



Oregon

State Board of Examiners for
Engineering & Land Surveying
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Minutes of Meeting
May 8, 2012

CALL TO ORDER

President Linscheid called the meeting to order at 9:00 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, Oregon 97301.

Members Present:

Dan Linscheid
Steven Burger
Grant Davis
James Doane
Ken Hoffine
Sue Newstetter
John Seward
Carl Tappert
Amin Wahab

Others Present:

Mari Lopez, OSBEELS Executive Secretary
Jenn Gilbert, OSBEELS Executive Assistant
Allen McCartt, OSBEELS Investigator
JR Wilkinson, OSBEELS Investigator
Joanna Tucker-Davis, Assistant Attorney General
Michelle Gall, CPA, Moss Adams, LLP
Pam Powell, NCEES Director of Exam Administration Services (via telephone)
Bob Whorton, NCEES Compliance and Security Manager (via telephone)

President Linscheid, Board members, AAG Tucker-Davis, and staff introduced themselves to Michelle Gall, CPA. Ms. Gall introduced herself and stated the purpose for her attendance was to discuss the concerns of the Finance Committee with regard to the 2009-2011 Biennial Audit.

APPROVAL OF AGENDA

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

APPROVAL OF MINUTES

It was moved and seconded (Newstetter/Tappert) to approve the minutes of the March 13, 2012 Board Meeting as presented. The motion passed. Mr. Doane abstained since he was not present for the March 13, 2012 Board meeting.

EXECUTIVE SECRETARY'S REPORT

2009-2011 Biennial Audit

Ms. Lopez began her report with the 2009-2011 Biennial Audit to accommodate the attendance of Michelle Gall. The Auditors from Moss Adams, LLP of Eugene found a material weakness during the biennial audit for the 2009-2011 period. However, in presenting the draft audit to the Finance Committee for a response, a better explanation was needed so Ms. Gall was invited to the meeting. Ms. Gall summarized the material weakness for Board. She noted that this is typical with small boards and commissions. As a result, it is also common for smaller entities to seek outside assistance with regard to Generally Accepted Accounting Principles (GAAP) based requirements. The Board should conduct a cost benefit analysis to determine actions that would remove the material weakness from a future audit. Ms. Newstetter agreed, noting that the requirements for Governmental Accounting Standards Board (GASB) are also frequently changing. After discussion, staff was directed to conduct research with the Department of Administrative Services (DAS) and private accounting firms for alternative options and fees. There was no further discussion.

Committee Activities

Ms. Lopez continued to report that the Examinations and Qualifications (E&Q) Committee, External Relations Committee (ERC), Finance Committee (FC), Law Enforcement Committee (LEC), Professional Practices Committee (PPC), Rules and Regulations (R&R) Committee, and Standards of Land Surveying Practice (SOP) Committee each met during the interim. The Committee minutes were included in the packets.

Administrative Activities

Oregon Specific/National Council of Examiners for Engineering and Surveying (NCEES) Examinations

Ms. Lopez reported that the administration of the NCEES PE, PLS, FE, and FLS examinations took place at the Oregon State Fairgrounds in Salem on April 13 – 14, 2012: OSBEELS did not participate in observing the administration. However, Ms. Lopez informed the members that Amanda Sloan, Jennifer O'Neill, and Matt Bryan staffed the Oregon Specific Forest Engineering examination in the OSBEELS office on April 13, 2012 and the Oregon Specific Land Surveying examination at the University of Phoenix on April 14, 2012. In addition, she noted that the Certified Water Right Examination (CWRE) took place on April 13, 2012 in conference room 124A of the Water Resources Department in Salem and at a second site in La Grande at the Agricultural Services Center in the Bud Jones Conference Room.

Ms. Lopez further reported that the numbers of "No Shows" for the NCEES administered examinations have yet to be received but the numbers of "No Shows" for the Oregon Specific administered examinations were: Oregon Specific Land Surveying-4, and CWRE-2. A total of 769 applicants were approved for the April 2012 examination administration.

Registration

Ms. Lopez reported that annual renewal activity for June is underway and Staff mailed approximately 3,203 courtesy reminders on April 1, 2012.

2012 Central/Western Zone Meeting

Ms. Lopez reminded the members that Dan Linscheid, Sue Newstetter, Amin Wahab will join her in representing OSBEELS at the 2012 Western Zone Meeting in Jackson Hole, Wyoming from May 17 – 19, 2012. In addition, the members of the New Mexico Board requested support of Gilbert Chavez, PLS for Western Zone Vice President and the members of the Utah Board requested support of Von Hill, PLS for Western Zone Vice President as provided in the Board packet.

2012 NCEES Annual Meeting

Ms. Lopez announced that arrangements have been made for the NCEES Annual Meeting. This event will take place August 22 – 25, 2012 at the Hyatt Regency in St. Louis, Missouri. President Linscheid will be the NCEES Funded Delegate.

Professional Engineers of Oregon (PEO)

Ms. Lopez reported that Tina Sorensen, Amelia Volker, and Jenn Gilbert presented and answered questions regarding renewals and professional development hour (PDH) requirements, and continuing professional development (CPD) audits to the Mid-Willamette Chapter of PEO at the Yaquina Bay restaurant in Albany on April 12, 2012. Additionally, she stated that they are scheduled to repeat the presentation during PEO's Annual Conference scheduled for May 11, 2012.

Professional Land Surveyors of Oregon (PLSO)

Ms. Lopez reported that Matt Bryan, Jennifer O'Neill, and Amanda Sloan presented the various pathways of obtaining a registration in land surveying to the Willamette Chapter of PLSO at the McNary Golf Course in Keizer on April 16, 2012. President Linscheid also attended.

PDH Presentation

Ms. Lopez briefly reported that on April 26, 2012, Tina Sorensen, Amelia Volker, and Jenn Gilbert again presented and answered questions regarding renewals and PDH requirements, and CPD audits to interested registrants at the Washington County's transportation facility in Hillsboro.

STEM (Science, Technology, Engineering, and Mathematics) Event

Ms. Lopez reported that John Seward volunteered to assist OSBEELS Staff, Matt Bryan, Jennifer O'Neill, and Amanda Sloan during the Umpqua Community College STEM (Science, Technology, Engineering, and Mathematics) Event held on May 3, 2012. Staff provided a small project with materials to the attendees. The project was a "Pop-fly" project as shown in the Board packet materials. The purpose of this event was to familiarize students with the practices of engineering and land surveying. Joy Pariente, OSBEELS Social and Communications Media Specialist also attended the event. Mr. Seward commented that staff did a wonderful job!

Umpqua Community College (UCC) "Explore Engineering & Surveying"

In addition to managing an OSBEELS booth at UCC on May 10, 2012, Ms. Lopez stated that Amanda Sloan and Jennifer O'Neill are scheduled to present information about OSBEELS, the examination process, and the registration process. Mr. Hoffine noted that he will also be attending the event.

Semi-Independent Agency Biennial Reports

Pursuant to Oregon Revised Statute (ORS) 182.472, Ms. Lopez noted that the OSBEELS' report was submitted to the Governor, the President of the Senate, the Speaker of the House of Representatives and the Legislative Fiscal Officer on March 30, 2012. Mr. Tappert thanked staff for including the information in the Board packet.

OSBEELS' Legislation

Ms. Lopez briefly noted that the OSBEELS' proposed legislative concepts were submitted for the 2013 Session. A copy was provided in the Board packets along with the Legislative Concept Development Schedule. There was no further discussion.

Board Vacancies

Although the Governor's Office has yet to fill the vacancies with the Board, Ms. Lopez stated that she was informed by Pamela Larsen, Executive Appointments Program Representative, that they are currently working on OSBEELS' file. Mr. Davis expressed his disappointed in the length of time that this is taking. President Linscheid also noted that if this trend continues, it would be hard for the Board to reach a quorum in order to make decisions. President Linscheid and Mr. Davis will send correspondence to Ms. Larsen encouraging a quicker turnaround in filling the Board vacancies.

Staffing

Ms. Lopez informed the members that the Governor ended the 3-month hiring freeze in March. As a result, effective April 2, 2012, Joy Pariante was hired to replace Ross Gale as the Social and Communications Media Specialist.

PRESIDENT'S REPORT

President Linscheid reported that he attended the PLSO meeting where he was approached by an individual from Morrow County regarding the "new" definition of land surveying as a result of the 2005 Legislative Session. Through discussion, he informed the individual that the Board has not received any law enforcement complaints to date. Ms. Newstetter mentioned that she was invited to the meeting of the Blue Mountain Chapter. She was unaware if the same question would be asked of her, but would encourage any individual to attend a meeting of the Professional Practices Committee meeting for discussion. Ms. Newstetter continued that she anticipates presenting information on the Standards of Land Surveying Practices Committee.

Lastly, President Linscheid noted that Belinda Holcombe-Rasmussen, Executive Director of PEO, strongly encouraged him to attend the PEO Annual meeting on Friday. As a result, President Linscheid will attend the meeting in Eugene. There was no further discussion.

EXAMINATIONS AND QUALIFICATIONS COMMITTEE

Mr. Wahab reported that the E&Q Committee met on April 13, 2012, to discuss the matters as contained in the Committee minutes. Additional discussion was held regarding the following matters:

Exam Irregularity Report

Due to recent irregularity reports received from NCEES, Pam Powell, NCEES Director of Exam Administration Services and Bob Whorton, NCEES Compliance and Security Manager, joined the discussion by telephone. The purpose of the discussion was to obtain information on the selection and training of the proctors, the information given to the examination candidates, and the preparation of the irregularity reports. The Board also discussed the concerns with the information provided by NCEES that is utilized to make a final determination on an examinee's results. Ms. Powell informed the members that proctors generally have an educational background. Some proctors are members of the National College Testing Association (NCTA). Furthermore, the Chief Proctor attends training provided by NCEES and if they are unable to attend the training, a staff member from NCEES will arrive prior to the administration of examinations to train the Chief Proctor. Every couple of years, the Chief Proctor is invited to refresher trainings. The Chief Proctor then is responsible for hiring and training the remaining proctors.

Ms. Powell went on to inform the members of the information available to the examination candidates. It was noted that the candidates must agree twice that they will abide with the NCEES Candidate Agreement, once prior to registering for the examination and once prior to the start of the examination. The information in the NCEES Candidate Agreement is also summarized in the instructions for the examinations read by the Supervising Proctor. Ms. Powell was asked if the candidates are aware of behavior that could cause dismissal from the administration of the examinations. She answered that grounds for dismissal is included in the information provided to the candidates. Ms. Powell will send copies of the information provided to the candidates and to the Chief Proctor to the Board office. Additionally, she noted that the information is available on the NCEES Web site under "My NCEES."

With regard to the irregularity reports, it was noted that the copies received by the Board are sometimes illegible. Ms. Powell offered to type and attach a copy of the reports received from the proctors prior to sending. Concern was expressed with the detail of information given. Through discussion, it was concluded that the Board could request additional information or contact the Chief Proctor. Mr. Whorton also stated that he is available to attend administrative hearings, if necessary, at the expense of NCEES.

Mr. Whorton further informed the members of the statistical analysis used to determine if collusion occurred during an administration. There are five different methods used in collusion analysis and he will gather information about the process and send to the Board office. A concern was raised about the different examination booklets and on how seating is determined. Mr. Whorton stated that an algorithm is used for seating charts to prevent the same versions of the examinations at the same table. Even using this method, it is not foolproof. Moreover, the examination booklets have large letters on the cover to show the version.

Several Board members expressed concerns regarding OSBEELS' participation in the administration of NCEES examinations. As a result, Ms. Lopez will continue to inform the Board members of the examination dates so that they can be approved for observing an administration. There was no further discussion.

Oregon Specific Forest Engineering Examination Syllabus

It was moved and seconded (Newstetter/Doane) to adopt the Oregon Specific Forest Engineering Examination Syllabus. The motion passed unanimously.

Registration

Comity Applications –

Medhat Nakhla - Discussion was held regarding the Committee's recommendation to deny the comity application submitted by Medhat Nakhla. It was moved and seconded (Wahab/Burger) to recommend the denial of Mr. Nakhla's comity application pursuant to ORS 672.148(4) and Oregon Administrative Rule (OAR) 820-020-0015(2). The motion failed (Burger, Newstetter – favor; Linscheid, Davis, Doane, Hoffine, Seward, Tappert, Wahab – opposed). As a result, staff was directed to invite Mr. Nakhla to the June meeting for additional discussion.

Kenneth Savage - Discussion was held regarding the Committee's recommendation to deny the comity application submitted by Kenneth Savage. It was moved and seconded (Davis/Burger) to recommend the denial of Mr. Savage's comity application pursuant to ORS 672.148(4) and ORS 672.045(1). The motion failed (Burger, Doane, Wahab – favor; Linscheid, Davis, Hoffine, Newstetter, Seward, Tappert, – opposed). As a result, staff was directed to invite Mr. Savage to the June meeting for additional discussion.

Professional engineer by Comity – Mr. Wahab then directed the members' attention to the list of 104 applicants for registration as a professional engineer by comity. It was moved and seconded (Wahab/Davis) to approve the list of 104 professional applicants as presented. The motion passed unanimously.

Professional Land Surveyor by Comity – Mr. Wahab then directed the members' attention to the list of 5 applicants for registration as a professional land surveyor by comity. It was moved and seconded (Wahab/Newstetter) to approve the list of 5 professional applicants as presented. The motion passed unanimously.

The Oregon Specific Land Surveying Examination report was also distributed. Mr. Neathamer reported that of the 27 approved examinees, 23 elected to attend. Pursuant to OAR 820-010-0463(3), the cutoff score for the examination is 70 points out of a possible 100 points. However, during the grading session, an error was detected in item 4 of the examination. After discussion by the Examination Development Team, item 4 was deleted and the cut score was set at 70% of a possible 80 points; therefore 56 points is a passing grade. Mr. Neathamer further included in his report that 5 examinees obtained a score with 5 points of the cutoff score and would be allowed to review their examination pursuant to OAR 820-010-0470(1). Ms. Newstetter voiced her concern with the deletion of an examination problem. She noted that she anticipates seeing Mr. Neathamer later in the week and will address her concerns at that time. There was no further discussion.

1st Registration Applications – Mr. Davis directed the members' attention to the 11 applicants seeking 1st registration. It was moved and seconded (Wahab/Davis) to approve the 11 applicants as presented. The motion passed unanimously.

Harvey Barber

The Board reviewed a request from Harvey Barber to waive the CPD requirements as a condition of renewing in the active status. Mr. Barber's question was submitted initially to the Committee. The Committee denied his request to remain compliant with OAR 820-010-0505 and OAR 820-010-0635. Additionally, the Committee informed Mr. Barber that his payment would not be processed until he submitted the CPD Organizational form. Mr. Barber was also informed that his certificate of registration would remain in the delinquent status and that he is not authorized to advertise for or offer to perform professional services. Mr. Barber's request dated April 6, 2012 was in response to the Committee denying his request. After discussion, it was moved and seconded (Doane/Newstetter) to deny Mr. Barber's request to waive the CPD requirements. The motion passed unanimously. It was further discussed that correspondence would be drafted for signature by President Linscheid to include the ORSs and OARs applicable to Mr. Barber's circumstance. There was no further discussion.

EXTERNAL RELATIONS COMMITTEE

Mr. Wahab reported that the ERC met on April 13, 2012, to discuss the matters as contained in the Committee minutes. Additional discussion was held regarding the following matters:

Oregon Examiner

It was moved and seconded (Newstetter/Doane) to approve three article for the next edition of the Oregon Examiner. The motion passed unanimously. The three articles were *Last Administration of the WA SEIII Exam, More Information on Transition to Computer Based Testing for FE and FS Examinations, and Investigation and Enforcement.*

2012 Symposium

The topics briefly mentioned for the 2012 Symposium were Digital Signatures, OSBEELS Law Enforcement, Right of Entry, Qualification Based Selection, and Ethics. Ms. Newstetter will be contacting Mitch Duryea for interest in presenting the Ethics course. There was no further discussion.

FINANCE COMMITTEE

Mr. Doane reported that the FC met on April 13, 2012, to discuss the matters as contained in the Committee minutes. Additional discussion was held regarding the following matters:

Purchasing and Contracting Policies

It was moved and seconded (Newstetter/Hoffine) to adopt the Department of Justice (DOJ) Public Contracts Manual that includes reference to ORS 279A, B, and C, and OAR Chapter 137, Divisions 46 and 47 as the Board's purchasing and contracting policies. The motion passed unanimously.

Review of Financial Reports

Members reviewed the Statement of Net Assets and the Profit & Loss Budget Overview as of March 31, 2012. There was no further discussion.

LAW ENFORCEMENT COMMITTEE

As the substitute Chair for the April meeting, President Linscheid reported that the LEC met on April 12, 2012, to discuss the matters as contained in the Committee minutes. Additional discussion was held regarding the following matters:

Informal Conferences:

2599 – George Frauendiener

Mr. Linscheid reported the Committee met in an informal conference with respondent George Frauendiener, Hicorp Steel Buildings, Inc., to discuss a Notice of Intent (NOI) to assess a \$1,000 civil penalty for the unlicensed practice of engineering violating ORS 672.007(1)(a), ORS 672.020 (1), ORS 672.045(1),(2), and OAR 820-010-0720(1). Mr. Frauendiener, as Hicorp Steel, sold a steel building that also required a professional engineer to design the footings and site plans. The investigation found that Mr. Frauendiener twice invoiced a client for engineering services as the result of his contract with Mark Ellingson, PE. Importantly, Mr. Frauendiener did not employ Mr. Ellingson or another professional engineer nor did he offer the services as a construction contractor licensed under ORS 701 in compliance with OAR 820-010-0720.¹ Mr. Linscheid noted the Committee offered to reduce the civil penalty as long as he complied with telling clients that they had to deal with a professional engineer. Mr. Tappert asked if Mr. Frauendiener was acting as an agent.

AAG Tucker-Davis explained that Mr. Frauendiener was not acting as a middleman, but was contracting separately with the client for the sale of the building and with Mr. Ellingson to perform engineering work. Mr. Frauendiener then billed the client for engineering services using his invoice at a rate higher than a simple pass-through with a service fee. Therefore, Mr. Frauendiener was offering and/or performing engineering services. Mr. Hoffine added that Mr. Frauendiener billed for engineering services and had not informed his client that Mr. Ellingson was the engineer. The Committee issue was not the additional charges invoiced.

¹ OAR 820-010-0720, Advertising for or Offering to Perform Services without Employing a Licensee; Engineering, Land Surveying and Photogrammetry Offices:

- (1) A licensee or firm, partnership, corporation, limited liability company, joint stock company, or other organization shall not advertise for or offer to perform or perform professional services for which a license is required unless the licensee or organization has a full-time partner, manager, officer or employee licensed to practice in the discipline for which a license is required.
- (2) Licensees and organizations shall not advertise for or offer to perform or perform professional services for which a license is required but for which they do not hold, or have a qualified person who holds, a license and thereafter seek to employ persons who hold a qualifying license.
- (3) As used in this rule, a “full-time partner, manager, officer or employee” refers to a person who:
 - (a) Is physically present at least one half of the person’s working time in the offices of the licensee or organization during normal business hours unless the full-time partner’s, manager’s, officer’s or employee’s professional duties require that the person be elsewhere; and
 - (b) Is not working for the licensee or organization under a contract or as a consultant for specific projects.
- (4) A licensee or person employing or having a licensee as its partner, manager, or officer, may operate a project office for which no licensed professional engineer, land surveyor or photogrammetrist is physically present at least one half of the person’s working time, provided that the project office qualifies under this section and that no services are advertised or offered making reference to or in connection with the project office, its address or phone number. For purposes of this section, a project office is a workstation for a specific project, the use of which will not extend beyond the scope or duration of the specific project.

AAG Tucker-Davis clarified that a person cannot offer to perform engineering without employing an engineer or without having a license with the Construction Contractors Board (CCB) and declaring the engineer. Mr. Frauendiener, who did not employ an engineer and was not a CCB licensee, used his invoice to bill for engineering services. Ms. Newstetter stated her experience is to put an engineer together with a client, but she cannot offer engineering services by a side contract with the engineer. A project manager can coordinate engineering services, but cannot offer those services. Mr. Tappert restated that a CCB license is crucial to a design-build project. They should be licensed contractors and declare their engineer, but Mr. Frauendiener was not and therefore could not offer engineering services. Investigator McCartt informed the Board the Mr. Frauendiener lost his contractor's license and was unable to offer construction services.

The Committee offered to reduce the civil penalty from \$1,000 to \$500 if Mr. Frauendiener was in compliance with the requirement that customers need to deal directly with an engineer. Mr. Frauendiener accepted. It was moved and seconded (Newstetter/Hoffine) to approve the settlement agreement with Mr. Frauendiener. The motion passed unanimously.

2616 – Leland A. MacDonald

Mr. Linscheid reported the Committee met in an informal conference with respondent Leland A. MacDonald, PLS, CWRE, to discuss a NOI to assess a \$1,000 civil penalty for failing to give right-of-entry notice violating ORS 672.047(4). Mr. MacDonald's field crew staked a boundary line inside property where they failed to provide the owner notice. Mr. Linscheid commented this was a straightforward right-of-entry case where a crew set property corners on the other side of a fence without notice. Mr. MacDonald accepted responsibility and also informed the Committee about changes he made to his operations. The Committee offered to assess Mr. MacDonald a \$250 civil penalty. It was moved and seconded (Davis/Newstetter) to approve the settlement agreement with Mr. MacDonald. The motion passed unanimously.

2656 – Mikhail P. Golberg

Mr. Linscheid reported the Committee met in an informal conference with respondent Mikhail P. Golberg, EIT, Certified Engineering Geologist (CEG), to discuss a NOI to assess a \$2,000 civil penalty for violating ORS 672.020(1), ORS 672.045(1),(2), and OAR 820-010-0720(1). Mr. Golberg prepared a report wherein he provided engineering recommendations not done by a professional engineer. He also claimed it was a "geotechnical report" that listed his geotechnical concerns with geotechnical design and construction recommendations. Lastly, Mr. Golberg sealed the report with his CEG seal under his firm name of Hydro-Geo Engineering, Inc. (HGE).

The Committee found that Mr. Golberg engaged in the unlicensed practice of geotechnical engineering and unlicensed use of the "engineer" title in his firm name. Mr. Hoffine clarified that Mr. Golberg offered asphalt engineering specifications for design recommendations and this was the practice of engineering. Mr. Linscheid added that after some discussion, the Committee offered a settlement of \$1,000, but Mr. Golberg wanted to go to hearing. The Board will be making the arrangements.

Ms. Newstetter stressed that this case involves the Oregon Department of Consumer & Business Services, Office of Minority, Women and Emerging Small Business (OMWESB). She stated

that the Office issued Mr. Golberg authorization codes to provide services based on his application and reported experience, including geotechnical and geotechnical engineering, and that Mr. Golberg asserted the Office certification was approval for him to provide those services. However, this authorization has caused conflict since Mr. Golberg cannot lawfully offer geotechnical engineering services because he is licensed by the Oregon Board of Geologist Examiners (OSBGE) to provide only the services of a Certified Engineering Geologist.

2724 – Michael Kath

Mr. Linscheid reported the Committee met in a teleconference with respondent Michael Kath, PE, to discuss a NOI to assess a \$2,000 civil penalty for use of the engineer title and for engaging in the unlicensed practice of engineering violating ORS 672.007(1)(a) and ORS 672.020(1). Mr. Linscheid observed that this case was substantially related to Mikhail P. Golberg (case #2656). Mr. Kath assisted Mr. Golberg in preparing the report, but signed it as Mike Kath, EIT, “Senior Engineer.” At the time, Mr. Kath was not registered with the Board as a professional engineer and could not use the engineer title. Mr. Hoffine thought that Mr. Kath offered a view of what happened during the preparation of the Golberg report that was different from Mr. Golberg. Nevertheless, the Committee offered to drop the unlicensed practice allegation and to issue a \$250 civil penalty for use of the title. Mr. Linscheid stated that Mr. Kath had accepted the settlement agreement by email. It was moved and seconded (Newstetter/Davis) to approve the settlement agreement with Mr. Kath. The motion passed unanimously.

2605 – Daniel W. Baker

Mr. Linscheid reported the Committee met in an informal conference with respondent Daniel W. Baker, PLS, and his attorney Don Curnside to discuss a NOI to revoke Mr. Baker’s professional land surveying registration and to assess a \$4,000 civil penalty violating ORS 672.025(2), OAR 820-010-0621, OAR 820-020-0015(2), ORS 672.200(2),(4), and ORS 672.047(4). Mr. Baker was hired to survey a large tract of land and he discovered a deed gap between the large tract and the adjoining lot properties. The investigation found that Mr. Baker prepared an unsealed map of survey for his client. The client’s attorney wrote a subsequent letter to the adjoining owners informing them that an existing fence was the boundary line and he used the Baker map as an illustrative attachment, so the neighbors agreed to a quiet title action. The deed gap was awarded. Afterwards, Mr. Baker returned to stake the boundary for fence reconstruction and the fence line was found not in harmony with the deeded property lines. Mr. Baker produced a second, unsealed map showing the fence location contrary to its depicted on the first Baker map. The neighbors filed suit. The investigation found that Mr. Baker had not located the fence prior to its first depiction and he had not sealed and signed the two surveys.

Mr. Tappert asked if Mr. Baker was able to fix the matter. Mr. Linscheid replied that Mr. Baker at his expense agreed to move the boundary line to match the existing fence. He continued that Mr. Baker also wanted the Board to approve Mr. Baker to publically present his experience from this case, which was not accepted. He would need to do so without Board approval. Mr. Hoffine added that Mr. Baker’s client used the map in a manner not intended, but it still should have been accurate and sealed. The Committee agreed in a settlement to drop revocation and to reduce the civil penalty to \$1,500. It was moved and seconded (Newstetter/Davis) to approve the settlement agreement with Mr. Baker. The motion passed unanimously.

2750 – Shaun Martin

Mr. Linscheid reported the Committee met in a teleconference with respondent Shaun Martin, EIT, to discuss a NOI to revoke his EIT certification and to assess a \$1,000 civil penalty violating ORS 672.200(1) and ORS 672.045(1),(2). Mr. Martin sealed and signed a “Professional Letter of Reference – Professional Engineer” for a Missouri applicant. When the Missouri Board contacted OSBEELS to confirm Mr. Martin’s registration, he was found to be an EIT who was not authorized to represent himself as a professional engineer. Mr. Martin also affixed to the reference letter an embossed seal, used the title of Civil Engineer, and offered an opinion as a professional engineer to the Missouri Board. Upon investigation, Mr. Martin accepted full responsibility and admitted using “extremely poor judgment.”

Mr. Hoffine observed that Mr. Martin was in the Army Corps of Engineers and he needed his EIT to continue to work. As a result, the Committee dropped the revocation to a 90-day suspension, but kept the \$1,000 civil penalty. Ms. Newstetter thought he was not forthcoming in that he allowed people to think he was a PE when he was not. This led to his deputy commander asking for the reference letter. It was moved and seconded (Hoffine/Newstetter) to approve the settlement agreement with Mr. Martin. The motion passed unanimously.

2677 – Chul Hwan Shim / OSBEELS

Mr. Linscheid reported the Committee attempted to hold a teleconference with respondent Chul Hwan Shim, PE, to discuss a NOI to assess a \$1,000 civil penalty for failing to submit a change of address violating OAR 820-010-0605. Mr. Shim was required during an audit to submit proof of PDH units. Because auditors were unable to reach him, an email inquiry sent by the Regulation Department ultimately resulted in Mr. Shim submitting documentation that was found compliant with CPD requirements. However, his failure to comply was a direct result of his failure to maintain a correct address with the Board.

To prepare for the informal conference since Mr. Shim is a resident of South Korea, staffs arranged for a translator through an international teleconference center. Mr. Shim failed to call at the appointed time. After noting further Committee discussion about the protocols for international dialing and the potential for issuing of a Default Final Order, Mr. Linscheid asked for Board discussion. Investigators also briefed the Board about miscommunication stemming from the language barrier. In view of the problems, staffs evaluated other options and suggested another informal conference with a translator the Board provides from the Salem office. The Board agreed to allow Mr. Shim another informal conference.

Ms. Newstetter also reminded the Board about an email meant to alert the members about a late start to the next Committee meeting. Investigator Wilkinson had emailed the Committee members noting that due to the time zone differences between Oregon and Korea that a lunch start time for the Committee meeting would accommodate informal conference schedules for two Korean respondents (Shim/Cho).

2649 – Yong-su Cho

Mr. Linscheid reported the Committee met in a teleconference with respondent Yong-su Cho, PE (delinquent), to discuss a NOI to suspend registration for 90 days and to assess a \$2,000 civil

penalty for violation of ORS 672.200(4), OAR 820-010-0635(1),(5), OAR 820-015-0026(1), and OAR 820-020-0015(7),(8). Mr. Cho is a South Korea resident who signed a renewal form certifying he completed the required PDH units. However, Mr. Cho did not respond to the audit until the second notice when the Board received a CPD Organizational Form claiming 60 PDH units, but no supporting documentation was included. When he subsequently failed to respond to the allegations, or to the allegations presented in the NOI, the Board discussed his comment that he could not speak English well and could not participate in an informal conference. As a result, the Board offered Mr. Cho an informal conference with translation services.

The Board learned that the Committee conducted an informal conference with Mr. Cho. Mr. Cho asserted compliance with the CPD requirements, but was having difficulty in understanding what was needed as documentation to show compliance, which the Committee viewed as an educational effort. Some of his certificates were in English, most others not. After further exchanges through the translator, Mr. Cho was informed that he needed to communicate with the Board and was to provide whatever documentation he may have for evaluation. The translated certificates need not be notarized. As a result, the Committee offered Mr. Cho the opportunity to submit documentation of compliance with CPD regulations. Investigators informed the Board that the documentation was received and appeared to be in order. However, the issue is of cooperation, which can be discussed in an informal conference scheduled for the next Committee meeting.

Committee Meeting:

2611 – Martin Stewart / Anna Cornelison

Mr. Linscheid reported the Committee discussed that complainant Anna Cornelison alleged that respondent Martin Stewart, PLS, CWRE, failed to provide right of entry notice. The investigation found that Mr. Stewart met on his client's property with neighbors Ms. Cornelison and Robert Elting. During this meeting, Mr. Elting was consulted about the survey and was therefore noticed. The Committee also reviewed Ms. Cornelison's concerns about errors that Mr. Stewart fixed by filing a corrected survey. Mr. Linscheid observed this was a case where the surveyor missed a buried monument and he had to correct his findings on filed surveys. It was a simple mistake. It was moved and seconded (Tappert/Newstetter) to close the case as allegations unfounded. The motion passed unanimously.

2617 – Jay Corgiat / Ruben Martinez

Mr. Linscheid reported the Committee discussed that complainant Ruben Martinez alleged that Jay Corgiat, President of Environmental Information Logistics, LLC (EIL), Wheaton, Illinois, advertised for and offered to perform engineering services from their Hood River branch office without employing an Oregon registered professional engineer. The Committee discussed that EIL employs Edward J. Doyle, PE, as their registered professional engineer. Mr. Doyle visits the Hood River office two or three times a year, but does most of his work from his Illinois office. Therefore, Mr. Doyle's professional duties require that he reside in Illinois and visit each office as needed. However, there was discussion about referral of OAR 820-010-0720 to the Rules & Regulations Committee for clarification. It was moved and seconded (Tappert/Newstetter) to close the case as allegations unfounded. The motion passed unanimously.

2618 – Ruben Martinez / OSBEELS

Mr. Linscheid reported the Committee discussed that respondent Ruben Martinez, PLS (revoked), sent an email to the Board office alleging that Jay Corgiat was engaged in the unlicensed practice of engineering and land surveying. A case was opened against Mr. Corgiat (#2617). However, Mr. Martinez used a Portland address and telephone number with the “PLS” title in his email complaint to the Board. Since Mr. Martinez had been revoked and could not use the PLS title as per ORS 672.007(2)(a), a respond to allegations letter was sent notifying him that he could not use the title in Oregon. When he responded, he stated he was a registered land surveyor in Washington State and was completely unaware that he could not use the PLS designation in Oregon. Despite being informed of the violation, he signed the response and subsequent emails as Ruben M. Martinez, PLS. The Committee determined to issue Mr. Martinez a Notice of Intent to assess a \$1,000 civil penalty for unlicensed use of the title violating ORS 672.025(1).

2619 – Gary K. Underhill / OSBEELS

Mr. Linscheid reported the Committee discussed that respondent Gary K. Underhill, PE, submitted a signed renewal form along with his renewal payment. However, Mr. Underhill failed to submit his renewal prior to his registration expiring and it was processed with an assessed delinquency fee. Mr. Underhill failed to respond to a notice of the required delinquency fee to reactivate his registration and it remained delinquent until he contacted the Board on an unrelated matter. Mr. Underhill was unaware his registration was delinquent. However, he indicated he had engaged in the practice of engineering during the time period when his registration was delinquent. As a result, the Committee determined to issue Mr. Underhill a Notice of Intent to assess a \$1,000 civil penalty for unlicensed practice of engineering violating ORS 672.020(1), ORS 672.045(1),(2), and OAR 820-010-0720(1).

2627 – Russell Faux / OSBEELS

Mr. Linscheid reported the Committee discussed that respondent Russell Faux attended the Committee meeting and was able to answer their questions. He stated Mr. Faux and his firm were hired to provide LiDAR data under an Oregon Department of Geology and Mineral Industries (DOGAMI) contract. The agency wanted to update its land slide hazard assessment maps along the coast. The Committee grappled with whether or not the work was conducted under the proper supervision and control of a registered professional land surveyor. Mr. Faux clarified for the Committee that the contract work was overseen by a registered, part-time employee. In addition, they were not preparing surveying maps, but producing data for an elevation model. The model showed the shape of the earth. Mr. Hoffine commented that there may have been a violation at the time of the contract given that the professional was not a full-time employee as required. Nevertheless, they now have a full-time employee registrant to oversee the work. It was moved and seconded (Hoffine/Tappert) to close the case as compliance met. The motion passed unanimously.

2720 – Tim H. Thex / OSBEELS

Mr. Linscheid reported the Committee discussed that respondent Tim H. Thex, PE, was sent a letter requesting his participation in the audit of documentation to support the PDH units he claimed as a condition of the last biennial renewal period. When Mr. Thex did not respond to the initial request, or to subsequent audit request letters, he responded to the Regulation Department

by stating he had retired from active practice and had forgotten to retire his registration. Mr. Linscheid commented that Mr. Thex also returned his pocket card. Ms. Newstetter remarked that Mr. Thex had suffered a 100% disability with ongoing health challenges. It was moved and seconded (Tappert/Doane) to close the case as voluntary surrender of registration. The motion passed unanimously.

New Business:

Preliminary Evaluation: Christopher Bradbury allegations against David Bonneville

Mr. Linscheid reported the Committee discussed that Christopher Bradbury alleged David Bonneville, PE, had published two different résumés on the Web. The evaluation found that the marketing department of the firm employing Mr. Bonneville mistakenly published the wrong résumé on their Web Site. Mr. Bonneville already had corrected the matter when contacted by the Board's investigator. Mr. Bonneville also informed that he closely monitors his résumé when sent as part of a proposal. He stated there were no mistakes in those instances over which he had control. The Committee determined to not open a law enforcement case.

Preliminary Evaluation: Terry Clinton allegations against Oregon Military Department

Mr. Linscheid reported the Committee discussed that Terry Clinton alleged the Oregon Military Department was not following the requirements of OAR 806-010-0050. However, OSBEELS does not have authority over that rule and referred the matter to the Oregon Board of Architect Examiners (OBAE). The Committee determined to not open a law enforcement case.

Preliminary Evaluation: Renewal delinquency of Kerry Bradshaw, PLS

Mr. Linscheid reported the Committee discussed that Kerry Bradshaw, PLS, failed to renew his registration in a timely manner and was delinquent during the January – February 2012 time frame. Questions then arose about whether he had engaged in professional practice of land surveying during his delinquency. However, the Committee could not discuss the case because a member recused himself and quorum was lost. The Committee will discuss the matter at the next Committee meeting.

Unfinished Business:

2613 – Cathey, request for waiver of remaining civil penalty

Mr. Linscheid reported the Committee discussed that George Cathey, PLS (retired), CWRE (retired), had submitted a request to renegotiate his settlement agreement. However, Mr. Cathey has been deployed and would not be able to discuss his request until a later date. Mr. Linscheid stated that the Committee will meet with Mr. Cathey once he returns and submits the proper paperwork.

Settlement Agreements:

Mr. Linscheid reported the Committee reviewed the list of Cases Subject to Collections (9), Cases Subject to Monitoring (11), and Case Status Report (110 open cases) and offered no comments. He also commented that of the 110 law enforcement cases three or four cases were active right-of-entry cases that occurred prior to the law changing. He also noticed that over half of the pending cases are CPD cases.

PROFESSIONAL PRACTICES COMMITTEE

Ms. Newstetter reported that the PPC met on April 13, 2012, to discuss the matters contained in the Committee minutes. There was no further discussion.

STANDARDS OF LAND SURVEYING PRACTICES COMMITTEE

Ms. Newstetter reported that the SOP Committee met on April 12, 2012, to discuss the matters contained in the Committee minutes. There was no further discussion.

RULES AND REGULATIONS COMMITTEE

Mr. Doane reported that the RRC met on April 13, 2012, to discuss the matters contained in the Committee minutes. Additional discussion was held regarding the following matters:

OAR 820-010-0415 – Nature of the Examination for Professional Engineer

It was moved and seconded (Doane/Tappert) to approve with the rulemaking process to amend OAR 820-010-0415 as presented. The motion passed unanimously.

OAR 820-010-0226 – Educational Requirements to Take the Fundamentals of Land Surveying (FLS) Examination for Enrollment as a Land Surveyor Intern (LSI) = FOM Request

Ms. Newstetter briefly informed the members that she had a recent conversation with Mr. Neathamer regarding alternate pathways to the FLS examination. Mr. Neathamer reminded her that this topic was brought to legislation during the late 1990's and failed. Ms. Newstetter will conduct research related to the previous request so history does not repeat itself. Staff still intends to submit draft language to the remaining schools for review and comment.

RULES HEARING

As a result of the Rules Hearing held at 2:00 p.m., the following action was taken by the Board:

OAR 820-010-0730 – Use of Engineering Title if Registered in Other Jurisdiction

It was moved and seconded (Tappert/Doane) to adopt OAR 820-010-0730 as presented. The motion passed unanimously.

OAR 820-010-0204 – Applications for Registration as Professional Engineer (PE) Based on Examination by Another Jurisdiction or by NCEES (1st Registration)

It was moved and seconded (Tappert/Davis) to amend OAR 820-010-0204 as presented. The motion passed unanimously.

OAR 820-010-0206 – Applications for Registration as Professional Land Surveyor (PLS) Based on Examination by Another Jurisdiction or by NCEES (1st Registration)

It was moved and seconded (Tappert/Doane) to amend OAR 820-010-0206 as presented. The motion passed unanimously.

OAR 820-010-0208 – Applications for Registration as Professional Photogrammetrists Based on Examination by Another Jurisdiction or by NCEES (1st Registration)

It was moved and seconded (Tappert/Doane) to amend OAR 820-010-0208 as presented. The motion passed unanimously.

OAR 820-010-0209 – Applications for Certification as a Water Right Examiner

It was moved and seconded (Tappert/Davis) to amend OAR 820-010-0209 as presented. The motion passed unanimously.

OAR 820-010-0210 – Application for Enrollment as an Engineering Intern (EI) and Land Surveying Intern (LSI)

It was moved and seconded (Tappert/Doane) to amend OAR 820-010-0210 as presented. The motion passed unanimously.

OAR 820-010-0212 – Applications for Registration as Professional Engineers (PE) Based on Examination

It was moved and seconded (Tappert/Doane) to amend OAR 820-010-0212 as presented. The motion passed unanimously.

OAR 820-010-0213 – Applications for Registration as Professional Land Surveyors (PLS) Based on Examination

It was moved and seconded (Tappert/Davis) to amend OAR 820-010-0213 as presented. The motion passed unanimously.

OAR 820-010-0214 – Applications for Registration as Professional Photogrammetrists (RPP) Based on Examination

It was moved and seconded (Tappert/Wahab) to amend OAR 820-010-0214 as presented. The motion passed unanimously.

OAR 820-010-0215 – Form of Applications

It was moved and seconded (Tappert/Doane) to amend OAR 820-010-0215 as presented. The motion passed unanimously.

OAR 820-010-0260 – Denied Applications

It was moved and seconded (Tappert/Doane) to amend OAR 820-010-0260 as presented. The motion passed unanimously.

OAR 820-010-0300 – Refunds and Charges

It was moved and seconded (Tappert/Doane) to amend OAR 820-010-0300 as presented. The motion passed unanimously.

OAR 820-010-0305 – Fees

It was moved and seconded (Tappert/Doane) to amend OAR 820-010-0305 as presented. The motion passed unanimously.

OAR 820-010-0442 – Application Deadlines

It was moved and seconded (Tappert/Doane) to amend OAR 820-010-0442 as presented. The motion passed unanimously.

OAR 820-010-0465 – Application for Readmission to Examination

It was moved and seconded (Tappert/Doane) to amend OAR 820-010-0465 as presented. The motion passed unanimously.

OAR 820-010-0505 – Biennial Renewal of Registration or Certification

It was moved and seconded (Tappert/Davis) to amend OAR 820-010-0505 as presented. The motion passed unanimously.

OAR 820-010-0520 – Registrants or Certificate Holders Not Qualified to Practice

It was moved and seconded (Tappert/Doane) to amend OAR 820-010-0520 as presented. The motion passed unanimously.

OAR 820-010-0530 – United States Military Registrants

It was moved and seconded (Tappert/Doane) to amend OAR 820-010-0530 as presented. The motion passed unanimously.

OAR 820-010-0621 – Final Documents

One written comment was submitted to the Board related to the proposed amendment to OAR 820-010-0621. Jim Elam stated his opposition to deleting the last sentence. He believes that the existing language makes it very clear that the work submitted to the County Surveyor is a final document that requires the seal and signature of the registrant. As an alternative, Mr. Elam

suggested changing “public jurisdiction” to “County Surveyor’s Office.” It was discussed that the County Surveyor is not required to accept a document without a seal and signature of a registrant. As a result, it was moved and seconded (Tappert/Davis) to amend OAR 820-010-0621 as presented. The motion passed unanimously.

OAR 820-010-0622 – Modifying Designs or Documents

It was moved and seconded (Tappert/Doane) to amend OAR 820-010-0622 as presented. The motion passed unanimously.

ADJOURN

The meeting was adjourned at 4:16 p.m.

NEXT MEETINGS

Next Board Meeting:

July 10, 2012

Next Committee Meetings:

LAW ENFORCEMENT:

Thursday, June 14th at 12:00 p.m.

RULES & REGULATIONS:

Friday, June 15th at 8:00 a.m.

Digital Signatures:

Friday, June 15th at 9:00 a.m.

EXAMINATIONS & QUALIFICATIONS:

Friday, June 15th at 10:00 a.m.

EXTERNAL RELATIONS:

Friday, June 15th at 11:30 a.m.

FINANCE:

Friday, June 15th at 12:00 p.m.

PROFESSIONAL PRACTICES:

Friday, June 15th at 1:00 p.m.