



Oregon

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

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Minutes of Meeting

November 13, 2007

CALL TO ORDER

President Laszlo called the meeting to order at 9:03 a.m. in the Conference Room of the OSBEELS office at 670 Hawthorne Avenue, S.E., Suite 220, Salem, Oregon 97301.

Members Present:

Susanna Laszlo
Samantha Bianco
Dan Linscheid
Mari Kramer
John Seward
Ron Stuntzner
Carl Tappert
Amin Wahab
Edward Butts (excused absence)
Grant Davis (excused absence)

Visitors Present:

David Gessert
Herbert Stephens, Jr.
Paul Monical
Gary Anderson, PLS, PLSO Liaison

Others Present:

Mari Lopez, OSBEELS Executive Secretary
Jennifer Gilbert, OSBEELS Executive Assistant
James R. (JR) Wilkinson, OSBEELS Investigator
Joanna Tucker-Davis, Assistant Attorney General

APPROVAL OF AGENDA

It was moved and seconded (Linscheid/Tappert) to approve the agenda. The motion passed unanimously.

APPROVAL OF MINUTES

It was moved and seconded (Kramer/Linscheid) to approve the minutes, as distributed, for the meeting of September 11, 2007. The motion passed unanimously. President Laszlo commented on the information contained in the minutes and would like to ensure that the general public has an understanding of the conversation, outcome, and any action items that result of discussion.

PUBLIC INPUT

President Laszlo welcomed the guests and requested introductions. David Gessert informed the members that he was invited by staff to observe the meeting. Mr. Gessert is a professional engineer, especially qualified in fire protection and may be interested in joining the Board. Herbert Stephens, Jr., and Paul Monical, are both employed in the field of Naval Architecture/Marine Engineering and were in attendance due to their interest in discussing the discipline.

Gary Anderson, PLS, shared comments received as the PLSO Liaison with the members. He acknowledged the immediate response by staff to concerns submitted regarding the pathway to land surveying licensure and was very appreciative. Mr. Anderson also shared similar concerns regarding the minutes, including the timeframe for availability to the public.

EXECUTIVE SECRETARY'S REPORT

Committee Activities

Ms. Lopez reported that the Examinations and Qualifications Committee, External Relations Committee, Finance Committee, Law Enforcement Committee, Professional Practices Committee and Rules and Regulations Committee each met during the interim. In addition, she noted that a joint meeting was held with members of the Professional Practices and Rules and Regulations Committees concerning digital signatures. The Committee minutes are included in the packets.

Administrative Activities –

Oregon Specific Examinations/ELSES

Ms. Lopez reported that the October 2007 examinations were administered at the Lane County Fairgrounds in Eugene on October 26th and 27th. On behalf of the Board, Bob Neatham, Mari Kramer, Amin Wahab, and Registration staff proctored and observed the exam administration.

She noted that the numbers of “No Shows” for the ELSES administered exams are unavailable at this time. However, the numbers of “No Shows” for the Oregon Specific examination were: 2 Oregon 4-hour, and 4 Structural III.

Joint Compliance Committee (JCC)

Ms. Lopez informed the Board that a Joint Compliance Committee meeting will be held tomorrow, November 14th, with members from the OSBEELS and the OSBGE. The meeting is scheduled to convene at 8:00 a.m. at the OSBEELS office. The agenda of this meeting is included in the packets, for informational purposes.

Attorney General' Public Law Conference

Ms. Lopez reported that she and Ms. Gilbert attended a two-day Public Law Conference, earlier in the month, organized by the Department of Justice. The conference was very informative for them. Ms. Lopez also alerted AAG Tucker-Davis that she would be in contact soon regarding matters discussed at the Conference.

The OSBEELS' Employee Handbook and Policies

Ms. Lopez was extremely pleased to announce that AAG Kathryn Logan completed her review of the employee handbook and the correlating policies. DAS is currently conducting their review of the documents and she is looking forward to presenting them to the Board for review and adoption during the January 8, 2008 Board Meeting.

Board Vacancies

The Board has yet to fill the engineer position that was vacated by George Gross. However, Ms. Lopez announced that Samantha Bianco, PLS was officially appointed to the Board for the Land Surveyor position vacated by Bob Neathamer. Her scheduled term is 11/01/2007 – 06/30/2011. Welcome Samantha!

Staffing

Ms. Lopez reported that the overwhelming tasks of converting the OSBEELS files to the new end-tab filing system, properly disposing and recording inactive licensing files, inactive microfiche and licensing index cards have been completed. This duty took 4 months for two temporary staff to accomplish.

Effective November 1, 2007, Ms. Lopez stated that Shantelle Meyer accepted a position as the Board's Information Coordinator. Shantelle will primarily focus on the new Web site and she will also work with the External Relations committee on additional outreach efforts. With Shantelle's movement, Ms. Lopez further reported that Lauren Olson was promoted as the Registration Coordinator for the Examination and Registration Department.

Additionally, all Board staff received the Governor's cost-of-living increase, effective July 1, 2007. Ms. Gilbert shared the information she obtained related to the increase. She stated that the information was obtained by speaking with Sue Wilson, DAS Human Resource Services Administrator, initially, then speaking with Laurie Grenya, DAS Compensation Consultant for additional clarification. At a minimum, each position received an \$80/month increase.

Discussion then moved to the Investigator position. Further information will be presented at the next Finance committee in regards to the vacant Investigator positions and the possible use of an outside classification and compensation consultant.

PRESIDENT'S REPORT

President Laszlo briefly summarized the meeting held in Wilsonville last month with the Oregon Building Officials Association. Topics discussed related to the Reference Manual, the Law Enforcement process, and similar concerns each Board may face. Mr. Tappert elaborated on the issues surrounding fire protection engineering. There is a perception that only those professional

engineers especially qualified in fire protection may design fire protection systems. In fact, OAR 820-020-0020 allows a registrant to practice in the field in which they are competent, either by education or experience. This appears to be an ongoing issue faced by the Board.

President Laszlo noted that the Executive Secretary evaluation is due at the next board meeting in January. In January 2007, the members appointed to the committee were Mari Kramer as the Chair, John Seward, and George Gross. Since Mr. Gross is no longer serving on the Board, she's asked Mr. Linscheid to participate. Ms. Kramer reported that she would like to schedule a time during the December 2007 Committee meeting dates to formally meet. Ms. Kramer also encouraged input from all members prior to the December meeting.

FINANCIAL REPORT

Mr. Tappert reported that the Finance Committee met on October 3, 2007, to discuss the following matters:

Classification and Compensation Consultation

Mr. Tappert reported that the Committee discussed the open Investigator position. The impression from the recruitment process was that the range of compensation was not competitive to the position. As a result, it was discussed to hire a consultant to evaluate the position, and furthermore, the entire office. As briefly discussed earlier, Mr. Tappert would like to continue the recommendation of hiring an outside consultant to evaluate the positions and respective salaries for all staff. Ms. Lopez reported that this is not an issue faced by just the OSBEELS. Other semi-independent boards have experienced similar predicaments. There was also a brief discussion on the possibility of unintended consequences of creating Board specific job descriptions outside of DAS' classifications, additional laws and rules the Board may need to adhere to, and additional personnel to keep updated on employee law. Ms. Lopez will invite AAG Logan to the next Finance Committee meeting in December and the next Board meeting in January to answer any questions. In addition, Ms. Lopez will post the open Investigator positions again.

Consider Increase in Fees for Registration Renewal

The Committee discussed the amount of the future increase to registration renewal fees. Chair Tappert requested specific information for the Committee to consider during the next meeting in December. This information should include renewal trend information with the number of licensees by renewal period and actual renewals submitted by renewal period (including the grace period). Information provided should also include application information related to the administration of examinations in foreign countries.

PROFESSIONAL PRACTICES COMMITTEE

Mr. Tappert reported that the Professional Practices Committee met on October 3, 2007, to discuss the following matters:

County Surveyors

Mr. Tappert reported on the discussion held related to County Surveyors also in private practice and who is required to review their maps prior to filing. He stated that the practice of utilizing the adjacent County Surveyor or the City Surveyor appears appropriate since the process is not clearly documented in statute. Mr. Linscheid clarified that the word “approve” does not appear in ORS 209. Staff will correct the committee meeting minutes to read; “*the conclusion of the Committee was that OAR 820-020-0030(3) would prohibit a County Surveyor from participating in decisions related to their own work before filing.*”

Lind Letter

Mr. Tappert briefly summarized the discussion held related to an inquiry of removing monuments. He reported that a response was sent informing the inquirer, Ken Lind, that ORS 209.150 contains required procedures to remove or obliterate existing monuments. The response included the Committee’s perception that the proposal presented did not comply with statute and that cutting off monument caps would likely create more confusion.

GIS Sworn Testimony

Mr. Tappert summarized an email received from Dave Gordon, Crook County Counsel, inquiring if unlicensed GIS personnel can provide expert testimony regarding GIS information if a disclaimer is made stating that the information regarding authoritative location or property boundaries cannot be provided. After discussion, the acts constituting land surveying includes more than identifying property boundaries, the Committee requested AAG Tucker-Davis to conduct further research and provide additional information at the next meeting. It was also noted that the information a GIS technician would be asked to testify about would inevitably be rendering an opinion that could fall within the practice of land surveying.

Interpretation of Professional Conduct Rules

Mr. Tappert reported to the members that a discussion was held regarding OAR 820-020-0035 – Obligation of Registrants to Avoid Improper Solicitation of Professional Employment. An email was received concerning subsection 3. Several possible scenarios were presented to compensate an additional engineer, however, the Committee determined that the scenarios provided fall within the restriction of the rule. The Committee also discussed that the rule would also apply to a registrant who leaves one firm and joins another firm, transferring clients to the new firm and receiving a commission from the new firm for these clients. The response informed the inquirer that OAR 820-020-0035(3) does prohibit an engineer from receiving a commission on engineering work brought into a firm.

LAW ENFORCEMENT COMMITTEE

Mr. Linscheid reported that the Law Enforcement Committee met on October 4, 2007, to discuss the following matters:

Consent calendar

Only one case was on the consent calendar: 2392 (Steele). The Board discussed the importance of communicating the basis for the decision to close the case to the complainant, the Oregon Board of Architect Examiners (OBAE). The OBAE expressed concern about Mr. Steele

practicing outside his area of competence by sealing and signing architectural sheets. Members observed that the Committee met with OBAE representatives to discuss law enforcement issues during a previous meeting on April 24, 2007. The subject case was specifically discussed. However, for the Board to sanction an engineer for practice outside area of competence involves demonstrating negligence or incompetence under ORS 672 and OAR 820. These violations are commonly evidenced through engineering documents that are of substandard quality or through documents that contain mistaken engineering calculations and designs. The subject plans were found to be neither substandard nor mistaken. The allegation of plan stamping was also not supported. The Committee recommended closing the case as allegations unfounded. After discussion, it was moved and seconded (Linscheid/Seward) to approve the Consent Calendar containing case 2392. The motion passed unanimously.

Recommended Board Action

2455 – David B. Hammond: Mr. Hammond entered into a Final Order Incorporating Settlement Agreement that assessed a civil penalty of \$250 for failure to seal and sign a final document. It was moved and seconded (Linscheid/Tappert) to approve the Final Order Incorporating Settlement Agreement. The motion passed unanimously.

2381 – Robert C. Bowser: The Board originally closed case #2381 as allegations unfounded with its Consent Calendar on January 10, 2006. The complainant Debra Gilmore subsequently contacted the Governor's Office. A representative from the Governor's office telephoned staff with no formal communication transmitted or requested. Staff informed the representative that the case was closed because evidence was not provided. If Ms. Gilmore wanted the case reopened, she was informed that she would need to submit her evidence for evaluation directly to the Board. On May 10, 2006, Ms. Gilmore sent the Bowser home inspection report crucial to #2381. As a registered professional engineer, Mr. Bowser was exempt from the Construction Contractors Board (CCB) requirements for conducting home inspections. A disagreement arose between Ms. Gilmore and Mr. Bowser regarding his home inspection effort and report. While the evidence was compelling, the likelihood of a successful sanction as required under OAR 820-015-0015(2) was remote because Mr. Bowser had already agreed to surrender his PE registration effective September 30, 2007. It was moved and seconded (Linscheid/Seward) to approve not reopening the case or to open a new case. The motion passed unanimously.

Miscellaneous Issues

Discussion of Susanna Knight letter August 2, 2007: Susanna R. Knight, State Board of Geologist Examiners (OSBGE) Administrator, wrote a letter to Committee Chair Linscheid on August 2, 2007. The letter expressed disappointment with the process the OSBEELS followed to close law enforcement cases 2448 and 2416. These cases were analyzed by the Joint Compliance Committee (JCC), which the two boards established by a 2001 Memorandum of Understanding (MOU) to foster communication and cooperation on law enforcement issues. The OSBEELS followed the JCC recommendations to close the cases, but the efforts revealed slight inconsistencies between the MOU and the process defined by the JCC in its minutes of July 15, 2005. Board members discussed the need to harmonize the MOU with the processes outlined on July 15, 2005, and the opportunity to present its concerns at the JCC meeting scheduled for November 14, 2007.

The Locating Company: Ed Graham, PLS Ret, sent the Board a complaint regarding The Locating Company. The Minnesota based firm advertises via the World Wide Web to locate existing property boundary monuments in violation of ORS 672.007(2)(c). During an interview with staff, the firm's principle made immediate website modifications to narrow the offering to only Minnesota. Follow-up contact with Mr. Graham resulted in a favorable response. The Committee observed that direct discussion lead to a successful outcome and no action is required.

2479 – *Landry:* The Board office 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. However, an EMS report provided as evidence showed the registered geologist seal of Senior Geologist David M. Seaver. The Board discussed a courtesy notification sent to the OSBGE since the investigation is not anticipated to involve Mr. Seaver, but his seal is on evidence for the case. Staff noted that OSBGE Administrator Knight replied with a favorable response. No action is required from the JCC or OSBGE at this time.

The Board packet included a copy of the case status report and the settlement agreement monitoring report.

Settlement Agreement Monitoring:

2339 – *Robert C. Bowser:* In a settlement agreement for case 2339, Mr. Bowser agreed to surrender his license while under investigation and 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. The Board found the Bowser response improper because the Board is not a referral service for Bowser clients. That is his duty. While not a violation of the settlement agreement, Mr. Bowser received a letter detailing this issue.

EXTERNAL RELATIONS COMMITTEE

Ms. Kramer reported that the External Relations Committee met on October 3, 2007, to discuss the following matters:

Oregon Examiner

Ms. Kramer reported that the business working on the newsletter is in the process of placing articles submitted into the new layout. She also stated that she is currently compiling topics to include in the next edition.

Website

Ms. Kramer noted that timing and technical difficulties prevented the Committee from viewing the test site for the migration of the current OSBEELS Web site to the Oregon.gov Web site. Further review and discussion will be held at the next meeting in December.

RULES AND REGULATIONS COMMITTEE

In the absence of Mr. Davis, Mr. Seward reported that the Rules and Regulations Committee met on October 3, 2007, to discuss the following matters:

Information to be Furnished by Registered Professional Photogrammetrist Applicants

Mr. Seward reported that there is no rule contained in OAR 820, Division 10, related to information required for applicants wishing to obtain licensure as a Registered Professional Photogrammetrist. The Committee discussed and considered the path an applicant takes to obtain this license and the education an applicant may undergo. A draft rule will be reviewed during the December meeting.

Amend OAR 820-010-0450 – Branches Examined by Board

Mr. Seward reported that the Examinations and Qualifications recommended an amendment to OAR 820-010-0450 – Branches Examined by Board; inclusion of the geotechnical branch. The members also discussed adding the Naval Architecture and Marine discipline to the list. It was moved and seconded (Seward/Linscheid) to approve adding the Naval Architecture and Marine discipline to the list and to begin the rulemaking process. The motion passed unanimously.

Review ORS 672.028 (RPP Seal)

Mr. Seward reported that that ORS 672.028 does not contain language requiring a Registered Professional Photogrammetrist to obtain a seal or require the RPP to seal and sign final documents. The Committee requested AAG Tucker-Davis to research the feasibility of implementing a rule, with a sunset date, until the current law is revised. Further discussion will be held during the December meeting.

Consider Refunds of Appeal Fees

Mr. Seward stated that a discussion was held regarding fees paid related to the request of an exam appeal. A draft rule was included in the packets for consideration. It was moved and seconded (Seward/Linscheid) to proceed with the rulemaking process. The motion passed unanimously.

Review OAR 820-010-0255 – References

Mr. Seward reported that several matters related to OAR 820-010-0255 – References were brought to the attention of the Committee for consideration. During the December meeting, the Committee will review and consider a draft rule including clarification that the registered reference must hold a registration in an NCEES jurisdiction, deleting language requiring the reference to have knowledge of an individual for a period of time to be at least one year, and the supervising reference requirement for comity applicants.

Mr. Seward further reported that as a result of the discussion held during the September board meeting, the Examinations and Qualifications Committee has been requested to develop procedures when a reference submitted is not entirely positive.

EXAMINATIONS AND QUALIFICATIONS COMMITTEE

Ms. Kramer reported that the Examinations and Qualifications Committee met on October 3, 2007, to discuss the following matters:

Guest Discussions

Ms. Kramer reported that the Committee reviewed and discussed with Erika Koss, her application for entrance to the October 2007 Fundamentals of Engineering examination. It was determined that compliance may be met with Oregon Administrative Rule (OAR) 820-010-0225(2) by successfully completing six of the nine specified courses listed in OAR 820-010-0225(3)(d) for the April 2008 examination. Ms. Koss accepted the Committee's decision.

The Committee also reviewed and discussed with Marcella Alcantar, her re-application for entrance to the October 2007 Professional Civil Engineering examination. Ms. Alcantar was denied entrance based upon noncompliance with OAR 820-010-0465. Ms. Kramer reported that during the meeting, Ms. Alcantar presented evidence of additional study, but it was determined that the Committee's decision would stand. Ms. Alcantar accepted the Committee's decision.

Request to Reduce or Waive Delinquent Fee-Email

Ms. Kramer briefly summarized the Committee's review of a request by Kurt Krueger to reduce or waive the \$80 delinquent fee. The Committee denied his request.

Request to Renew Lapsed PE Registration

Ms. Kramer reported that the Committee discussed a request from James H. Clark to renew his certificate of registration as a professional engineer in the State of Oregon. In accordance with Oregon Revised Statute (ORS) 672.170(4), the Committee determined that Mr. Clark's certificate of registration as a professional engineer is not renewable. However, he may apply by comity to regain a certificate of registration as a professional engineer in the State of Oregon.

OAR 820-010-0305(3)(a)

Ms. Kramer reported that staff informed the Committee that many registrants request to order duplicate wall certificates. However, the provisions outlined in OAR 820-010-0305(3)(a) states that wall certificates may be reissued or replaced if a wall certificate is "lost or mutilated." Discussion was held related to any concerns that may face the Board if duplicate wall certificates were issued. Ms. Bianco and Mr. Gessert noted that OAR 820-010-0615, states registrants shall post certificates conspicuously in their places of business. This matter was referred to the Rules and Regulations Committee to further discuss the possibility of submitting a notarized request and to determine adequate fees.

Rescoring NCEES Examinations

Ms. Kramer noted that the Committee concurred to not permit requests to rescore an NCEES examination. It was determined that there would be minimal benefit, if any, to the examinee in relation to the fee required by NCEES.

The Examination Solution Team (TEST)

Ms. Kramer briefly stated that the Committee received information related to other Member Boards experiences with TEST, Inc. She reported that representatives of TEST, Inc. will be invited to the January 2007 Board meeting for discussion and to answer any questions.

NCEES Information

Ms. Kramer briefly stated that a memorandum was received from NCEES informing Member Boards that effective July 31, 2007, Betsey Browne retired from her position as Executive Director for NCEES.

In addition, a memorandum was received from Jerry T. Carter, Executive Director of NCEES, addressing the issues concerning the volume of applications received by the Center and the short number of staff. The memorandum informed the Member Boards that the Center will hire two additional full-time evaluators to meet the demands for reviewing applications for an evaluation.

Acoustical Examination

A discussion was held related to the draft MOU included in the packets between volunteer(s) and OSBEELS. Concerns regarding liability of the Board due to the examination or a lack of examination will be incorporated under the general section of the MOU. Further discussion will be held during the December committee meeting.

Licensure

Comity Applications – Ms. Kramer directed the attention of the Board to the list of 87 applicants for licensure by Comity. It was moved and seconded (Kramer/Stuntzner) to approve the list of 87 applicants. The motion passed unanimously.

Professional Land Surveyor Comity Application – Ms. Kramer directed the attention of the Board to the list of 4 applicants for licensure as a professional land surveyor by Comity. It was moved and seconded (Kramer/Tappert) to approve the list of 4 applicants. The motion passed unanimously.

Applications by Prior Practice – Ms. Kramer directed the members' attention to the applicant seeking Geotechnical registration by prior practice. It was moved and seconded (Kramer/Seward) to approve the applicant as presented. The motion passed unanimously.

Ms. Kramer directed the members' attention to the list of 10 applicants seeking Photogrammetry registration by prior practice. It was moved and seconded (Kramer/ Linscheid) to approve the list of 10 applicants as presented. The motion passed unanimously.

First Licensure Applications – Ms. Kramer directed the members' attention to the list of 4 applicants seeking first licensure registration. It was moved and seconded (Kramer/ Linscheid) to approve the list of 4 applicants as presented. The motion passed unanimously.

ADJOURN

The meeting was adjourned at 3:06 p.m.

NEXT MEETINGS

Next Board Meeting:

January 8, 2008

Next Committee Meetings:

LAW ENFORCEMENT:

Tuesday, December 11th at 9:00 a.m.

FINANCE:

Tuesday, December 11th at 2:00 p.m.

EXAMINATIONS & QUALIFICATIONS: Wednesday, December 12th at 8:00 a.m.

EXTERNAL RELATIONS: Wednesday, December 12th at 11:00 a.m.

RULES & REGULATIONS: Wednesday, December 12th at 1:00 p.m.

PROFESSIONAL PRACTICES: Wednesday, December 12th at 2:00 p.m.

The Executive Secretary Evaluation Committee will also meet on Tuesday, December 11th at 1:00 p.m.