



# Oregon

State Board of Examiners for  
Engineering & Land Surveying  
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## Minutes of Meeting January 8, 2013

### **CALL TO ORDER**

President Linscheid called the meeting to order at 9:01 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  
James Doane  
Sue Frey (arrived at 12:05 p.m.)  
Ken Hoffine  
Sue Newstetter  
Carl Tappert  
Amin Wahab

### **Others Present:**

Mari Lopez, OSBEELS Executive Secretary  
Jenn Gilbert, OSBEELS Executive Assistant  
JR Wilkinson, OSBEELS Investigator  
Allen McCartt, OSBEELS Investigator  
Monika Peterson, OSBEELS Investigator  
Joy Pariante, OSBEELS Social and Communications Media Specialist  
Katharine Lozano, Assistant Attorney General  
Matthew Cash, PE, PEO

### **APPROVAL OF AGENDA**

Ms. Newstetter requested to add the Western Zone Nomination discussion under New Business. It was moved and seconded (Tappert/Newstetter) to approve the agenda, with the requested addition. The motion passed unanimously.

### **APPROVAL OF MINUTES**

It was moved and seconded (Newstetter/Doane) to approve the minutes of the November 13, 2012 Board Meeting. The motion passed unanimously.

### **PUBLIC INPUT**

Matthew Cash, PE, was in attendance as a representative of Professional Engineers of Oregon (PEO). He informed the Board of the PEO meeting Saturday, January 12, 2013 in Corvallis,

which will focus on Quality Based Selection (QBS) changes. Also discussed will be Engineering Week events and the PEO conference in May 2013 in Grants Pass.

## **EXECUTIVE SECRETARY'S REPORT**

### **Committee Activities**

Ms. Lopez reported that the Examinations and Qualifications (E&Q) Committee, External Relations Committee (ERC), Finance Committee (FC), Law Enforcement Committee (LEC), Professional Practices Committee (PPC), and the Rules and Regulations Committee (RRC) each met during the interim. Additionally, the Oregon Specific Examinations Task Force (OSETF) met. 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 October 2012 FE, FLS, PE, and PLS examination scores have been sent with the exception of the Acoustical. Staff has yet to receive the results from this examination. Ms. Newstetter, who chairs the Oregon Specific Exam Task Force (OSTEF), expressed concern about the Acoustical examination liaison not attending OSTEF meetings with the other examinations' liaisons. Ms. Lopez said the Acoustical liaison has been invited to both OSTEF meetings, but no response was received. Ms. Lopez is also unaware of any alternate liaison for the Acoustical examination. As a result, it was moved and seconded (Newstetter/Doane) to have OSBEELS Staff draft a letter to the Acoustical examination liaison expressing the importance of communication with Staff and attendance at OSTEF meetings. The motion passed unanimously.

Preparations are underway for the April 2013 examinations. However, Ms. Lopez reported that NCEES has listed 2 exam irregularities in Salem from the October 2012 administration. Upon further information provided by NCEES, additional discussion will be held during the Board's next LEC meeting in February.

#### *2013 Board Presidents' Assembly*

Ms. Lopez reported that the 2013 Board Presidents' Assembly is scheduled for February 8th – 9th in Atlanta, Ga. President Linscheid will attend this meeting.

#### *2013 Western Zone Meeting*

Ms. Lopez reported that the 2013 Western Zone Meeting will be at the Hilton San Francisco Financial District in San Francisco, Calif. from April 18th – 20th. Funded Delegate notification response is needed by Monday, January 14th. Ms. Lopez and Matt Bryan, Administrative Specialist, will be in attendance. President Linscheid will be the funded delegate and Ms. Newstetter also showed interest in attending.

#### *Professional Land Surveyors of Oregon (PLSO)*

Ms. Lopez reported that PLSO has requested a speaker from OSBEELS for their Annual Conference on January 25th. Mr. Wilkinson and Ms. Peterson plan to present "Introduction to OSBEELS Law Enforcement."

### *Engineer's Week*

Ms. Lopez reported that, in addition to managing an OSBEELS booth at the Southwestern Oregon Community College (SOCC) on February 20th, to celebrate the 7th Annual Engineer Week Career Exploration Dinner, Matt Bryan and Jennifer O'Neill, Administrative Specialists will present information about OSBEELS, the examination process, and the registration process.

### *OSBEELS' Legislation*

Ms. Lopez reported that the OSBEELS' proposed legislative concepts have been assigned bill numbers for the 2013 Session; LC 388=SB 208, LC 734=SB 209.

### *Board Vacancies*

Ms. Lopez reported that the Governor's Office has yet to fill 3 positions. However, she has been in contact with the Governor's Office and, in a recent email, the office indicated they are actively working to fill these vacancies.

### *Staffing*

Ms. Lopez reported that the announcement for one full-time Office Specialist 1 (Receptionist) position has been posted since January 3rd.

### *Forest exam liaison recruitment*

Ms. Lopez presented the draft Forest exam liaison recruitment letter to the Board. The letter will be sent to Oregon State University and the Forest Engineering Professionals Association. It was moved and seconded (Hoffine/Newstetter) to approve the letter, with suggested changes, for distribution. The motion passed unanimously.

## **PRESIDENT'S REPORT**

President Linscheid stated he had no formal report, but he needed Staff assistance in drafting a Business Appreciation Letter to the Japan PE/FE Examiners Council (JPEC) for their 10-year anniversary. The letter should discuss JPEC's partnerships with OSBEELS and OSBEELS' assistance with examinations in Japan from 1994-2005. Ms. Pariante will assist with the composition of the letter.

**Staff Update:** Ms. Pariante drafted the correspondence and it was reviewed by Ms. Gilbert and Ms. Lopez. President Linscheid and Ms. Lopez signed the letter and it was sent to JPEC on January 9, 2013.

## **EXAMINATIONS AND QUALIFICATIONS COMMITTEE**

Mr. Burger reported that the EQC met on December 14, 2012, to discuss the matters as contained in the Committee minutes. Additional discussion was held regarding the following matters:

### **Review of Applications**

Reapplications

*Simescu, Andreea*

It was moved and seconded (Burger/Newstetter) to approve Ms. Simescu to take the PE (Civil) examination in April 2013. The motion passed unanimously.

Examination Applications

*Kennedy, Marie*

It was moved and seconded (Tappert/Hoffine) to ratify the Committee's determination regarding approving Ms. Kennedy's FE examination application. The motion passed unanimously.

### **Unfinished Business**

#### *Replacement Wall Certificate*

Mr. Burger informed the Board that the decision on this matter is not as easy as it seems. Mr. Hoffine asked why the Board can't just issue a copy of the certificate and charge a fee for the reissue. AAG Lozano said the Board's current rule says that wall certificates indicate the ability to practice. In order to reissue these certificates as keepsakes, the Board must change the rule. Mr. Doane said this issue is very important to the individual asking for the replacement. Mr. Burger said it was a shame the Board doesn't issue retirement certificates. He suggested sending a letter to registrants upon retirement to document their term of licensure and Ms. Lopez pointed out that Staff already do this. President Linscheid said the issue was not cause to go to an emergency rulemaking hearing, but, if it's something the Board wants to continue to pursue, the issue can be sent back to the Rules and Regulations Committee. Mr. Tappert pointed out that issuing commemorative items is not one of the duties of the Board and it creates additional work for Staff. It was moved and seconded (Doane/Newstetter) to send a letter to the registrant who requested the replacement wall certificate explaining that the rules don't allow reissue of certificates and to include an additional letter documenting the individual's registration history. The motion passed, with one opposition (Doane).

### **New Business**

#### *Kesner, Keith*

It was moved and seconded (Doane/Tappert) to issue a Final Order to Mr. Kesner confirming the Administrative Law Judge's Decision to uphold the Board's decision to deny his Registration by Comity. The motion passed unanimously.

#### *Registration by Comity List*

It was moved and seconded (Burger/Wahab) to approve the list of 53 applicants for Registration by Comity. The motion passed unanimously.

#### *Registration by 1<sup>st</sup> Registration List*

It was moved and seconded (Burger/Doane) to approve the list of 7 applicants for Registration by 1<sup>st</sup> Registration. The motion passed unanimously.

### **OREGON SPECIFIC EXAMINATIONS TASK FORCE**

Ms. Newstetter reported that the OSETF met on December 14, 2012, to discuss the matters as contained in the Committee minutes. Additional discussion was held regarding the following matters:

#### **Oregon Specific Examinations Security**

Ms. Newstetter is concerned with current examination security measures. AAG Lozano said that the documents are allegedly locked, but if the examinations and question banks are not under OSBEELS' control, there's no confirmation of the security of the documents. Ms. Newstetter said she would like to have OSBEELS staff scan and store all previous examinations and

maintain the question banks for the development teams. This, she said, would increase security of the examination questions and answers and reduce the work expected of the volunteer-only examination development teams. The issue will be addressed again during the February OSETF meeting.

## **EXTERNAL RELATIONS COMMITTEE**

Ms. Newstetter reported that the ERC met on December 14, 2012, to discuss the matters as contained in the Committee minutes. Additional discussion was held regarding the following matters:

### **Oregon Examiner**

Reciprocal Disciplinary Action - It was moved and seconded (Newstetter/Doane) to approve the article for the next edition of the *Oregon Examiner*. The motion passed unanimously.

Oregon Specific Exam Task Force Reconvenes - It was moved and seconded (Newstetter/Doane) to approve the article for the next edition of the *Oregon Examiner*. The motion passed unanimously.

### **OSBEELS Symposium 2013**

It was moved and seconded (Newstetter/Doane) to approve the Salem Conference Center for the 2013 OSBEELS Symposium location and to approve the theme of Infrastructure and the Environment. The motion passed unanimously.

### **Social Media**

Mr. Hoffine asked how OSBEELS' social media presence will benefit the Board. Ms. Pariante explained that involvement in social media allows for more open communication with registrants, potential registrants, and the community. Mr. Hoffine said he was concerned about social media turning into a complaint forum. Ms. Pariante explained that, even if there are complaints, the way OSBEELS Staff responds to those complaints can have a big impact on public impression. Also, the commenting procedures were drafted to help prevent inappropriate or unlawful content. AAG Lozano recommended if any offending material is posted, to contact AAG Tessa Sugahara before removing any content. The page can be temporarily disabled to prevent offensive material from being viewed. Mr. Hoffine asked why OSBEELS can't just remove everything that is in violation of the commenting procedures. AAG Lozano said that it becomes a freedom of speech issue. OSBEELS Staff can refer violating commenters to the commenting procedures and, if an individual continues to violate the posted procedures, their access to the OSBEELS page can be revoked. It was moved and seconded (Newstetter/Hoffine) to accept the Social Media Commenting Procedures as presented. The motion passed unanimously.

## **FINANCE COMMITTEE**

Mr. Tappert reported that the FC met on December 14, 2012, to discuss the matters as contained in the Committee minutes. Additional discussion was held in reference to the following matters:

### **Tablets**

Mr. Tappert reported that discussion with Grant Moyle, IT contractor, reassured the committee members of the usefulness and security of iPads. It was moved and seconded (Doane/Tappert) to

move forward and implement iPads for Board use. The motion passed unanimously.

### **Review of Financial Information**

Mr. Hoffine asked if the Board should put aside money for off-site file storage. Ms. Lopez said that OSBEELS has its digital files backed up in Chicago, Illinois, and paper files are archived through the state, according to state rules. Mr. Hoffine also asked about the necessity of a litigation fund. AAG Lozano said it wasn't needed because the Board has enough funds to cover issues with regulatory cases, if needed. However, she said this may change in the future depending on the Board's available funds. AAG Lozano also explained that any other litigation money that OSBEELS would owe would be paid out by Risk Management and then repaid over time by the Board. There was no further discussion

### **LAW ENFORCEMENT COMMITTEE**

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

#### **Committee Meeting:**

*2684 – Dana Lattin/OSBEELS*

It was moved and seconded (Tappert/Hoffine) to approve the settlement agreement with Mr. Lattin. The motion passed unanimously.

*2678 – Troy Plum/Brett Martin*

It was moved and seconded (Tappert/Hoffine) to close the case as allegations unfounded. The motion passed unanimously.

*2691 – Henry Li/OSBEELS*

It was moved and seconded (Tappert/Newstetter) to close the case as compliance met. The motion passed unanimously.

*2692 – Deron Alan Jyo/OSBEELS*

It was moved and seconded (Tappert/Hoffine) to close the case as compliance met. The motion passed unanimously.

*2702 – Bassam Moussan/OSBEELS*

It was moved and seconded (Tappert/Newstetter) to close the case as compliance met. The motion passed unanimously.

*2704 – James E. West/OSBEELS*

It was moved and seconded (Tappert/Newstetter) to close the case with a Letter of Concern regarding not responding to audits in a timely manner. The motion passed unanimously.

### **Unfinished Business**

#### *Regulation Examination*

The Board discussed implementing an examination on OSBEELS laws and rules for use as part of the settlement process in Regulation Department cases. President Linscheid and Mr. Hoffine

said that there would have to be some sort of wording in the Final Order to specify that the settlement was only considered complete when the examination was completed and passed. Ms. Newstetter said she believes OSBEELS staff should start developing this examination. AAG Lozano said the state's iLearn platform would work well for this project. Ms. Lopez said Staff would begin looking at other state's examinations. The topic was sent back to the LEC for further discussion.

*2733 – Mouhamad Zaher*

It was moved and seconded (Tappert/Newstetter) to approve the Final Order to Withdraw NOI for Mr. Zaher. The motion passed unanimously.

### **Attorney General Updates**

*2601 – Rick Franklin Corporation (RFC)*

AAG Lozano said the hearing for RFC was been set with the Office of Administrative Hearings for March 19, 2013. AAG Lozano said that RFC's legal counsel requested a Motion for Summary Determination, which is normally requested by the Board. She said RFC doesn't dispute the facts, as presented, but rather they believe that OSBEELS statutes are unconstitutional. The Administrative Law Judge ruled against their motion, which means the case is going to hearing. The case is also being sent back to the LEC for further discussion regarding additional charges.

### **2788 – Probst, Bradley**

Mr. Wilkinson reported that Mr. Probst represented himself as an engineer during a trial while giving biomedical testimony. The title used during his testimony was "biomechanical engineer" and his working title was "senior biomechanical engineer. Mr. Probst used the title of "engineer" in his report and in his representation to the court. After some initial debate, Mr. Probst responded to the Board with a notarized pledge stating he will not in the future violate the law. Given his notarized statement and a copy of his new business card and other related office documents, it appears to be compliance met.

The other potential violation was for the practice of engineering in the preparation of the report. When the LEC has viewed previous accident reconstruction analysis reports they were found to be a scientific endeavor lacking the requisite engineering recommendations inherent in "ensuring compliance with specifications and design" of utilities, structures, buildings, etc. under ORS 672.005(1)(b). Mr. Probst reported on the forces acting during an accident, which requires engineering training and experience, and then offered his opinions on potential mechanisms for personal injury. There was no "specification and design" to which he measured. The Board determined that Mr. Probst is discussing the effect on the body and not giving recommendations on car design or manufacture. AAG Lozano said he uses similar math and science to an engineer would, but for a different purpose.

The final issue discussed was the fact that a circuit court judge ruled that Mr. Probst's testimony did not qualify as the practice of engineering. AAG Lozano said OSBEELS doesn't have the authority to overrule a circuit court judge, but a circuit court judge doesn't have the authority to override an OSBEELS rule. AAG Lozano said, currently, her office is contacted if testimony in any case may be violating OSBEELS rules and statutes.

Mr. Tappert said he disagreed with testimony being considered “practicing” engineering. He said if someone is an expert, it should be left up to the judge and jury to determine if their credentials deserve deference. AAG Lozano said if the Board would like to address this, it would require a change to statute. Mr. Doane and Ms. Newstetter said they’re more comfortable with the current system of case-by-case evaluation of testimony instead of statutory changes. Mr. Tappert asked if a registered engineer from another state can come to Oregon to testify and AAG Lozano said, according to OSBEELS’ rules, the engineer would have to apply for registration in Oregon by Comity and request a temporary permit to testify in Oregon. It was moved and seconded (Tappert/Hoffine) to close the case as compliance met. The motion passed unanimously.

### **PROFESSIONAL PRACTICES COMMITTEE**

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

### **RULES AND REGULATIONS COMMITTEE**

Mr. Hoffine reported that the RRC met on October 12, 2012, to discuss the matters contained in the Committee minutes. Additional discussion was held regarding the following matters:

#### **Housekeeping Revisions**

It was moved and seconded (Hoffine/Tappert) to approve the housekeeping revisions on the 14 rules presented. The motion passed unanimously.

- 820-010-0200 Application for Registration as Professional Engineers (PE) Based on Licensure by Another Jurisdiction (Comity)
- 820-010-0204 Applications for Registration as Professional Engineers (PE) Based on Examination by Another Jurisdiction or by NCEES (1st Registration)
- 820-010-0205 Applications for Registration as Professional Land Surveyors (PLS) Based on Licensure by Another Jurisdiction (Comity)
- 820-010-0206 Applications for Registration as a Professional Land Surveyors (PLS) Based on Examination by Another Jurisdiction or by NCEES (1st Registration)
- 820-010-0207 Applications for Registration as Professional Photogrammetrists Based on Licensure by Another Jurisdiction (Comity)
- 820-010-0208 Applications for Registration as a Professional Photogrammetrists Based on Examination by Another Jurisdiction or by NCEES (1st Registration)
- 820-010-0212 Applications for Registration as Professional Engineers (PE) Based on Examination
- 820-010-0213 Applications for Registration as Professional Land Surveyors (PLS) Based on Examination
- 820-010-0214 Applications for Registration as Professional Photogrammetrists (RPP) Based on Examination
- 820-010-0215 Form of Applications
- 820-010-0415 Nature of the Examination for Professional Engineer (PE)
- 820-010-0425 Nature of Examination for Professional Land Surveyor (PLS)

- 820-010-0427 Nature of Examination for Registered Professional Photogrammetrist (RPP)
- 820-010-0520 Registrants or Certificate Holders Not Qualified to Practice

**OAR 820-010-0442 –Application Deadlines**

After extensive discussion, the Board determined to send the rule back to the Rules and Regulations Committee for further work.

**OAR 820-020-0040 – Examination Subversion: Grounds for Invalidation of Examination Results**

It was moved and seconded (Hoffine/Doane) to approve OAR 820-020-0040 for the Rulemaking Process, as presented. The motion passed unanimously.

**NEW BUSINESS**

**Western Zone Awards Committee**

Ms. Newstetter is a member of the National Council of Examiners for Engineering and Surveying (NCEES) Western Zone Awards Committee, which is tasked with choosing a recipient of the Zone’s Distinguished Service Award. Currently, there is one nominee, John Howe, PLS, from Idaho. Ms. Newstetter asked the Board to support this candidate for the award. It was moved and seconded (Newstetter/Hoffine) to concur with the nomination of John Howe, PLS (ID), for the 2013 NCEES Western Zone Distinguished Service Award. The motion passed unanimously.

**NCEES Industrial Exemptions Task Force**

Mr. Wahab was absent from Committee meetings in December 2012 because he was working with the NCEES Industrial Exemptions Task Force. He said the Task Force’s work will conclude prior to the Western Zone meeting and OSBEELS Staff will receive a copy of the final report to distribute to Board members.

**LEGAL BRIEFING**

AAG Lozano briefed the Board on legislation and case laws which might pertain to OSBEELS. There was no further discussion.

**ADJOURN**

The meeting was adjourned at 1:38 p.m.

**January 8, 2013 ACTION ITEMS:**

- Draft correspondence to JPEC recognizing the OSBEELS/JPEC partnership.
- Draft correspondence to the Acoustical liaison emphasizing the importance of involvement with the OSETF.
- Send correspondence to registrant explaining the rules which prevent issuing a replacement wall certificate. Include an additional letter documenting his registration history.
- Draft an RFP for research and consulting services to better understand the public’s perception of OSBEELS.



**NEXT MEETINGS**

Next Board Meeting:

March 12, 2013

Next Committee Meetings:

LAW ENFORCEMENT:

Thursday, February 14<sup>th</sup> at 8:00 a.m.

RULES & REGULATIONS:

Friday, February 15<sup>th</sup> at 8:00 a.m.

EXAMINATIONS & QUALIFICATIONS:

Friday, February 15<sup>th</sup> at 9:00 a.m.

EXTERNAL RELATIONS:

Friday, February 15<sup>th</sup> at 11:00 a.m.

FINANCE:

Friday, February 15<sup>th</sup> at 11:30 a.m.

Oregon Specific Exam Task Force:

Friday, February 15<sup>th</sup> at 12:00 p.m.

PROFESSIONAL PRACTICES:

Friday, February 15<sup>th</sup> at 1:00 p.m.