



# Oregon

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

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**LAW ENFORCEMENT COMMITTEE**

**Meeting Summary**

**February 11, 2010**

Members Present:

Dan Linscheid, Chair

Ed Butts

Ken Hoffine

Staff Present:

Mari Lopez

Jenn Gilbert

James R. (JR) Wilkinson

Allen McCartt

Jill Van

Others Present:

Katherine Lozano, AAG

The meeting was called to order at 8:09 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**

2535

The Law Enforcement Committee (LEC) met with the respondent to discuss a Notice of Intent (NOI) to Assess a Civil Penalty of \$2,000 for violations of Oregon Revised Statute (ORS) 672.045(1),(2),(3). The Board received a complaint from the complainant, a PE, alleging that the respondent used his seal and engineering calculations without his permission on two occasions.

The respondent stated that he did submit on July 9, 2008, the complainant's calculations, which he had previously purchased from the complainant for another project within the last year. He stated that the only thing he had changed on them was the date and the address. The respondent stated that he did not sign on the complainant's documents and that he did not use his documents again on July 10, 2008. Rather, the respondent stated, he had submitted the second set of plans on July 7, 2008 and he provided proof from the City of Eugene. After the July 9, 2008 incident, the complainant had called the respondent and said he did not like the respondent using his plans. When the complainant had gone down to the City, he saw that the respondent had used his plans a couple weeks prior to July 9, 2008. The respondent stated that he did not use the complainant's calculations after the complainant had told him not to and that he had written an apology letter to the complainant.

Chair Linscheid asked the respondent if he had any idea, that when he had done this the first time, that it may have been a violation subject to disciplinary action by the OSBEELS. The

respondent stated he did not. The respondent admitted he knew it was wrong, but that he wasn't putting an air conditioner on a roof using calculations that would make it a danger to someone. When asked again to clarify that he knew it was wrong, the respondent restated that he had used the same calculations before with other engineers throughout the year, and that they didn't seem to have a problem with it. When he used the complainant's calculations (calculations that he had purchased from him before) and the complainant found out, the respondent wrote an apology to the complainant, but the respondent had already submitted another set prior to the complainant's discovery. The respondent provided proof from the City of Eugene to support his claim.

Chair Linscheid responded that it appeared the second allegation then would be unfounded. The respondent agreed in that he did not use the complainant's calculations after the complainant had asked him not to. An LEC member asked if the respondent had asked the complainant about using the calculations and the respondent admitted he had not. Chair Linscheid then asked if this would change the respondent's practice in the future. The respondent stated this had changed the way he operated since July 9, 2008, and that he had no intentions of ever doing this again.

Upon consideration, the LEC proposed to drop the second allegation since the respondent did not submit the complainant's calculations a second time after he was asked by the complainant not to, but maintain a \$1,000 civil penalty for the July 9, 2008 violation. **The LEC recommended the Board approve the settlement agreement.**

#### 2531

The LEC met with the respondent, a PLS, to discuss a Notice of Intent to Suspend Registration and Assess a \$3,000 Civil Penalty for violations of ORS 672.200(4), Oregon Administrative Rule (OAR) 820-010-0635(1), (5), OAR 820-015-0026(1),(2), OAR 820-020-0015(7),(8) and OAR 820-020-0025(1). The Board opened a case against the respondent when he failed to respond to an audit of his Professional Development Hour (PDH) units for the July 1, 2004 to June 30, 2006 biennial renewal period.

The respondent noted that he had attempted to respond to the Board by telephone because he had problems with a leaking roof and much of his records, which were minimal to begin with, were destroyed. He stated he contacted the Board office and was told to sign and return the card. The respondent stated that he did and then thought the matter was resolved. When he received a letter from the Board in September 2009, he responded but he was still deficient in PDH units. The respondent admitted that at that time he didn't think it was an immediate concern and was going to try to find his documentation. He continued that he thought he had been responding to Board correspondence and was surprised by the allegations. He also stated that he was still unsure what qualified as acceptable for PDH units. Further, the respondent said that he had been trying to acquire more PDH units since he was notified by the Board, because he realized he needed to make up more credits. He provided documentation for PDH units, but the LEC noted that the documentation did not cover the time period requested in the audit.

Again, the respondent stated he remained unsure about what constituted acceptable venues for PDH units. It was advised that the respondent write to the Board's Examinations and Qualifications Committee for assistance.

Upon consideration, the LEC proposed to reduce the civil penalty to \$1,000 and suspend the respondent's registration from March 9, 2010 through June 30, 2010. At the end of the suspension, reinstatement of his registration would then be contingent upon the respondent providing proof of 30 PDH units for the current period. **The LEC recommended the Board approve the settlement agreement.**

2545

The LEC met with the respondent, a PE, to discuss a Notice of Intent to Assess a \$1,000 Civil Penalty for the unlicensed practice of surveying violating ORS 672.025(3); ORS 672.045(1),(2); and OAR 820-010-0720(1). It was alleged that the respondent tied existing monuments between a property and a 15' tax lot to the north of the property which belonged to the Homeowner's Association (HOA) in Clackamas County, Oregon. This constituted the practice of land surveying for which the respondent is not licensed.

The respondent stated that he, along with his colleagues, had always understood that to do a topographical survey or a design survey, using survey equipment to pick out features giving a lay of the land, to give an idea of where things sit, was acceptable for an engineer to do. He understood that things a surveyor should do included setting corners, declaring a monument, an actual corner, or declaring a boundary especially in a dispute issue, and that those were outside the role of an engineer. The respondent went on to state that he had confirmed this with a colleague who is both a PE and a PLS. In addition, he stated that he had presented the specifics of what had occurred in this case.

The respondent continued to present to the LEC background information of what occurred in this incident, beginning back in 2002. The respondent worked at the county pump station to the north of the HOA property. In his role, the respondent stated he had consultants and surveyors that worked to define the upgrades of the pump station and had been shown a copy of the survey that identified the property lines between the pump station and the HOA property. As a result, he knew where the monuments were. When a neighbor had purchased the property to the south of the HOA property he asked the respondent if he knew where the monuments were for the pump station property. According to the respondent, at that time, he walked the property with the neighbor and showed corners and located others.

The respondent continued that in 2006, the HOA contacted him and asked if he knew where some monuments were. The respondent stated he had shown the HOA the monuments. The HOA was having difficulties with the neighbor and stated they wanted to clear a line of sight on their property line. The respondent explained that the HOA asked him to assist and he said he could, but that he wasn't a registered surveyor, although he had his own equipment he used for design and topographical surveys.

A LEC member asked about the notes on the respondent's survey. On them, the respondent noted that he set points. The respondent countered that he only set arbitrary points that didn't reflect anything. The LEC member pointed out that the respondent had set a railroad spike and a hub and tack. The respondent reiterated that they didn't mean anything but were used to establish a straight line between two other points, to enable running a string line. The respondent continued that the HOA asked him to show them the other monuments and the respondent stated he could but that he wasn't a surveyor, so could only show them in a topographical survey. An LEC member pointed out that the respondent's survey was not a topographical survey at all, and that the respondent's survey looked like a boundary line survey. The fact that he set a railroad spike (a permanent point) and hubs and tacks, constituted a boundary line survey.

Chair Linscheid interjected that 10 months prior to the respondent conducting the survey, Senate Bill 55 (effective January 1, 2006) changed the definition of land surveying. As a result, that changed the whole situation. By setting a railroad spike and authoritatively representing to somebody, even though there was a disclaimer of not being a surveyor, the respondent had depicted to others that his work was legitimate survey work. The respondent was unaware of the change. The respondent then continued on presenting details regarding the dispute between the neighbor and the HOA.

A LEC member emphasized that the respondent had conducted a boundary line survey and had done it half way and incorrectly. In addition, he misrepresented what he was capable of doing, and gave the HOA the impression of a boundary line. His map did not show any indication of a topographical survey.

Upon consideration, the LEC proposed to maintain a civil penalty of \$1,000 or the respondent could seek a hearing through the Administrative Law Judge (ALJ). The respondent requested a hearing. The staff will proceed accordingly.

#### 2521

The LEC met with the respondent, a PE, to discuss a Notice of Intent to Assess a \$2,000 Civil Penalty for a failure to provide documentation of compliance with continuing professional development requirements and failing to cooperate with the Board, violating OAR 820-010-0635(1),(5) and OAR 820-020-0015(7),(8). The Board opened a case against the respondent when he failed to respond to an audit of his Professional Development Hour (PDH) units for the January 1, 2005 to December 31, 2006 biennial renewal period.

In discussion, the respondent stated that he simply did not have any of the records of his PDH units for that period. In addition, he offered no excuse for not responding to the Board's letter. He admitted he had acted unprofessionally. The respondent requested an opportunity to make up the missing PDH units.

Upon consideration, the LEC proposed reducing the civil penalty to \$1,000 if the respondent would also admit the violations. **The LEC recommended the Board approve the settlement agreement.**

2543

The LEC met with the respondent to discuss a Notice of Intent to Assess a \$2,000 Civil Penalty for violations of ORS 672.020, ORS 672.0451,(2) and OAR 820-010-0720(1). The Board received an anonymous complaint that alleged the respondent was practicing engineering without a license. In support of the allegation, a copy of the respondent's business card and Web site were included. The respondent's business card listed his title as Consulting Engineer, Chemical Engineering, Technical Sales. In addition, the respondent's Web site identified chemical, biological, and process engineering as his organization's activities.

The respondent stated that he was not entirely prepared for the informal conference and had submitted a written public records request for a copy of all the information the Board had regarding his case. The respondent requested a postponement of his informal conference and the LEC agreed to postpone until April 8, 2010.

2516

The LEC met with the respondent, a delinquent PE, to discuss a Notice of Intent to Assess a \$3,000 Civil Penalty for failure to provide documentation of compliance with continuing professional development requirements, failure to cooperate with the Board, and being untruthful, violations of OAR 820-010-0635,(1),(5); OAR 820-020-0015(7),(8); and OAR 820-020-0025(1). The Board opened a case against the respondent when he failed to respond to an audit of his Professional Development Hour (PDH) units for the July 1, 2004 to June 30, 2006 biennial renewal period.

The respondent explained that he was having a difficult time in his life during the time that he received the first letter from the Board and he was negligent in responding. The respondent also stated that he did not use his license professionally and had only stamped two drawings in his entire career. He continued on in stating that he had been able to fulfill the PDH unit requirements in the past, but was unable to do so during the renewal period in question due to family medical concerns. He admitted that as a result he simply signed off the renewal form just to keep his license current. The respondent stated he had done some studies, but had no documentation because he did not have the time or energy to maintain it. He realized that it was a violation and he was in the wrong. The respondent further commented that he maintained his registration for the prestige, but that it was expensive to maintain the license through classes and fees.

A LEC member noted that the respondent had a responsibility as an engineer to maintain his PDH units and the respondent failed to do so. According to the LEC member, it appeared he wanted the prestige of the title, but didn't want to do what was required to maintain it.

Upon consideration, the LEC proposed to waive the \$3,000 civil penalty if the respondent would retire his license. The respondent agreed. **The LEC recommended the Board approve the settlement agreement.**

The LEC met with the respondent to discuss a Notice of Intent to Assess a \$2,000 Civil Penalty for the unlicensed practice of engineering, violations of ORS 672.007(1)(a)(b)(c); ORS 672.020; and ORS 672.045(1)(2). The allegation was that the respondent signed a Declaration of Engineer as part of a civil proceeding that stated, "I am a civil engineer with an emphasis in construction engineering," and that the respondent provided testimony regarding engineering.

The respondent stated that the Declaration of Engineer that he signed was prepared by an attorney and that he relied on the attorney to ensure he abided by statutes. He went on to state that it was not anyone's intent to deceive. The respondent stated he had graduated from the University of Iowa with a degree in engineering. It was the intent of the Declaration to provide an educational background. The respondent stated that neither he nor his attorney were aware that the mere use of the word "engineer" meant "licensed engineer." He admitted that as soon as they were aware that the Declaration was a problem, it was promptly corrected to state that he had a degree in engineering.

With regard to the allegation of the testimony, the respondent noted that he used no calculations and made no references to anything designed improperly. His report (and subsequent testimony) addressed construction and that the contractor failed to include certain materials that were required by the design engineer. The respondent also stated that he was part of a defense team of experts involved in the civil proceeding and that the team included several engineers. According to the respondent, if he had done something incorrect with regard to engineering, his colleagues would have had a serious problem with it.

When asked by a LEC member if he was aware that his testimony may have influenced a jury and provided credibility to his testimony when stating that he was an engineer. The respondent agreed that could be the case, but that the testimony he provided in court clearly stated that he was not an engineer and that he was not testifying in regards to structural integrity.

The LEC raised further questions about the nature of the respondent's work. When asked how he reached the conclusion that the wall involved was not constructed properly, the respondent stated he had reviewed project photographs as the wall was built in relation to the design documents. According to the respondent, he merely looked at the design drawings and specifications and compared them to the photographs taken at various times. From there he determined whether materials were assembled in the proper sequence and whether they were present. At that point, he recognized some materials missing or incorrectly spaced. He further noted that he did not say the wall wasn't going to work because it was designed improperly. According to the respondent he merely noted it was not assembled according to the design.

A LEC member noted that the respondent's role appeared to be more in the realm of a construction inspector. The respondent agreed that he basically provided an after-the-fact inspection.

Upon consideration, the LEC proposed to remove the allegation regarding his testimony and reduce the civil penalty to \$500 for the signed Declaration of Engineer. The LEC would also incorporate language that it was not intentional and that the respondent corrected the violation promptly. **The LEC recommended the Board approve the settlement agreement.**

2524

The LEC met by teleconference with the respondent, a delinquent PE, to discuss a Notice of Intent to Assess a \$2,000 Civil Penalty for a failure to provide documentation of compliance with continuing professional development requirements and not cooperating with the Board, violating OAR 820-010-0635(5) and OAR 820-020-0015(7),(8). The Board opened a case against the respondent when he failed to respond to an audit of his Professional Development Hour (PDH) units for the July 1, 2004 to June 30, 2006 biennial renewal period.

The respondent admitted he had not responded to the second notice on February 14, 2008, because he was going to terminate his registration which he had not used in years. The respondent had intended to just let it lapse. He understood that it was the wrong thought, but that it was what he had thought. The respondent, however, did take exception to the allegation of not being responsive. He stated he had responded within 23 days of the December 17, 2007 notice (on January 9, 2008) because of the holidays and his vacation. The respondent stated that more recently when he was contacted about his PDH units being insufficient, he had responded within 5 days, 3 days, and 6 days respectively following subsequent correspondence from the Board. The respondent then stated that when he followed up with Board Investigator McCartt on November 2, 2009, he had more than enough PDH units, but he had only submitted the bare minimum in his first response. In summary, the respondent had the units, but had assumed that since he wasn't renewing his license, it wasn't so important. The respondent recognized that was a bad assumption.

Chair Linscheid reiterated that the respondent's failure to respond to the February 14, 2008 letter from the Board is what was considered by the Board to be a failure to cooperate with the Board. Upon consideration, the LEC proposed to reduce the civil penalty to \$500 if the respondent would admit the violation of being uncooperative. **The LEC recommended the Board approve the settlement agreement.**

2538

The LEC met with the respondent in an informal conference to discuss a Notice of Intent to Assess a \$2,000 Civil Penalty for the unlicensed practice of land surveying, violating ORS 672.025(1); ORS 672.045(1),(2); and OAR 820-010-0720(1). The respondent's spouse was also in attendance. The Board opened a case against the respondent for offering mortgage survey inspections on his organization's Web site and for locating monuments and property lines and preparing maps reporting them.

The respondent admitted that they had used the term mortgage survey inspections on their Web site, but that they did remove it immediately once they were notified of the error. In addition, he stated they had removed the word survey from any and all documentation they had to ensure no future confusion. The respondent's spouse explained that they prepare foundation endorsements for title companies. They also explained that they do not perform any type of surveying and that having worked for two other companies prior to starting their own business, "mortgage survey inspections" was a term the other companies used so they continued using it. The respondent also noted that title company officers had also used the same term while understanding that it is not really what is being done.

When asked how they would handle a situation that presented a possible error, both responded that they would then advise a client to hire a professional land surveyor. The respondent stated that they only compare the site plan with how the foundation is actually placed. If it is in error, they only advise that it doesn't look like the plan. In addition, the respondent stated that anything placed on the diagram he prepares is simply transcribed from the site plan. In summary, the respondent stated that they never intended to mislead anyone and they only transcribe things that have already been surveyed.

Upon consideration, the LEC proposed a \$500 civil penalty on the condition that the respondent do not do work anymore extensive/detailed than they currently perform or that would make a client perceive their work was an actual survey. **The LEC recommended the Board approve the settlement agreement.**

#### 2544

The LEC met by teleconference with the respondent in an informal conference to discuss a Notice of Intent to Assess a \$1,000 Civil Penalty for the unlicensed practice of engineering violating ORS 672.020(1), ORS 672.045(1),(2), and OAR 820-010-0720(1). The Board received a copy of a letter the respondent had signed that was distributed to local businesses offering "work involving every facet of engineering including: Architectural, Civil, Structural, Electrical, Mechanical, HVAC, Interiors/Space Planning, Utilities, Landscaping."

The respondent stated that he could clearly see now how he had worded the letter wrong and in light of what he knows now, it was probably poorly written. He went on to state that he never had any intention to violate the law. As a contractor, he was well aware of the fact that licenses are required for anything that is going to be stamped or approved in the permit process.

The respondent continued in stating that he and his business partner proposed to work as consultants and wanted simply to introduce themselves to people they would eventually be doing business with. Further, the respondent discussed the many projects for which he'd prepared his own engineering and then had gone to appropriate licensed engineers for final approval. The respondent believed that one of the individuals he tried to introduce himself to, did not believe in outsourcing engineering, but that others welcomed his ideas.

Subsequently, the respondent stated that he had changed his practice and that since he was notified by the Board, he had gone out of his way to be careful in how he words things. Upon consideration the LEC proposed a \$500 civil penalty. **The LEC recommended the Board approve the settlement agreement.**

#### 2520

The LEC met with the respondent, a delinquent PE, to discuss a Notice of Intent to Assess a \$500 Civil Penalty for violations of ORS 672.200(4); OAR 820-010-0635(1), (5); OAR 820-010-0635(1),(5); and OAR 820-020-0015(7). The Board opened a case against the respondent when he failed to provide documentation of 15 delinquent PDH units for the July 1, 2004 to June 30, 2006 biennial renewal period.

The respondent admitted that he was delinquent in his PDH units. He also requested some units from the previous renewal period be brought forward and others be brought backward to fill in

gaps. In addition, the respondent stated that he was currently taking a class to make up units. The LEC stated that 15 units had already been brought forward from a prior period and that the rules do not allow units from the subsequent period to be taken backward to give credit for a deficiency. The current class could be used for the current period and showed the respondent was making an effort to ensure compliance.

Upon consideration, the LEC proposed a \$250 civil penalty if the respondent admitted the violation. **The LEC recommended the Board approve the settlement agreement.**

### **Cases Reviewed**

#### 2515

The LEC discussed that the respondent, a delinquent PE, was a non-resident Oregon registrant selected to participate in an audit of his PDH units for the renewal period January 1, 2004 to December 31, 2005. Prior to April 5, 2007, OAR 820-010-0635(7) allowed non-residents to satisfy Oregon's CPD requirement when licensed in and having met the requirements of any NCEES member state. The Idaho Board confirmed the respondent's license was active during the audit period, and Idaho did not require CPDs prior to May 8, 2009. **The LEC recommended the Board approve closing the case against as allegations unfounded.**

#### 2523

The LEC discussed that the respondent, a delinquent PE, was a non-resident Oregon registrant selected to participate in an audit of his PDH units for the renewal period July 1, 2004 to June 30, 2006. The respondent experienced serious health problems during the audit period and was only able to provide 27.5 PDH units instead of the required 30. Following a discussion of the respondent's situation, **the LEC recommended the Board approve closing the case as allegations unfounded.**

#### 2530

The LEC discussed that the respondent, a delinquent PLS, was selected to participate in an audit of his PDH units for the renewal period July 1, 2005 to June 30, 2007. The respondent had failed to respond to Board correspondence. During the investigation, investigators were told that the respondent's current medical condition resulted in an inability to respond to Board inquiries and that the respondent was no longer practicing. The County Surveyor where the respondent did the bulk of his work confirmed the respondent's condition. Following a discussion of the respondent's situation, **the LEC recommended the Board approve closing the case as allegations unfounded.**

2539

The LEC discussed that the respondent had engaged in the unlicensed practice of engineering when on multiple occasions he identified himself as a professional engineer and his business as an engineering firm. Board Investigator Van noted that the respondent had failed to respond to any Board communication, and that the Oregon Construction Contractors Board also has outstanding penalties against the respondent. The LEC determined to issue the respondent a Notice of Intent to assess a \$9,000 civil penalty for violations of ORS 672.007, ORS 672.020(1), ORS 672.045(2), and OAR 820-01000720(1), and to start proceedings in an appropriate circuit court to restrain the respondent's engineering activity in accordance with ORS 672.215.

2542

The LEC discussed that the respondent, a PE, was allegedly operating an office without a resident engineer in charge. The LEC determined to issue the respondent a Notice of Intent to assess a \$1,000 civil penalty for violating OAR 820-010-0720(1).

2549

The LEC discussed that the respondent had engaged in the unlicensed practice of engineering by offering to perform professional services without a licensee when he bid on the Port of Tillamook Bay Railroad Restoration Project in March 2008. The registration for the professional engineer that the respondent used in preparing the bid was in exempt status at the time of the bid. The LEC determined to issue the respondent a Notice of Intent to assess a \$1,000 civil penalty for violating OAR 820-010-0720.

2551

The LEC discussed that the respondent was alleged to have engaged in the unlicensed practice of engineering when electrical drawings were posted to the Central Oregon Builder's Exchange with his organization's name on the drawings but were marked for bid use only. An investigation determined that the respondent did not place the documents on the Exchange and were meant for his use only. **LEC recommended the Board approve closing the case as allegations unfounded.**

2552

The LEC discussed that the respondent allegedly engaged in the unlicensed practice of land surveying when she distributed a business flyer listing property boundary marking as one of her services. The LEC determined to issue the respondent a Notice of Intent to assess a \$1,000 civil penalty for violating ORS 672.025(1).

2553

The LEC discussed that the respondent engaged in the unlicensed practice of engineering when he created a business and listed his business on a Web site as an engineering company and identified engineering as a service offered. The LEC determined to issue the respondent a Notice of Intent to assess a \$1,000 civil penalty for violating ORS 672.020(1).

2554

The LEC discussed that the respondent, a PE, PLS and CWRE, failed to return a corrected Claim of Beneficial Use and Site Report to the Oregon Water Resources Department after repeated notices and had failed to cooperate with the Board. The LEC determined to issue the respondent a Notice of Intent to assess a \$2,000 civil penalty for violating OAR 820-020-0015(2),(8).

2555

The LEC discussed that the respondent as President of a company allegedly was engaged in the unlicensed practice of engineering by advertising and/or offering to perform engineering services in its Oregon offices without employing a licensee. Board Investigator Van noted that this case resulted from a previous case against an individual who operated a subdivision of the company. It was found that the company had corrected its Web site to remove references to engineering services, and included a disclaimer that it employs licensed professionals and works within the requirements of the states in which it offers engineering services. A discussion ensued about whether the disclaimer was adequate to make it clear that the company doesn't perform engineering in Oregon. The LEC recommended postponing the review of this case for the next LEC and requested an Assistant Attorney General Opinion to provide more clarification.

2556

The LEC discussed that the respondent, a PE and CWRE, was alleged to be negligent in the practice of engineering when she performed a soil analysis during the 2003 construction of a single family residence. Prior to January 1, 2010, ORS 672.060 included professional engineers in the exemption for single-family residences in the application of ORS 672.002 through ORS 672.325. Effective January 1, 2010, professional engineers are no longer included in that exemption. **The LEC recommended to close the case as the Board lacks jurisdiction, but to issue a reminder to the respondent that the exemption no longer applies to PEs effective January 1, 2010.**

2557

The LEC discussed that the respondent allegedly engaged in the unlicensed practice of engineering when he used his Washington State PE title in signing a roof damage evaluation for a duplex unit located in Oregon. It was noted that the respondent's work did not involve engineering work and that the respondent was a registered professional engineer in Washington. **The LEC recommended issuing the respondent a Letter of Concern to not use his PE title on work done in Oregon and to refer information to the Oregon Construction Contractors Board for consideration.**

2574

The LEC discussed that the complainant, a PE and CWRE, alleged that the respondent, a PE, used the complainant's professional engineer seal and modified his design plans thus posing a risk to public safety. The AAG reminded the LEC that since the case involved a Board member there could be no decision-making regarding this case as the LEC would not have quorum once the complainant recused himself, and the complainant was required to recuse himself.

The complainant presented new information that he wished to add to his complaint and alleged that the respondent had changed his design when he changed the spacing for the sill/anchor bolts that hold the roof down. According to the complainant, the respondent's change would have

resulted in the roof blowing off with “the first good wind.” The LEC recommended the new information be submitted to the Professional Reviewer for additional evaluation and report.

2579

The LEC discussed a referral by the Oregon Board of Architect Examiners (OBAE), in which the Administrator, a PE and PLS, alleged that the respondent, a PE, was not in responsible control and incompetent in the practice of engineering when he designed a non-exempt structure in Portland. The LEC noted that the allegations were pretty egregious. The LEC determined to issue the respondent a Notice of Intent to Revoke Registration and to Assess a \$5,000 Civil Penalty for violating ORS 672.020(2); ORS 672.200(2),(4); OAR 820-010-0620(2); OAR 820-010-0621; OAR 820-020-0015(2),(10); and OAR 820-0020-0025(1).

### **New Business**

#### **Preliminary Evaluation:**

The LEC discussed a preliminary evaluation of a complaint submitted regarding concerns about a survey company that completed a survey of a property, but there was a noted error in the deed documents. Upon consideration, the LEC determined that the complaint was not a survey error and therefore, outside the Board’s jurisdiction and to not open a law enforcement case.

#### **Preliminary Evaluation:**

The LEC discussed a preliminary evaluation of a complaint regarding engineering errors in a single family residence. Upon consideration, the LEC determined that the complaint was outside the Board’s jurisdiction and to not open a law enforcement case, but to send the respondent a reminder that professional engineers are no longer included in the single-family residence exemption under ORS 672.060, effective January 1, 2010.

#### **Preliminary Evaluation:**

The LEC discussed a preliminary evaluation of a Consent Order issued against a registrant by the Oklahoma State Board of Licensure for Professional Engineers and Land Surveyors. Upon consideration, the LEC determined that the Consent Order did not give rise to a level required under OAR 820-020-0015(6) to take action, and recommended to not open a law enforcement case.

#### **Notice to Building Officials: Senate Bill 143 Revisions**

It was proposed to send a notice of the Senate Bill 143 Revisions (alerting them that the single-family residence exemption in ORS 672.060 is no longer available to PEs) to the Building Officials and they would in turn distribute it there. The LEC recommended to proceed with sending to the Building Officials.

#### **Expert Reviewer Application – Steven Bjordahl, SE**

**The LEC reviewed the application and concurred with recommending approval.**

#### **Remove Approved Reviewer – Timothy N. Moore**

**The LEC reviewed Moore’s delinquent status, making him no longer qualified to practice engineering, and recommended removing Moore from the approved reviewer list.**

### **Unfinished Business**

2478 – Gilliland – unpaid/overdue civil penalty

The LEC discussed Gilliland's failure to submit payment of his civil penalty due. The LEC approved sending to Department of Revenue for collections.

2494

The LEC was previously scheduled to meet in an informal conference on December 10, 2009, 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 ORS 672.200(2),(4); ORS 672.025(1),(2); ORS 672.045(1),(4),(6); ORS 209.250(1),(3),(4); 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. Upon consideration, the LEC determined to move forward to a hearing. During the Board meeting on January 12, 2010, Mr. Linscheid commented that this case has been on-going for quite some time. The respondent kept requesting informal conferences but for various reasons the informal conferences never materialized. As a result, the LEC had recommended taking the case to a hearing. The hearing was scheduled for January 26, 2010.

However, upon Office of Administrative Hearings (OAH) review of the case it was noted that the respondent did not request a hearing in writing. Therefore, OAH determined that the case was not under their jurisdiction. As a result, the respondent was offered a settlement agreement to be approved by the LEC at the February 11, 2010 meeting.

**Mr. Linscheid took the committee into Executive Session as provided by ORS 192.660(2)(h) to consult with the AAG concerning the matter.**

**Upon returning to open session, it was noted that no action was taken during Executive Session.**

Following the Executive Session, the LEC was asked by the AAG if the LEC would be comfortable (provided the AAG received a signed agreement by the respondent the following day) recommending to the Board to approve the settlement agreement and to issue the Final Order of revocation, suspending the civil penalty, contingent upon the respondent's compliance with the terms of the settlement agreement. The LEC concurred. The AAG then asked the LEC to propose an alternative should the Board reject the LEC's recommendation. The LEC stated it would then opt to withdraw the case from OAH and propose issuing a Default Final Order immediately. The respondent could still appeal a Default Final Order to the Oregon Court of Appeals.

2495 – Update

Board Investigator McCartt informed the LEC that a discussion between the respondent's Attorney and the Assistant Attorney General was still pending.

2499 –(non-compliance/failure to submit final maps)

Board Investigator Van informed the LEC that upon calling the two County Surveyors who filed complaints against the respondent in case no. 2499, she learned that the surveys involved still had yet to be filed by the respondent. The County Surveyors stated they had both sent him

copies of the redlines on or about the first week of December 2009 and that they had not seen anything back from him. This constituted a missed 30-day deadline to return corrected maps.

The LEC reviewed the wording of the settlement agreement previously reached with the respondent by the Board. Board Investigator Van reminded the LEC of the respondent's statements during the Informal Conference on December 10, 2009. The LEC then discussed whether the respondent had been untruthful to the LEC at the time with regard to submitting the required final survey maps, or had he committed a new violation by not returning the corrected redlines within 30 days of receipt from the County Surveyors in early December 2009? The LEC determined that the Board would need new complaints from the County Surveyors in order to address these issues as new violations.

**Settlement Agreements: Cases Subject to Collections, Cases Subject to Monitoring**

*See Cases Subject to Collections and Cases Subject to Monitoring reports.* Board Investigator McCartt briefed that the Board is still waiting for payment in case #2480, which is due March 9, 2010. Board Investigator Van briefed that payment for case #2508 is past due. No further discussion.

**Case Status Report**

Chair Linscheid announced there are 71 open cases. No further discussion.

The meeting adjourned at approximately 2:47 p.m.