make payments then he would be current because once he left the City he attempted to make timely payments on his PLS registration and CWRE certificate. He claimed he was being judged by the LEC on no record of payment when the evidence does not exist. Furthermore, he intended to pay, which is evidence of mitigation. On the basis of that, the respondent did not expect the Board to reinstate his license. However, he felt the penalty was unfair because no evidence of his payments were in the record. This ignores possible payment and his attempts to pay.

The respondent answered another question about arrangements to take the exam. He explained that he could not fit it in last year. He acknowledged he will be a better surveyor for taking the exam and believed it was enough punishment. He asked the LEC to forego the \$5,000 civil penalty. He declared that the renewals were part of his compensation package with the City of Newberg and was unaware of what happened with his PLS and CWRE. LEC member Carl Tappert, PE, CWRE, added that he was on the Examinations and Qualifications Committee (E&Q) when this issue was first brought up and he recalled that E&Q recommended little or no sanction because there was no evidence to suggest fraud or deception.

A LEC member asked, what is the purpose of the fine? In response, AAG Tucker-Davis explained that rehabilitation is to get a person back on track, that punishment is used for the consequences of a person's actions, and that deterrence applies to specific and general actions. Specific deterrence is used primarily in criminal cases to prevent a person from doing it again. If a person knows that additional punishment will follow a prohibited act, they are less likely to engage in that behavior. General deterrence is society's means to alert people that some type of punishment follows the violation of laws and rules. All three fine types may apply to an OSBEELS case. Investigator Wilkinson reminded the LEC that OAR 820-010-0617 lists factors in determining a civil penalty amount. In reviewing the list, one LEC member noted that factors included whether the act was inadvertent and whether there was a history of the individual to take steps to correct the matter. Both factors, in his opinion, weighed in the respondent's favor. However, the LEC has not issued a Notice of Intent with which to settle.

Another LEC member noted that he himself stamps a map of survey at least every month. He added that he knows what is going on with his registrations and certificate and that the respondent has made a big mistake since 1993 by missing his PLS and CWRE renewals. He asserted that the respondent was not paying attention. On the other hand, he felt these were not five mistakes made on five surveys, but one mistake made on five surveys. He suggested a

\$1,000 civil penalty was appropriate. In response, however, if a NOI were issued it would separately list the five maps because each map represents an instance of unlicensed practice. Another LEC member related to the respondent's predicament because of problems he had with his records. For him, the respondent took proactive steps to mitigate the circumstances.

The respondent was asked whether he is current with the PDH requirements. He replied that they are on record in his office, but he did not have them with him. Given the respondent's comments, the LEC offered to waive the civil penalty if he would admit to the violations, agree to not practice land surveying without registration, and submit his PDH units by November 10, 2009, as evidence of his intent to pay. The respondent accepted the terms. **The LEC recommended the Board approve the settlement agreement.**

2506

The complainant, Secretary/Treasurer of the Hawn Creek District Improvement Company (HCDIC), alleged that the PE respondent a PE (Retired), engaged in the unlicensed practice of engineering by performing work on the Hawn Creek Reservoir Dam and its properties. HCDIC was formed in 1953 to administer Dam operations and the respondent has been a member since 1991 due to his irrigation rights. In February 2007, the respondent wrote a letter to the HCDIC membership expressing concerns over the lack of maintenance, record keeping, and State inspections. The respondent signed as "PE & PLS (Retired)." The HCDIC subsequently approved the respondent to contact the Water Resources Department (WRD) to schedule a dam inspection. About ten days later, the respondent distributed a letter alleging violations of state irrigation law by some HCDIC members and describing his visit with the WRD. The letter was signed, "Civil Engineer & HCDIC member." The respondent also complained that another HCDIC member, who is also a PE, was practicing outside his area of expertise when he inspected the dam and prepared a report stating that the dam was in "very good condition."

AAG Tucker-Davis observed that the respondent prepared his reports for HCDIC of which he was a member. She asked if his actions fell within the industrial exception of ORS 672.060(5). The respondent was pointing to problems with dam safety and he had a vested interest in dam operations. Furthermore, the respondent used the title internal to HCDIC. There was no offering to the public as it was within their membership. In addition, the respondent made recommendations regarding dam maintenance based on WRD review and did not offer engineering design. The LEC found that the industrial exception applied to both the respondent and the other PE and **recommended to close the case as Board lacks jurisdiction.**

2507

The complainant a PE (retired) alleged that respondent was practicing acoustical engineering without a license. The respondent was featured in a *Newberg Graphic* article for his work with a local church to help them improve the sound of their music during worship services. The investigation found that the respondent works full time as a contracted mechanical designer in the aerospace field and does not perform engineering work. His hobby is music and he owns quite a bit of music related equipment for his own personal use. The respondent admitted he occasionally assists local churches by loaning them his equipment and repairing or maintaining sound equipment. His work involved suggesting the church move some existing acoustic panels and constructing homemade panels based on a design he found on the internet. **Upon review, the LEC recommended closing the case as allegations unfounded.**

2508

The complainant alleged that the PE respondent demonstrated unprofessional conduct by failing to correct errors in calculations and by signing calculations required to be signed by a structural engineer when he is not a structural engineer. The respondent prepared and submitted a Seismic Analysis Report for a Tualatin Valley Water District Pump Station on behalf of the complainant's client. The client rejected the report as having errors in calculations, primarily from the respondent using the Uniform Building Code (UBC) as opposed to using the requested International Building Code (IBC). The complainant repeatedly requested that the respondent provide the corrected calculations, but to no avail. When the complainant advised the respondent she would file a complaint with OSBEELS. The respondent provided the corrections. The investigation also found that the respondent used a non-compliant seal. When Board investigators requested him to submit a revised version, he failed to provide a compliant example.

Upon review, the LEC determined that the allegations were contract performance related and outside the Board's jurisdiction. However, the respondent failed to cooperate with the Board regarding his non-compliant seal. The LEC determined to issue the respondent a Notice of Intent to Assess a \$2,000 Civil Penalty for violations of OAR 820-010-0620 and OAR 820-020-0015(8).

2509

The PE complainant alleged that the respondent engaged in the unlicensed practice of engineering. The respondent does not employ a registered engineer. The allegations stem from a meeting with the Tri-City Water & Sanitary Authority of Myrtle Creek, Oregon, where the respondent's company offered to provide a second engineering opinion and engineering calculations. In addition, the complainant alleged that the respondent offered free engineering services with the intent of having the respondent's work incorporated into the complainant's civil engineering plans and having the complainant's company stamp the designs.

A LEC member added that the allegations against the respondent are consistent with what he hears from the engineering community. "Packaged" pump stations are designed by the respondent and integrated into a site specific plan done by a firm with registrants. However, the respondent has done site designs that go beyond the packaged pump station to include the facility, parking, electrical, and other infrastructure.

Board Investigator Jill Jamros informed the LEC that the civil penalty was based on specific examples of the respondent's company offerings. For example, their Web site offers architectural and engineering services. Their brochure and the Scope of Work for the Tri-City Water & Sanitary Authority were also included in the civil penalty. In addition, they also offer to design restrooms. A LEC member added that what the respondent does is to design the pump station and have the project engineer sign off on their design. Pump stations are site specific and not interchangeable. The LEC determined to issue the respondent a Notice of Intent to Assess a \$5,000 civil penalty for the unlicensed practice of engineering violating ORS 672.020 and OAR 820-010-0720.

2510

The complainant alleged that the PE respondent violated OAR 820-020-0035(2)³ in October 2005 when he contributed a \$1,000 to a political action committee working to support a measure that would allow the City of Sherwood to use the Willamette River as a drinking water supply source. A separate, but related complaint against another PE was also received from another complainant. The parties made similar allegations against the other PE in case #2511. LEC member Ed Butts recused himself from the discussion.

The respondent wrote the Board that in 1997 a consortium of five public water agencies, including the City of Sherwood, prepared an in-depth study of the potential use of the Willamette River at Wilsonville for a drinking water supply source. Prior to the study, he and his firm supported the development of the Willamette River as a drinking water supply source. Since 1999, his firm has served the City of Sherwood under a general engineering services agreement. Subsequently, his firm was selected through a competitive process to prepare a water system master plan and water management and conservation plan for the City of Sherwood. The plan evaluated seven options for water supply sources, which were later narrowed down to four options, and then down to two (Willamette River and Bull Run). On October 4, 2005, the Sherwood City Council selected the Willamette River as its preferred option and subsequently put forth a ballot measure for the voters to decide.

On October 25, 2005, the respondent donated \$1,000 to the political action committee Safe and Affordable Future for Everyone (SAFE). SAFE's goal was to educate Sherwood voters on the ballot measure. The intent of the contribution was to aid in the dissemination of factual data on the two options. Once the voters approved the measure, his firm was selected through a competitive process by the City of Sherwood to provide the City with engineering services for the approved Willamette River drinking water supply source.

The LEC discussed whether the contribution was intended to influence the voting or the award of the contract. Investigator Jamros replied that the intent was to get Sherwood voters to approve the use of Willamette River as drinking water source. City officials and others established SAFE as a Political Action Committee (PAC). The contribution was intended not to influence a specific contract, but to support a ballot measure. The contract was awarded about two years after the vote. A LEC member observed that enough separation was between the vote and the award of the contract to not rise to a level of influence peddling. If the money had been given to a City Councilor or other person to influence the award of the contract, it might be a different matter. However, that was not the case. There was a common interest to pass the initiative. **The LEC recommended closing the case as allegations unfounded.**

³ 820-020-0035(2), effective June 1, 1981 - November 21, 2006. Registrants shall not offer, give, solicit or receive, either directly or indirectly, any commission or gift or other valuable consideration in order to secure work, and shall not make any political contribution in an amount intended to influence the award of a contract by public authority, but which may be reasonably construed by the public of having the effect or intent to influence the award of a contract.

2511

The complainant alleged that the PE respondent violated OAR 820-020-0035(2)⁴ in October 2005 when he contributed a \$1,000 to a political action committee working to support a measure that would allow the City of Sherwood to use the Willamette River as a drinking water supply source. A separate, but related complaint against the respondent was also received from another complainant. The parties made similar allegations against a PE in case #2510. LEC member Ed Butts recused himself from the discussion.

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2534

The PLS complainant alleged that the PE respondent, on his company Web site, advertised for or offered to perform professional land surveying services without employing a registered professional land surveyor. In addition, the firm identified "Licensed Professional Land

⁴ 820-020-0035 (2), effective June 1, 1981 - November 21, 2006. Registrants shall not offer, give, solicit or receive, either directly or indirectly, any commission or gift or other valuable consideration in order to secure work, and shall not make any political contribution in an amount intended to influence the award of a contract by public authority, but which may be reasonably construed by the public of having the effect or intent to influence the award of a contract.

Surveyors in Oregon” as one of its certifications and offered land surveying teamed with a surveying company as one of its services, but identified no PLS on its staff. The respondent responded to Board inquiries stating that a PLS was a contract employee of his company. The PLS is President of another company. The respondent claimed that his company complied with ORS 672.025 because they ensured all personnel who oversaw, stamped, and signed applicable paperwork was registered.

Investigator Jamros explained that the two firms worked together as a team and if the respondent’s company needed land surveying the surveying company would provide the service. The firms were negotiating a merger. However, the PLS was acting as a contractor to the respondent. The LEC determined to issue a Notice of Intent to assess a \$1,000 civil penalty against the respondent for the unlicensed practice of land surveying. The LEC also discussed whether the PLS was in violation. Upon review of OAR 820-020-0045(5), Obligation Not to Engage in Unprofessional Behavior, “*An applicant or registrant will not assist or aid the unsupervised or unlawful practice of engineering, land surveying, or photogrammetric mapping,*” the LEC determined to open a case against the PLS for violating OAR 820-020-0045(5).

2541

The complainant alleged that the PLS respondent trespassed on her property and left a metal pipe exposed putting her horses at risk of injury. A separate complainant also alleged that the respondent trespassed onto their property. The respondent surveyed the property adjacent to the two complainant’s properties. Prior to the respondent, the client had hired an unlicensed individual to conduct an “unofficial survey” of her property. As a result of the unofficial survey, she built a fence encroaching 11 feet into the complainant’s property. The respondent maintained that he stayed within the encroaching property, did not set any monuments on the common boundary with his client, and the metal pipe was already exposed when he arrived. However, the respondent set a monument on the boundary common with the second complainant without providing her notice of entry. The LEC determined to issue the respondent a Notice of Intent to assess a \$1,000 civil penalty for violating ORS 672.045(4).

2579

The Oregon Board of Architect Examiners (OBAE) submitted a complaint against the respondent, a PE and PLS. The OBAE issued a sanction against a designer for his design of a non-exempt structure and alleged to OSBEELS that the respondent was not in responsible control of the designer’s design and was not competent to practice engineering. While the OBAE complaint mentioned the plans went through several plan reviews “due to life/safety and structural issues,” it was not until the respondent responded to the allegations that broader concerns emerged with the Rules of Professional Conduct, Division 20. As a result, staff recommended that a professional reviewer and expert witness analyze the case file.

Investigator Wilkinson distributed a memorandum that listed the names and disciplines of approved professional reviewers and expert witnesses who are also professional engineers. He also noted that the Board received sets of plans and calculations sealed by the respondent. A LEC member asked, what is the evidence that the respondent was not in responsible charge? Wilkinson replied that while the investigation was not complete, the designer created the design prior to the respondent being contracted to review. The file contained the respondent’s invoices

to the designer that may evidence responsible charge. At this time, however, the question was not responsible charge, but whether there were life/safety issues that were of an immediate concern. The LEC reviewed the list of approved reviewers and determined to have Edward Tornberg, PE, review the file. In addition, the LEC determined to have Brandon Erickson, PE, review case file #2332.

New Business

Louisville NCEES Trip Report

The LEC briefly reviewed a memorandum from Board Investigators Wilkinson and McCartt who flew to Louisville, KY, to attend the 88th conference of the National Council of Examiners for Engineering and Surveying (NCEES). They attended the Law Enforcement Forum, which was focused on current enforcement issues affecting member boards, and presentations from the NCEES Law Enforcement Program.

A few key points emerged including Oregon was not the only state struggling with continuing professional development compliance. State laws and regulations vary making it difficult to directly compare efforts. In addition, some states are aggressive in their law enforcement efforts on registrants and non-registrants alike. Exam security was another topic of discussion. One presentation on examination subversion showed the cleverness of a Puerto Rico examinee to thwart security. Another presentation discussed NCEES modeling efforts to catch cheating. Investigators concluded that no major changes to operations were needed. Executive Secretary Lopez added that Oregon is ahead of some states in its exam and law enforcement efforts.

LE #2462, Thomas Burton: Review status of civil penalty payments

Thomas Burton, PE, PLS (retired), agreed to settle law enforcement case #2462 by making payments on a \$2,000 civil penalty. Burton was making regular payments, but stopped this past spring and did not communicate his intentions to the Board. Once contacted by a Board Investigator, Burton responded and upon submitting documentation of medical reasons for the delay, the Board approved Burton's request to make a single payment of \$833.38 on or before September 9, 2009. Burton notified the Board on September 9th that he was recently discharged from the hospital and requested an additional two to three weeks to pay. Payment was not received. Upon discussion, the LEC had accepted his reasons and adjusted the settlement agreement. However, he made commitments to pay the civil penalty under both the settlement agreement and afterwards. The LEC determined to turn the Burton balance due over to the Department of Revenue for collections.

Proposal to Promulgate CPD Fine Rule: Discussion memorandum by John Seward

The LEC reviewed a memorandum prepared by Board member John Seward, PE. Seward submitted a proposal to establish a rule that sets fines for violating continuing professional development (CPD) rules (OAR 820-010-0635). He believed the proposal would streamline the law enforcement process by reducing the number of informal conferences (and hearings). He continued that OAR 820-015-0026(2) allows a registrant up to one year to complete delinquent professional development hours (PDH). PDH units are earned based on the schedule in OAR 820-010-0635(2). A violation of the CPD rules typically will create a violation of OAR 820-020-0025, Obligation of Registrants to Issue Statements only in an Objective and Truthful Manner, since the registrant signs a statement upon renewal that they have complied with the

CPD rules. Seward noted that his memorandum is a straw document to begin the discussion. If the objective could not be achieved, then there is no need to continue.

The LEC was directed to a spreadsheet prepared by Investigator McCartt. The spreadsheet lists the nineteen CPD cases under active investigation and identifies the current status of each investigation. Seward explained his proposal covers cases where the individual does not have the required PDH units and they need to make up the units. AAG Tucker-Davis observed that the problem cases are those with no good addresses. If they are unreachable, there is no way to tell if they comply. McCartt added that each case is unique. For example, he found one case where a zip code was misprinted, so the respondent had not received the notices. Once it was straightened, he submitted the documentation. On the other hand, there are registrants in Oregon who have chosen to ignore the audit. In another case, the County was responsible for changing street addresses and for notifications, but the registrant never submitted an address change to OSBEELS because he never moved.

Executive Secretary Lopez confirmed that some of the issues are outside the control of the registrant. She added that it shows the investigation process is working because the spreadsheet shows what specific issues the Board is facing during the audit. McCartt emphasized that he is sending a respond to allegations letter to each person. For those who do not respond, he conducts an internet search and contacts other licensing boards to verify information. However, military registrants are the difficult ones to contact.

McCartt continued that North Dakota requires their registrants to submit a CPD log with their renewals. If they do not, they are not renewed and are audited. If they are late with a renewal payment, they are not renewed and are audited. If their log does not total 30 CPD units or more, they are not renewed and are audited. North Dakota staff informed him that their late renewals have been virtually eliminated. He also learned that North Dakota conducts an audit of registrants based on a percentage. Importantly, they have the logs of the chosen registrants to compare the received certificates against.

Seward added that his proposal was to divert registrants from requesting an informal conference when they have nothing to lose. As it stands, a Notice of Intent would be issued for a minimum of \$1,000 and most people will take the chance that the fine would be reduced during an informal conference. His proposal is to offer an up-front reduction in order to get compliance.

However, the spreadsheet shows that audit issues may not allow a one-size-fits-all approach. A number of the registrants who failed to respond to the audit have been able to renew. Adopting the North Dakota model would stop that. OSBEELS currently uses an honor system for reporting since registrants only certify on the renewal form that they have completed the required PDH units. In contrast, the North Dakota model requires each registrant to submit a log of the CPD courses and claimed PDH units. Because North Dakota requires the log, does accepting the log pre-approve the CPD courses? McCartt replied that North Dakota does not pre-approve courses. North Dakota staff reviews the CPD logs to ensure that courses total 30 or more and are within the registrant's discipline and licensure. A LEC member noted it is possible a course is approved for one individual and not another. It was added that this scenario might happen under the current system too.

Chair Linscheid asked if the Board could change the audit procedures by rule. AAG Tucker-Davis replied that the Board has broad rule-making authority. A LEC member pointed out that there are registrants who play audit roulette. He added that the North Dakota model was a good solution. AAG Tucker-Davis added that the Oregon Bar Association is similar in that she has to submit a log of her courses. If she were audited, she would need to provide proof of attendance.

Executive Secretary Lopez stated that the Board has a CPD log available online. The Board audits 3% of professional engineers, 3% of land surveyors, and 3% of photogrammetrists. The North Dakota model would eliminate those who play audit roulette and renew without completing their CPD courses. AAG Tucker-Davis added the law states a renewed registrant is authorized to continue to practice until a hearing with an issued ruling. By requiring a CPD log along with the renewal payment as a condition of renewal, a registrant could not be renewed without submitting both. The registrant would not complete the renewal process without the log. Furthermore, audits of registrants' logs can still occur. The LEC determined to refer the North Dakota model to the OSBEELS Rules and Regulations Committee for review and possible revision of the CPD requirements.

LE #2204, Gregory Brands: Review State of Washington action

The Board completed an investigation into the actions of Gregory Brands, PE, regarding his design of a 26' x 42' pole building in Yakima, WA. The Board postponed a final determination on a case since it involved a Washington State project. The complaint information was forwarded for evaluation to the State of Washington Board of Registration for Professional Engineers and Land Surveyors.

The Washington Board determined that Brands failed to meet the expected standard of care and was incompetent in his work. The Washington Board placed Brands on probation for a period of one year effective January 24, 2008. However, for Oregon to take action under ORS 672.200(3), it would require a conviction of a felony, or of a misdemeanor involving the practice of engineering or land surveying. Furthermore, OAR 820-020-0015(6), Registrants Shall Hold Paramount the Safety, Health and Welfare of the Public in the Performance of their Professional Duties, requires, "*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 672.310 or of these rules, shall be grounds for a charge of violation of these rules.*" While the violations are within the Board's purview, the Washington sanction does not rise to a level required by OAR 820-020-0015(6). **The LEC recommended final closure of case #2204.**

Request for Reinstatement of Registration

The Board received a letter from a respondent, a retired PE regarding a settlement agreement he signed for law enforcement case #2270. The respondent entered into the agreement based on the allegation that he was not in responsible control of the engineering works of another. The respondent did not admit to the violations, but surrendered his professional engineering registration effective August 27, 2003. The respondent wrote the Board asking to have his registration reinstated. However, he agreed in the settlement agreement to not reapply for reinstatement. Importantly, he did not provide any evidence to contravene the findings of the settlement agreement. Upon review, the LEC determined that he entered into the agreement on his own accord and denied his request.

Unfinished Business

Update on Continuing Professional Development (CPD): Spreadsheet on CPD investigations

The LEC had already discussed the spreadsheet, so there was no further discussion. Each case will proceed on its own merit. However, the LEC was informed that many of the CPD cases will be on the next LEC agenda.

Settlement Agreements

LEC Closed Cases in Collections, Closed Cases Subject to Monitoring.

The LEC was informed that Dale Marx in law enforcement case #2425 has paid his \$1,000 civil penalty. He will be removed from the collections list. In addition, it appears that Bontrager has entered into a payment schedule with the Department of Revenue because he has paid \$100 towards his \$2,000 civil penalty. The LEC briefly reviewed the Closed Cases Subject to Monitoring list and offered no comments.

Case Status Report

The LEC briefly reviewed the Case Status Report and offered no comments other than to inquiry as to the status of case #2480. Investigator Wilkinson informed that the respondent has until October 14, 2009, to respond to his Amended Notice of Intent. In addition, the number of incoming cases has dropped off.

The meeting adjourned at approximately 1:45 p.m.