



# Oregon

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

670 Hawthorne Ave. SE, Suite 220

Salem, OR 97301

(503) 362-2666

Fax (503) 362-5454

E-mail: osbeels@osbeels.org

**Oregon Board of Examiners for Engineering and Land Surveying  
Law Enforcement Committee Meeting Minutes  
Thursday, October 4, 2007, 10:30 a.m.**

Members Present:

Dan Linscheid, Chair  
Ed Butts  
Grant Davis  
John Seward

Others Present:

Bob Neathamer (Observer)  
Joanna Tucker-Davis, AAG  
Mari Lopez  
Jenn Gilbert  
James R. (JR) Wilkinson

The meeting was called to order at 10:30 a.m. on Thursday, October 4, 2007, in the conference room of the OSBEELS office at 670 Hawthorne Ave SE, Suite 220, Salem, OR 97301.

Prior to the meeting, the LEC conducted a telephonic informal conference with David B. Hammond, PE, for case number 2455. The LEC and Hammond reached a settlement agreement. The LEC recommended that the Board approve the agreement. A Final Order to accept the settlement agreement has been prepared for Board President signature.

**Cases Reviewed:**

2381 – Bowser/Gilmore: The Board closed this case as allegations unfounded on January 10, 2007, and it involved Bowser's home inspection of the Gilmore residence. Gilmore was upset the Board closed the case and contacted the Governor's Office. A representative telephoned a Board investigator to inform that Gilmore possessed a report not provided during the initial investigation. A written request from the representative to reopen the case was not provided. Regardless, Gilmore submitted the Bowser report to the Board, which was evaluated on whether it was directly related to the original complaint.

During the evaluation, Bowser was found to have entered into a settlement agreement for case 898 that also involved a home inspection report. Bowser agreed, "*a registered engineer providing the same service [as a home inspector] must be held to a higher standard of responsibility because of his higher qualification and professional obligations.*" The Committee discussed what that standard should be and how to measure it against the submitted report.

While there was no general consensus on the standard to be applied, there was further discussion on whether Bowser was a home inspector offering engineering services or an engineer offering engineering services through his home inspections. ORS 701 and OAR 812 set the standards for home inspection, but an engineer under ORS 672 and OAR 820 has the expertise to go beyond home inspection standards. A reasonable customer expectation would be hiring an engineer to perform a "professional" home inspection grants access to higher qualifications than a "contractor" home inspection. When Bowser affixed his seal and signature, he indicated an

engineering final report. One challenge offered by reopening the case would be differentiating the engineering standards under ORS 672 and OAR 820 as applied to home inspections from home inspection requirements in ORS 701 and OAR 812.

Furthermore, ORS 701.010(7)(b) exempts registered professional engineers from home inspection licensing requirements. Bowser was exempt at the time, therefore, he may need to have sealed and signed his home inspection reports in order for the exemption to take effect.

Without further discussion, the LEC returned to whether new information supports reopening the case and, if reopened, what sanction may be applied. This is a crucial question given that Bowser surrendered his engineering registration while under investigation for case 2339. As a result, he is not authorized to practice engineering in the State of Oregon after September 30, 2007. Since revocation is the most severe sanction available to the Board, there is little likelihood that any sanction issued in the current case would have the desired affect.

The LEC concluded its case evaluation by recommending not reopening the existing case, or to continue the investigation through a new case. This determination was based on OAR 820-015-0010(2), *“The Board will conduct a preliminary review of the complaint to establish that there is sufficient evidence to justify proceeding and that the allegations against the respondent are such that, if proven, would result in a penalty or sanction.”*

2392 – Steele/OBAE: John Steele, PE, is an Executive Vice President for the engineering firm SSOE, Inc., which has 900 employees with offices in 16 cities including Shanghai. Petsmart provided architect prototype plans to SSOE, Inc. that then were engineered to site conditions and to code for Bend, OR. Steele claimed 150 engineers worked under his direction as he supervised Petsmart engineering. The LEC discussed typical engineering workflow where a group leader oversees qualified staff to detail the plans, which the group leader reviews and approves before sealing. No evidence was found to support plan-stamping allegations, which is contrary to the outcome in the Kentucky case against Earl McKinney. The issue then became less of Steele’s supervision and control over the plans, but more of whether he is competent to seal and sign specific plans; particularly, the electrical plans that were prepared by an Oregon registered electrical engineer and the architectural plans. Steele claimed his 30 years of experience allowed him to approve the plans and ORS 671.030(1) exempts registered engineers from architect licensing. Overall, the plans did not exhibit substandard engineering, nor was a pattern of poorly designed projects found to support the allegation of incompetence. The LEC recommended closing case as allegations unfounded.

### **Miscellaneous Issues:**

Discussion of Knight Letter August 2, 2007: Susanna R. Knight, State Board of Geologist Examiners (OSBGE) Administrator, wrote a letter to LEC Chair Linscheid on August 2, 2007. The LEC reviewed the letter wherein she was “very disappointed in the process used to close” OSBEELS law enforcement cases 2448 and 2416 and she wanted an explanation “as to the breakdown in the process.” The LEC noted that OSBGE and OSBEELS established the Joint Compliance Committee (JCC) by a 2001 Memorandum of Understanding (MOU) to foster communication and cooperation on law enforcement issues. These two cases were under a JCC review. However, the LEC observed that Knight incorrectly wrote to Linscheid. Rather, the communication should have occurred through the JCC members and staff. The LEC independently processed case 2448 consistent with the discussion documented in the JCC

minutes of February 7, 2007. Regarding case 2416, a staff oversight led to not providing the closure letter to OSBGE. The LEC further discussed the MOU and the JCC meeting minutes of July 15, 2005, because both define the complaint process and appear not in harmony. The next JCC meeting is scheduled for November with topics to include integrating the MOU with the steps outlined in the July 2005 minutes. A corrected draft letter to Knight was approved.

The Locating Company: The Board received a complaint from Ed Graham, PLS Ret, regarding The Locating Company. The Minnesota based company advertises via the World Wide Web to locate existing property boundary monuments in violation of ORS 672.007(2)(c). A Board investigator interviewed Chris Adamson, The Company principle, and he admitted he is not a registered land surveyor in Oregon or in Minnesota and is under investigation by the Minnesota Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience and Interior Design. During the interview, the investigator noted the violations of Oregon law, which caused Adamson to make the following website modification, "T.L.C. is based in Minnesota and locates only within the state of Minnesota." Follow-up contact with Graham resulted in a favorable response. The LEC noted this outcome solved an enforcement problem with difficult jurisdictional problems. The LEC recommended not opening a case file and to send a letter to Graham that was approved with a copy to Adamson and the Minnesota Board.

2479 – Landry: The Board received an anonymous complaint regarding the firm Environmental Management Services, Inc. (EMS), an EMS employee Daniel J. Landry, and the services EMS offers through their website [www.time4ems.com](http://www.time4ems.com). The complaint included a report entitled Enhanced Bioremediation Work Plan, Homedale Road Shell, 5419 South Sixth Street, Klamath Falls, Oregon, LUST No. 18-91-0032 and 18-02-0002. EMS' Supervising Engineer Daniel J. Landry and Senior Geologist David M. Seaver, RG, signed the report. Landry is the subject of the investigation because he is not registered with the Board. However, Seaver's RG seal and signature caused staff to prepare a memorandum as courtesy notification to OSBGE of the receipt of the complaint. The complainant did not make allegations against Seaver or find fault in the Bioremediation report. Therefore, the investigation is not expected to involve the RG Seaver. As such, this is not a JCC issue since it deals solely with Landry who is unregistered. No action is required from the JCC or OSBGE at this time. If evidence is later found to warrant a JCC investigation, proper protocol will be initiated.

**LEC Closed Cases Subject to Monitoring:**

See tracking sheet in the LEC packet.

2339 – Bowser: Discuss Bowser's response to Settlement Agreement

To settle case 2339, Robert C. Bowser surrendered his license while under investigation and agreed to provide the Board by September 15, 2007, a list of clients for whom he has provided services as a registered professional engineer during the past 6 months together with his plan to close his practice. Bowser also was to inform the Board of any clients that he is transferring to another registered engineer. The LEC evaluated the submittal and found that Bowser proposed to refer his clients to the Board for information on available engineers. The Board is not a referral service. Staff was directed to prepare a letter to Bowser noting the issue.

The LEC discussed other cases as follows. 2291-Dale E. Marx has paid the civil penalty, but is still suspended until his ethics course work is finished. Marx hired Dan Bauer, PLS, to continue the surveying practice for Marx and Associates. 2336-Michael Boyce paid \$700 of a \$1,000 sanction, but has not submitted payments since February 2006. The LEC recommended turning the account over to a collection agency. 2425-Dale E. Marx has not paid the \$1,000 civil penalty due June 8, 2007. The LEC recommended turning the account over to a collection agency. 2447- Lee Hickman agreed to make two payments towards a \$1,000 civil penalty with the last payment due June 15, 2007. However, he has made only one payment with a commitment for the second. Staffs are to continue to seek training for collections. 2462-Thomas H. Burton made his first monthly payment.

**Case Status Report:**

The LEC reviewed the current case status list.

The meeting was suspended for lunch at 12:05 and was reconvened at 12:43 to allow the Board investigator to update the LEC on the following issues.

**Update:**

2391-Bowser: The Governor's Office did not send any written communication about its discussion with complainant Gilmore. The only reference was an email from former Compliance Specialist/Investigator Halfman alerting Executive Secretary Lopez that the call was received. The email was dated May 3, 2006. The LEC noted this was not a normal process. Since no formal communication indicated follow-up, the LEC decided there was no need to communicate the outcome to the Governor's Office. However, the results will be communicated to Gilmore.

2336-Boyce: The case file revealed Boyce was mailed a Notice of Intent to Assess a Civil Penalty on March 7, 2005. Boyce replied on April 18 to deny a hearing and to pay the penalty. A Final Order was prepared and sent to Boyce. It was returned "unclaimed" on April 21, so a Final Order Upon Default was sent, which was also returned "unclaimed" on June 2. After some communication, Boyce signed a payment agreement on August 24, 2005, and made payments totaling \$700. His last payment on February 27, 2006, left a balance due of \$300. The LEC decided to turn the account over for collection.

The meeting adjourned at 12:50 p.m.