



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 STATE BOARD OF EXAMINERS FOR
ENGINEERING AND LAND SURVEYING

PROFESSIONAL PRACTICES MEETING MINUTES

Wednesday, December 12, 2007, 2:00 p.m.

Members Present:
Carl Tappert, Chair
Ron Stuntzner
Amin Wahab
Samantha Bianco

Others Present:
Sue Laszlo, (Observer)
Joanna Tucker-Davis, AAG
Mari Lopez
Jenn Gilbert
James R. (JR) Wilkinson

Guests:
Doug Spencer, PE

Professional Practices Committee (PPC) Chairman Tappert called the meeting to order at 2:11 p.m., on Wednesday, December 12, 2007, in the OSBEELS conference room at 670 Hawthorne Avenue SE, Suite 220, Salem, OR 97301. He had the audience guest introduce himself. The Chair reviewed the agenda and called for any additions. For the convenience of the guest, the PPC voted to reorder discussion topics and amend the agenda.

NEW BUSINESS

Intelligent Transportation System (ITS) 197 Questions – Doug Spencer: Spencer submitted an email dated November 19, 2007, wherein he asked two questions. The first question was whether design drawings can be used for construction if the stamp has expired. The second question was if a particular design engineer maintained adequate control of his standard drawing if he included conditions regarding geotechnical investigations. On the first question, the PPC responded with a two conditions. First, as long as the design engineer was active when the drawing was prepared, then it remains valid. Second, as long as the design content regarding standards, codes, and laws has not changed, then it remains a valid design.

For the second question, the PPC learned that the foundation design was not a standard drawing because it was not for agency-wide distribution. The foundation design was done for only his office's use. The PPC responded that a project engineer who uses a standard drawing should modify standard drawings to fit their engineering demands and seal the design. A standard drawing sets the design expectations without consideration of the wide variation in application conditions.

Here, the "standard" drawing required geotechnical investigations for foundation placement and it set restrictions based on soil conditions, which are clear and proper. The PPC found no issues with the way the drawing or the conditions were handled. Mr. Spencer departed and the PPC returned to the scheduled agenda.

Jurisdictional Issue – Ken Faught: In an email to the Board on August 31, 2007, Faught stated that his firm provides non-destructive testing of foundation elements, primarily drilled shafts, to contractors engaged in the construction of bridges in Oregon. However, the Oregon Department of Transportation (ODOT) personnel apparently tried to remove his firm from a construction site. He asked for Board review believing their work “is professional level work under the direction of an engineer” and is therefore “exempt from the requirements of the contractor’s license.” To support his inquiry, Faught quoted Oregon Revised Statute (ORS) 701.010(7) and Oregon Administrative Rule (OAR) 812-002-0760. The PPC determined that the Construction Contractors Board (CCB) administers ORS 701 and OAR 812 and should be contacted for guidance. The Board’s jurisdiction is confined to ORS 672 and OAR 820 for regulating the professional practice of engineering, land surveying, and photogrammetry. The Board cannot interpret ORS 701 and OAR 812. Furthermore, business or contractual matters may be involved. Regardless, this issue is not within the jurisdiction of the OSBEELS.

Signature Question – Gerald Williams: The Board received an email from Gerald Williams on October 10, 2007. His firm had prepared a report to which he affixed his stamp and signature, but he failed to sign the report’s signature block. Rather, an unlicensed individual signed for him initiating the request for an opinion. The PPC stated that the report is a final document per OAR 820-010-0621, which requires the seal and signature of the registrant who prepared the document or who supervised and controlled its preparation. While the stamp and signature appear to be that of Williamson and consistent with OAR 820-010-0621, the unlicensed person created confusion when they signed the signature block. ORS 672.020 defines the stamp and signature to constitute a certification that the document was prepared by the registrant or under their supervision and control. While not a violation, the additional signature raised reservations about who prepared the report and whether supervision and control was exercised. It was also observed that the Williamson seal design was not compliant with OAR 820-010-0620, Exhibit 1, and that his truncated expiration date of “2008” also was not compliant.

Conservation Districts – Lyndon Yamada: In emails dated October 24 and 25, 2007, Yamada submitted questions for the Malheur County Soil and Water Conservation District regarding a set of “engineering” scenarios and a skills matrix. For each scenario, Yamada asked if the District can provide engineering services without a professional engineering license and about the difference between technical assistance and engineering. For the skills matrix, he inquired if certain District activities, as represented by skills, can be performed without an engineering license. The PPC responded that for each scenario an engineer is required if the specific work meets the definition of engineering in ORS 672.005(1). Also discussed was that Board authority encompasses ORS 672 and OAR 820 with the notable exceptions in ORS 672.060. Specifically, ORS 672.060(6) allows the unlicensed practice of engineering under an “industrial” exception provided that it is done in connection with or incidental to “company” operations and it is not offered directly to the public. However, the PPC was unsure if the District met the exception restrictions provided in ORS 672.060(6). The PPC also discussed technical assistance to assert the ORS 672.005(1) definition of engineering and the “technician work” definition of OAR 820-010-0010(3). The District should compare the two definitions to reach an understanding of the distinction. In sum, if the District is offering services to the public that meet the ORS 672.005(1) definition of engineering and no ORS 672.060 exceptions apply, then the services must be performed by a registrant.

Property Line Adjustment or Replat – Nick White: Nick White, PLS, emailed the Board an inquiry on November 6, 2007, regarding his efforts at the Sequoia Landing and the Walnut Grove Estates subdivisions. At Sequoia Landing, White proposed seven individual property lines adjustments (PLA) affecting twelve lots. At Walnut Grove Estates, the PLA is between two separate property owners involving a land swap. No new lots were created in either instance. White believed these adjustments are not a “significant reconfiguration.” However, the Clackamas County Surveyor disagreed and asserted that both are significant reconfigurations requiring replat. To complete a PLA is a violation of ORS 92, Subdivisions and Partitions. White asked for an opinion on significant reconfiguration and what should constitute a replat under ORS 92. The PPC responded that the Board’s jurisdiction is over ORS 672 and OAR 820. City and county governments exercise authority over ORS 92 and have procedures to review and approve ORS 92 development. Therefore, the inquiry is outside the authority of the Board.

Reference Manual for Building Officials, FAQ #27 – Carol Halford, Administrator, the Oregon Board of Architect Examiners (OBAE): The Board has received a number of inquiries regarding the stamping of fire protection drawings.

Notably, OBAE Administrator Halford wrote the Board on November 28, 2007, stating that sprinkler plans have become “deferred submittals.” Building Officials are permitting shop drawings for installation of fire protection systems in non-exempt structures without a registered professional designing the system. Halford believed this “surfaced partially” from FAQ number 27 in the Reference Manual for Building Officials (Manual). FAQ #27 asked: Can drawings of sprinkler systems be sealed by National Institute for Certification in Engineering Technologies (NICET)-certified people? The answer was, “*Sprinkler systems relate to life safety issues and therefore the construction drawings for sprinkler systems must be designed and sealed by an engineer or architect qualified by experience and knowledge in this area of work.*” The Board holds the consistent position that fire protection systems for non-exempt structures must be designed by a registered professional engineer or architect. Halford stated in her letter, “*However, by enforcing the rules and laws as they exist in this area, it would create an impossible situation for owners with such a limited number of qualified professionals available to sign such system plans.*”

The Board also received an email from Roger Fast, Fire Inspector, Hillsboro Fire and Rescue, and a letter from Brad Roast, City of Beaverton Building Official, on November 1, 2007. Both individuals raised concerns regarding the Board’s position, which appears to contradict that of the Building Codes Division (BCD). Richard Rogers, BCD Structural Program Chief, wrote the Board on May 16, 2007, that “BCD is unaware of any statutory directive that allows local building departments to require that fire sprinkler plans be signed and sealed by an engineer.” Apparently, the BCD letter has received wide distribution and discussion. Roast noted two issues including “whether or not [Building Officials] have the authority to enforce the Engineers’ Board rule” and about “the impact the regulations will have on the fire sprinkler industry if the rule is enforced (especially when it has not generally been enforced statewide for years).” However, the PPC disagreed with the reasons used by some Building Officials to not require a registered professional to seal and sign fire protection systems. For example, the Cities of Bend and Medford are known to require a design professional seal and signature.

While the number of Oregon registered active fire protection engineers is 59 individuals, this fact does not limit the application of the law nor prohibit other professional engineers in other disciplines, especially those qualified in the mechanical and electrical fields, or qualified architects from providing fire protection services.

Rather than discussing specific issues or actions, the PPC explored options to bring compliance to the preparation of construction documents for fire protection systems installed in non-exempt structures. The options included an Attorney General opinion binding on all state agencies, an aggressive education campaign, a work group of agency and industry persons, and a law enforcement case. Each option was discussed against the amount of time to achieve compliance, the impact to available resources, and the effectiveness of the action.

After a lengthy debate, the PPC resolved to invite agency administrators to discuss the issue before deciding on next steps. Mari Lopez would invite Carol Halford, OBAE, and Mark Long, BDC, to a future meeting. The purpose of the meeting would be to identify the conflict and develop options for the PPC to consider.

Electronic Signatures on Plans – Rick Hopkins: Hopkins is the Assistant Building Official for the City of Bend who wrote the Board regarding electronic signatures on November 30, 2007. The City developed an electronic plan review system that allows design professionals to securely transmit construction documents and attachments via their on-line system. He asked whether the City can accept electronic signatures. The PPC noted that ORS 672 does not prohibit electronic signatures, but OAR 820-010-0620(4) requires a registrant to sign the seal “in handwriting, and in permanent ink.” Given this restriction, the answer is no. However, the PPC observed that rule changes allowing electronic signatures are to be discussed and possibly adopted at the February committee meeting with the stated intention to establish standards for digital signatures.

Notice of Termination – Ron Kernan: The Board received an inquiry from Kernan on December 4, 2007. Kernan was working on a project where the project architect withdrew notifying the client and subcontractors. He inquired for procedures for engineers to withdraw from a project. The PPC responded that engineers are not required, as architects are required, to follow a project to its completion. Since notification is not a Board requirement, there may be business or contractual considerations, but these are outside the regulatory authority of the Board.

UNFINISHED BUSINESS

GIS Sworn Testimony – Dave Gordon: Crook County Counsel Gordon inquired in an email dated August 27, 2007, as to whether unlicensed Geographical Information System (GIS) personnel can provide expert testimony regarding GIS generated maps, aerial photographs, and superimposed boundaries if they make a disclaimer that they cannot provide information regarding the authoritative location of property boundaries. In the simplest terms, a GIS is a computer program that manages geographic and other types of data. If a person performs an activity while using a GIS that is within the definition of land surveying in ORS 672.005(2), a license is required unless an exemption applies. Returning to the inquiry, the PPC discussed a memorandum from AAG Tucker-Davis dated November 14, 2007, which is summarized below.

The practice of land surveying is defined in ORS 672.005(2) and subsection (g) provides: "Performing or offering to perform any investigation, interpretation or evaluation of, or any consultation or *testimony about*, any of the services described in paragraphs (a) to (f) of this subsection" (emphasis added). In analyzing ORS 672.005(2), the legislature has expressly stated that testifying about certain activities, those described in subsections (a) through (f), is land surveying. The legislature did not state that the act of testifying about the activities described in subsections (i) and (j) constitutes land surveying. Therefore, an unlicensed person would likely violate ORS 672.025 by testifying about the actions described in subsections (a) through (f). However, an unlicensed person would likely not violate ORS 672.025 by testifying about the activities in subsection (i) and (j) given the following. A person could run afoul of ORS 672.025 if the person, in their testimony, purports to be a land surveyor or to be able to perform acts constituting land surveying, including the acts in subsections (i) and (j).

Gordon also focused his question on the exemptions that make reference to authoritative location of property boundaries. Those exemptions are found in subsections (12) through (14) of ORS 672.060. Subject to limitations, these exemptions only apply to four types of acts including transcribing data, maintaining data, preparing maps, and compiling a database. Testifying is not included as an exempted act in these exemptions. There is one caveat. Subsection (13) broadly exempts "[a] person carrying out activities under ORS 306.125 to 308.245." This language may allow for testimony in a court case related to the administration of property taxes as an "activity under ORS 306.125 to 308.245."

In sum, if an unlicensed GIS professional testifies to an act that falls within subsections (a) through (f) of the definition of land surveying in ORS 672.005(2), the person would likely be violating the prohibition against unlicensed land surveying.

2007 Reference Manual for Building Officials: The PPC noted that there are few if any changes needed as a result of legislative action to the engineering, land surveying, and photogrammetric portions of the Manual. However, this year's publication rests with the OSBEELS and any further changes will be identified by the Architect Board (OBAE). The PPC resolved to continue coordination with the OBAE to finalize and publish the next edition of the Manual.

The PPC meeting adjourned at 3:55 pm.