



Oregon

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

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LAW ENFORCEMENT COMMITTEE

Meeting Summary

October 10, 2008

Members Present:

Dan Linscheid, Chair

Grant Davis (Present by telephone for informal conferences)

Ken Hoffine

Ed Butts

Staff Present:

James R. (JR) Wilkinson

Allen McCartt

Others Present:

Joanna Tucker-Davis, AAG

The meeting was called to order at 2:05 p.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 five informal conferences were scheduled prior to the meeting of the Law Enforcement Committee (LEC). However, a lack of quorum for the first two scheduled informal conferences caused the meetings to be informational meetings only. Upon convening the Committee, Chair Linscheid shared the results of the two informational meetings with the members of the Committee. The LEC make their recommendations as below.

Informal Conferences

2431

The respondent explained that upon graduation from graduate school in England with a Ph.D. in waste water management, the respondent accepted a job with BacGen Technologies, Inc, in Seattle, WA. The respondent came to the United States with the belief that the American engineering registration laws were similar to the European registration laws, which is not true as the respondent later learned. Regardless, the respondent signed as Senior Process Engineer an engineering report for a waste water management proposal for the City of Prineville when the respondent was not registered. When the respondent was informed by the complainants that she needed to be registered, the respondent submitted a comity application prior to the complaint being filed. However, the Board required the respondent to sit for the examination. The respondent was issued an Oregon registration on January 10, 2006. Other than the position title on the report, the respondent did not represent herself as an engineer to the City of Prineville. Furthermore, the complainant and the respondent have since worked together with the City of

Prineville to implement some recommendations for waste water treatment. The LEC observed that the respondent took immediate steps to become registered with the Board once informed of the requirement. **The LEC recommended closing the case by withdrawing the Notice of Intent and dismissing the case against the respondent as compliance met.**

2476

The complainant owns a produce business on the property adjoining a parcel sold to an investment firm. The investment firm hired an engineering firm represented by the respondent, who is a PE and PLS, to provide engineering and land surveying services for the sale of the property and for prospective development. The complainant alleged a right of entry violation by the respondent's survey crew. The respondent denied responsibility noting that he acted as the project manager and not as the project surveyor. In terms of the ORS 672.047 notice requirement, the respondent submitted emails to evidence that the respondent relied on the investment firm as the respondent's agent to provide notice to the adjoining property owners. Furthermore, the respondent submitted the record of survey for the property as evidence to show that another PLS sealed and signed the survey and was responsible for notification. Due to new evidence provided by the respondent, the LEC determined further investigation.

2475

Chair Linscheid reported a potential conflict in that he and the respondent had a business relationship that ended about 20 years ago. Upon further discussion, it was determined there was no conflict of interest. Nevertheless, the complainant alleged that the respondent set property monuments, but failed to file a record of survey within 45 days as required by the ORS 209.250(1). The respondent admitted the violation in light of extenuating circumstances including a center of section dispute, legal action involving the land owners, and his stolen survey vehicle. He agreed that he should have requested the 180-day extension prior to the end of the 45-day filing requirement. Based on his admission and extenuating circumstances, **the LEC recommended closing the case by sending the respondent a letter of concern regarding the 45-day requirement.**

2474

The complainants alleged that the respondent, who is a PE, PLS, CWRE, conducted an unauthorized survey of their property and failed to provide notice of right of entry. The investigation revealed that the respondent surveyed the adjoining property and set two property monuments common to the complainant's properties. As a result, the LEC examined the right of entry allegation and the problems associated with surveyors providing notice in remote areas where changes in property lines and in ownership are often unknown. The LEC discussion held with the respondent focused on the requirements of the ORS 672.047(4):

A registered professional land surveyor, or any employee or agent of the surveyor, shall not enter upon or establish any permanent survey monument upon any land without first attempting to provide notice to the landowner or occupant of the property in person. When the landowner or occupant is not available, written notice shall be posted in a conspicuous place where it is most likely to be seen. The posted notice shall give the professional land surveyor's name, address, telephone number, purpose, availability of the survey and the presence of any temporary or permanent monuments or other markers left on the property.

The LEC noted that paragraph four requires notice prior to entry upon a property or prior to establishing any permanent survey monument. The LEC interpreted paragraph four to include providing notice to adjoining land owners when setting a common boundary monument. The respondent stated that typically there are no places in rural, undeveloped areas to post the required notice, so he changed his business practice by sending notifications to land owners by mail, many of whom are absentee owners. Otherwise, there is no other way to post notice. The respondent continued that if additional surveying is required once in the field then right of entry becomes difficult as a surveyor can not always anticipate all the affected land owners. He also commented that the ORS 672.047 does not provide a remedy for when access is denied.

Chair Linscheid agreed that the ORS 672.047 may be imperfect. However, the LEC is charged with enforcing the statutes and rules as written. The ORS 672.047(4) required the respondent to provide notice to the landowner or occupant before establishing any permanent survey monument. The LEC accepted the respondent's statement that he did not trespass on the complainant's property to set the common property monuments. The LEC also accepted the respondent's concerns about providing written notice "in person" to absentee land owners in rural areas. Since each case of right of entry is unique and no property damage occurred as a result of the respondent's survey, **the LEC recommended closing the case by sending the respondent a letter of concern regarding right of entry notice.**

2406

The respondent is a PE who was hired by a landowner to design a Keystone retaining wall that was involved in a landslide in Astoria, Oregon. The complainant was the contractor hired by the landowner to construct the wall and to level the site for development. In the course of removing approximately 6,500 cubic yards of material and constructing the wall, a slope failure occurred upslope of the construction causing approximately thirty neighbors to report cracked foundations, shifting walls, and other structural problems. Construction of the wall was expedited along with the importation of over 12,000 cubic yards of rock designed and placed to be a mass equilibrium solution to the slope failure. Litigation was initiated by the affected parties and a settlement was reached. Regardless of the landslide cause or settlement agreement, the LEC discussed the actions of the respondent as he prepared his geotechnical analyses.

The respondent explained that he examined other geologic maps and documents that were not listed in his geotechnical report, including the Oregon Department of Geology and Mineral Industries (DOGMI) Bulletin 74. He also provided the LEC more detail regarding his site reconnaissance efforts than what he narrated in his geotechnical report. He also discussed his reasoning for only observing three test pits rather than using borings by noting that inclinometers strategically placed in boreholes around the landslide to measure ground movement did not reveal the shear surface. The respondent reiterated the restrictions he placed in his geotechnical report on both the depth and length of wall excavation. The respondent emphasized that the contractor began construction prior to the City of Astoria issuing a construction permit. He asserted that the contractor failed to follow his instructions and the City of Astoria's permitting process. The LEC also heard the respondent's personal efforts to address the slope failure.

In response to a LEC question, the respondent noted several changes to the way he conducts business. He is more selective in job assignments to ensure that the right team is in place. He

wants the contractor he works with to follow his instructions. The respondent also observed that he did not include as much information in his geotechnical report as he should have. He now is providing more detail. The LEC reached a settlement agreement in that the respondent committed negligent engineering in his reporting relating to the Keystone retaining wall and would be assessed a \$500 civil penalty. **The LEC recommended that the Board approve the settlement agreement with the respondent.**

Cases Reviewed

2450

The complainant alleged that the respondent, who is a PE and PLS, prepared an erroneous drainage report for development of an adjoining property, failed to revise the report once the access road was relocated, and designed a road that trespassed onto his property causing drainage problems on his property. In response, the respondent noted that no evidence of easements or stormlines allowed the discharge of the complainant's water to the neighboring property. Furthermore, the County had approved the revised road design, but the contractor failed to follow the design. Also, subsequent site visits by County staff during heavy rains found no evidence of drainage problems. The disputing parties reached a settlement agreement including the withdrawal of the complaint. Regardless, the investigation did not support the allegations. **The LEC recommended closing the case as allegations unfounded.**

2453

The complainant alleged that the respondent, who is an EIT, misrepresented herself as a professional engineer in two news articles. The investigation revealed that the articles' authors misrepresented her qualifications, so the allegations were unfounded. However in the course of investigation, evidence obtained showed that the respondent submitted an application to the Oregon Office of Minority, Women, and Emerging Small Business offering to perform engineering services without employing a professional engineer. The LEC directed staff to issue the respondent a Notice of Intent to Assess a \$1,000 Civil Penalty for the unlicensed offering of engineering services violating the OAR 820-010-0720.

2464

The respondent works for T-Mobile and prepared documents for a T-Mobile permit application to the City of Springfield to construct a 120-foot steel monopole wireless communication facility within an existing shopping center. The Springfield Development Code 32.130 required engineering reports to satisfy specific code sections. The respondent signed two permit application documents as an "RF Engineer" and the City denied the application in part due to the respondent not being a registered engineer. T-Mobile did not appeal the decision. In response to the allegations, T-Mobile's attorney asserted an exception under the ORS 672.060(6), which exempts a person, firm or corporation, or full-time employees from the ORS 672 provided the work is in connection with or incidental to the operations of the persons, firms or corporations and the engineering work is not offered directly to the public. The LEC discussed the exception and found that T-Mobile offered their engineering work to a public agency for approval or denial. The LEC directed staff to issue the respondent a Notice of Intent to Assess a \$3,000 Civil Penalty for the unlicensed practice of engineering violating the ORS 672.007(1)(a),(c). The LEC member Ed Butts disagreed with the determination.

2467

The complainant alleged that the respondent, who is a PLS and CWRE, prepared a map of survey that was submitted to the County Surveyor past the 45-days required to submit a map for filing. The filed map showed a 3.0 foot offset to a property corner without noting the monument as a witness monument. Therefore, he did not mark the property corner and no physical impediment was noted on the map of survey as to the reason for the offset. Furthermore, the respondent wrote on the filed map of survey that the complainant directed him to offset the property monument. The complainant denied the statement. The LEC observed that the respondent made an untruthful statement as the draft map of survey he provided to the complainant did not show the offset. Staff was directed to issue the respondent a Notice of Intent to Revoke Registration and Assess a \$3,000 Civil Penalty violating the ORS 209.250(1), the ORS 672.025(2), the ORS 672.200(2), the OAR 820-010-0621(2), the OAR 820-020-0015(10), the OAR 820-020-0025(1), the OAR 820-030-0060, and the OAR 820-030-0070. The respondent refused to request a hearing. **The LEC recommended approving a Default Order to revoke the land surveying registration of the respondent and to assess a \$3,000 civil penalty.**

2468

The complainants stated that the respondent, who is a PLS, PE, and CWRE, surveyed the property adjacent to their property, but failed to file a map of survey within 45-days and to provide notice of right of entry. To mark the common boundary, the respondent set a monument and found an existing monument. The investigation found that the map of survey was submitted for timely filing, so no violation of the 45-day requirement to file a map of survey was found. Furthermore, the complainant admitted during the investigation that the respondent had given her verbal notification during a preliminary survey that he would return to set monuments. **The LEC recommended closing the case as allegations unfounded.**

2502

The complainant is a PLS who submitted documents showing thirteen allegations where the respondent failed to file a map of survey within 45-days of setting monuments, failed to return two corrected maps of survey within 30-days, failed to properly seal and/or sign five final documents, and improperly prepared a boundary description. The investigation found that four allegations were unfounded or unrelated. The LEC directed staff to issue the respondent a Notice of Intent to Revoke Registration and Assess a \$9,000 civil penalty violating the ORS 209.250(1) and (4)(b), the ORS 672.025(2), the ORS 672.200(2) and (4), the OAR 820-010-0621(1) and (2), the OAR 820-020-0015(2) and (10), the OAR 820-020-0025(1), and the OAR 820-030-0060.

2536

The Board received an anonymous complaint regarding the respondent who is a PE and was engaged in the practice of engineering on an exempt status registration. The respondent was not aware of the exempt status until notified by the Board. The respondent denied requesting exempt status. Regardless, he discontinued any performance of engineering until the matter was resolved. The respondent came to the Board office to discover what had happened. The investigation did not find evidence showing that the respondent requested exempt status on

November 24, 2004. In fact, he has continued to renew his registration and submit his continuing professional development (CPD) documents as required. It is unknown how his registration status became exempt. **The LEC recommended closing the case as allegations unfounded.**

New Business

Revisions to Professional Reviewer and Expert Witness Selection Procedures

Due to time constraints, the LEC decided to defer this agenda item to the next meeting.

Linscheid letter regarding Mill Creek Lane Road

Due to time constraints, the LEC decided to defer this agenda item to the next meeting.

Oregon Association of County Surveyors and Engineers: presentation on November 19, 2008

The LEC briefly discussed an invitation from the Oregon Association of County Surveyors and Engineers (OACES) to present the Board's law enforcement process to its members. The LEC approved the request for Board investigators to attend the OACES meeting scheduled for the Hilton Hotel, Eugene, OR, from 1:30 p.m. to 2:45 p.m., on November 19, 2008. The LEC Chair Dan Linscheid will moderate the session.

Investigator memorandum: Concern of ads on PLSO Web Site

Due to time constraints, the LEC decided to defer this agenda item to the next meeting.

Inquiry regarding PDH training and surveyors offering boundary by agreement

The LEC decided to direct this inquiry to the Professional Practices Committee (PPC).

Submission of complaint

The LEC discussed a preliminary review of a complaint from K. Robert Ezell, PLS, regarding Roger Roberts, PLS. Ezell challenged an opinion Roberts offered the Board on August 20, 2000. Robert's opinion was solicited for law enforcement case #2060, which was closed against Ezell as compliance met on March 11, 2003. The current allegations against Roberts were similar to ones Ezell made on March 10, 2008. On April 8, 2008, the LEC determined not to reopen #2060 or to open a new case. Regarding the current allegations, the LEC found that Ezell provided no new evidence and determined not to open a new case.

Unfinished Business

Update on 2466

Due to time constraints, the LEC decided to defer this agenda item to the next meeting.

Discussion regarding end of suspension for 2504

The respondent is a PE who was selected to be audited for compliance to CPD requirements on December 17, 2007, but failed to submit the CPD documents. In response to a Board inquiry, he wrote that he made a mistake on his last renewal form and wanted exempt status. Upon further inquiry, the respondent requested that the Board suspend his registration stating he would obtain the necessary CPD units if he desired to reactivate his registration. However, Board rules do not

state what is required for a suspended registrant to return to active status. As a result, the LEC determined to offer the respondent a settlement agreement wherein he would be suspended for 90 days and until he had completed the required CPD units as per the OAR 820-010-0520(1), Delinquent registrants.

Settlement Agreement Monitoring

LEC Cases Subject to Monitoring and LEC Cases Subject to Collections:

The LEC reviewed the LEC Cases Subject to Monitoring and the LEC Cases Subject to Collections and offered no comments.

Case Status Report

The Committee briefly reviewed the case status list.

The meeting adjourned at approximately 2:55 p.m.