



Oregon

State Board of Examiners for
Engineering & Land Surveying
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Minutes of Meeting July 9, 2013

CALL TO ORDER

President Tappert 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.

ROLL CALL

Members present:

Carl Tappert
William Boyd (Excused absence)
Steven Burger
James Doane (Excused absence)
Anne Hillyer (Excused absence)
Ken Hoffine
Sue Newstetter
Ron Singh
Thomas Van Liew

Others Present:

Mari Lopez, OSBEELS Executive Secretary
Jenn Gilbert, OSBEELS Executive Assistant
Joy Pariante, OSBEELS Social and Communications Media Specialist
Katharine Lozano, Assistant Attorney General
Brian Conley, PE (Observer)
Margaret Stevenson, complainant in case 2781

PUBLIC INPUT

There was no public input.

BOARD CONSENT AGENDA

It was moved and seconded (Newstetter/Burger) to approve the consent agenda containing the following:

- July 9, 2013 Board Agenda
- May 14, 2013 Board meeting minutes
- June 14, 2013 Examinations and Qualifications Committee meeting minutes
- June 14, 2013 Oregon Specific Examination Task Force Committee meeting minutes
- June 14, 2013 External Relations Committee meeting minutes
- June 14, 2013 Finance Committee meeting minutes
- June 13, 2013 Law Enforcement Committee meeting minutes

- June 14, 2013 Professional Practice Committee meeting minutes
 - June 14, 2013 Rules and Regulations Committee meeting minutes
- The motion passed. Mr. Singh abstained.

EXECUTIVE SECRETARY'S REPORT

Additional discussion was held on the following matters:

Administrative Activities

NCEES 92nd Annual Meeting

Ms. Lopez reported that President Tappert, Mr. Hoffine and Ms. Newstetter have requested to serve as the delegates to attend the NCEES Annual Meeting August 21-24 at the Marriot San Antonio Rivercenter in San Antonio, Texas. The deadline to register for the meeting is July 12th. Other Board members interested in attending were directed to contact Ms. Gilbert to make travel arrangements.

Additionally, Ms. Lopez reported that candidates for the 2013-2014 NCEES Treasurer and NCEES President-Elect have been received for the Board's consideration. The candidates are as follows:

- NCEES Treasurer
 - North Carolina Board Nomination – Gary Thompson, PLS
 - Illinois Board Nomination – John Dillaplain, PE
- NCEES President-Elect
 - Maryland Board Nomination – Howard Harclerode, PE
 - Oklahoma Board Nomination – David Widmer, PLS

NCEES Foreign Experience Task Force

Ms. Lopez reported that, because OSBEELS has significant experience with receiving applications from candidates outside the U.S., Jerry Carter, Executive Director of NCEES, has requested Oregon's participation with the Foreign Experience Task Force that President-Elect Mamola is creating next year. Ms. Newstetter mentioned that Ms. Lopez should be involved with the Task Force because of her extensive experience with foreign registrants. AAG Lozano explained that Ms. Lopez could participate, but only Board members could vote on behalf of OSBEELS. President Tappert approved the Board's participation with the Foreign Experience Task Force. The Board's representative(s) will be determined at a later date.

Korean Professional Engineers Association (KPEA)

Ms. Lopez reported that she received an email from KPEA requesting a meeting with Board representatives during the NCEES Annual Meeting to discuss the possibility of entering into an Mutual Registration Agreement with the Board, similar to the agreement Texas has with Australia. The agreement would allow an individual licensed by Korea's engineering organization to temporarily practice in Oregon without obtaining registration in Oregon. AAG Lozano said this is not allowed under statute. This type of agreement could not be made without legislative action. Ms. Lopez will respond, informing KPEA that temporary licensure by non-registrants is not allowed under Oregon statutes.

Oregon Administrative Rule (OAR) 820-010-0622 – Modifying Designs or Documents

During the OSBEELS May 14th meeting, members of the Board considered written testimony by

Norma Freitas, Oregon Board of Architect Examiners (OBAE) Board Chair concerning the proposed rule revisions to OAR 820-010-0622. Because significant OBAE concerns regarding the wording of OAR 820-010-0622, the Board agreed to remove the rule from their rulemaking hearing agenda for permanent rule filing and directed Ms. Lopez to draft an invitation for Ms. Frietas to attend the July 9th Board meeting to engage in further discussion with the Board. As Ms. Lopez was drafting the letter, it became clear to her and AAG Lozano that a misunderstanding may be arising from a typo contained in the proposed draft of OAR 820-010-0622. Ms. Lopez did not extend the invitation to Ms. Frietas as planned in order to allow the Board to discuss this discovery. To further facilitate the discussion concerning the Architecture and Engineering professions, Ms. Lopez provided an Assistant Attorney General Opinion dated April 5, 2005, a portion of the Building Officials Manual and OBAE testimony from October 24, 2012 and April 17, 2013.

AAG Lozano explained that, based on the OBAE meetings she's reviewed and attended, OBAE is unhappy with the large scope of activities included in the practice of engineering by statute. Part of this concern stems from the fact that the architect is responsible for the project from start to finish, but many engineers may come and go throughout the project cycle. If any issues arise as a result of engineer modifications, it's the architect who is responsible for remedying the situation. AAG Lozano pointed out that OSBEELS is not required to draft its rules around OBAE's statutes and rules. The Board asked Ms. Lopez to proceed with Ms. Frietas' invitation to the September 10, 2013 Board meeting.

Action Items

Ms. Lopez noted that she had not heard back from either party in reference to the March 2013 Action Item regarding completion of an examination contract for the CA Geotechnical examination (California Board) and an MOU for the Certified Water Right Examiner examination (Water Resources Department).

Additionally, Ms. Lopez reported that modifications to ORS 672.148 were not completed prior to the end of the Legislative Session due to Sen. Betsy Johnson's absence from her office.

PRESIDENT'S REPORT

Board Meeting Structure

This was President Tappert's first Board meeting as president. President Tappert requested the use of consent agendas at this and future meetings to streamline the meeting and allow more time for meaningful discussion of issues presented to the Board.

Executive Secretary Review

President Tappert asked for volunteers to perform Ms. Lopez's annual performance review. Ms. Newstetter and Mr. Burger volunteered to conduct the review in August, with the complete evaluation to be presented to the Board in September.

EXAMINATIONS AND QUALIFICATIONS COMMITTEE

President Tappert reported that the EQC met on June 14, 2013 to discuss the matters as contained in the Committee minutes. It was moved and seconded (Burger/Van Liew) to approve the consent agenda containing the following:

- Approve Hans Pedersen to sit for the October 2013 Oregon Specific Land Surveying Examination

- Approve the comity list of 57 applicants
- Approve the 1st registration list of 7 applicants

The motion passed unanimously.

Additional discussion was held regarding the following matters:

NCEES Credentials Evaluation

Mr. Yoshinori Oshiro submitted an application for registration as a Civil PE by 1st Registration. Mr. Oshiro provided an official evaluation of his degree from NCEES Credential Evaluators. The evaluation determined that Mr. Oshiro's degree is deficient 8 semester credit hours in general education. NCEES defines general education credits as "16 credit hours in subjects such as philosophy, religion, history, literature, fine arts, sociology, psychology, political science, anthropology, micro and macroeconomics, ethics and social responsibility." The EQC discussed this case in June and determined to forward it to the July Board meeting for full Board discussion.

AAG Lozano reminded the Board members that the Board has consistently waived general education requirements and, if this case were to go differently, there would need to be validation for the waiver denial. Mr. Burger said his fellow Board members should consider whether the absence of two general education classes would affect public safety. In addition, Mr. Burger asked if either of these classes would make Mr. Oshiro a better engineer. AAG Lozano said those same questions have come up in the past in reference to this topic. AAG Lozano also noted that, if the Board determined this degree to be insufficient, the requirement for registration would then be demonstration of four years of experience. She asked the Board if two general education credits were equivalent to four years of engineering experience.

Mr. Burger and President Tappert recommended setting a threshold for approval of general education-deficient foreign degrees at the Staff level. They agreed that if the applicant is deficient by 8 or fewer of the 16 general education credits required by NCEES to be considered as a substantially equivalent degree, Staff could approve the applicant. If the applicant was deficient by more than 8 general education credits, the EQC will review their application further.

It was moved and seconded (Hoffine/Burger) to accept degrees that are deficient by eight or fewer semester hours in general education credits. The motion passed unanimously.

It was moved and seconded (Newstetter/Hoffine) to approve Mr. Oshiro for registration by 1st registration. The motion passed unanimously.

Review CPD Correspondence

The Board reviewed a letter to Nick Kerber, PE, regarding his request to consider his full-time research work as fulfillment of his CPD requirement. The Board directed Staff to send the letter to Mr. Kerber denying his request. There was no further discussion.

OREGON SPECIFIC EXAMINATIONS TASK FORCE

Ms. Newstetter reported that the OSETF met on June 14, 2013, to discuss the matters as contained in the Committee minutes. Additional discussion was held regarding the following matters:

Server Upgrade

It was moved and seconded (Newstetter/Van Liew) to approve updates to the OSBEELS servers and software at a cost of \$13,500. Ms. Newstetter was concerned that the cost didn't include a contingency allotment in case of additional expenditures. Ms. Newstetter amended her motion to include \$1,500 in contingency fees, for a total of \$15,000. Mr. Van Liew seconded the amendment. The motion passed unanimously.

PLS Examination Development Team

It was moved and seconded (Newstetter/Burger) to accepted the PLS Examination Development Team, as outlined by Bob Neathamer, liaison to the Board. The motion passed unanimously. It was noted by Ms. Lopez that the Forest and Acoustical Engineering Examination Development Teams did not submit rosters for approval by the deadline. Ms. Newstetter directed Staff to send a reminder letter to those liaisons.

EXTERNAL RELATIONS COMMITTEE

Ms. Newstetter reported that the ERC met on June 14, 2013 to discuss the matters as contained in the Committee minutes. It was moved and seconded (Newstetter/Burger) to approve the consent agenda containing the following:

- Approve the Building Codes Division article for publication
- Approve the CWRE workshops article for publication
- Approve the article about Sue Frey for publication
- Approve the New/Outgoing Board president and member profiles for publication
- Approve the OSBEELS History, with the addition of PTEs, for use in the Board member manual and a future Wikipedia page
- Approve the date of October 10, 2013 for a joint board meeting with the OSBGE

The motion passed unanimously. There was no additional discussion.

FINANCE COMMITTEE

Mr. Doane reported that the FC met on June 14, 2013, to discuss the matters as contained in the Committee minutes. There was no additional discussion.

LAW ENFORCEMENT COMMITTEE

Ms. Newstetter reported that the LEC met on June 13, 2013, to discuss the matters as contained in the Committee minutes. It was moved and seconded (Newstetter/Burger) to approve the Final Orders portion of the consent agenda containing the following:

- Final Orders
 - 2712 – John R. Gery - \$3,000 civil penalty, 90-day suspension
 - 2717 – David P. Nicoli - \$500 civil penalty
 - 2718 – Douglas C. Roberts - \$500 civil penalty, permanent retirement
 - 2719 – Richard W. Smith - \$250 civil penalty
 - 2721 – Steven T. Toyama - \$500 civil penalty
 - 2731 – R. Bryce Stapley - \$500 civil penalty, permanent retirement
 - 2737 – Ali F. Momeni - \$500 civil penalty, permanent retirement

The motion passed unanimously. Additional discussion was held regarding the following matter:

Case number 2781 against Timothy Wolden was pulled from the consent agenda and discussed separately. Complainant Margaret Stevenson was present to contest the settlement agreement. AAG Lozano said the complainant speaking to the Board about this case after a settlement agreement has been drafted is inappropriate. The complainant's time to present their information is during the complaint process. Both parties in this case, Mr. Wolden and the State of Oregon, were appropriately represented during the informal conference. Ms. Newstetter explained to Ms. Stevenson how the Board came to their decision regarding the proposed civil penalty. AAG Lozano reminded Ms. Stevenson that there was no recompense for the complainant through the state's administrative process. She also explained that OSBEELS doesn't have the authority to require registrants to pay money to the public for damages. That must be dealt with through the civil court system. It was moved and seconded (Newstetter/Burger) to approve Mr. Wolden's settlement agreement, as presented. The motion passed unanimously. There was no further discussion.

It was moved and seconded (Newstetter/Burger) to approve the Additional Action Items portion of the consent agenda containing the following:

- Additional Action Items
 - 2722 – Robert L. Graham – Close case as compliance met
 - 2746 – Kristin Ming – Close case as allegations unfounded
 - 2755 – Jimmy Hillstrom – Close case as individual is deceased

The motion passed unanimously. Additional discussion was held regarding the following matters:

RFP and Expert Reviewers

James Tyvand submitted documentation for consideration to join the pool of OSBEELS expert reviewers, which assist in law enforcement cases when specialty skills are needed to evaluate information. Ms. Lopez explained that, in the past, the Board has approved individuals on a case-by-case basis. AAG Lozano said, since the March 2013 rule change, there are special provisions for obtaining the services of engineers and land surveyors which are different than the provisions for any other profession regulated by the State of Oregon. These changes mean that OSBEELS cannot (1) discuss payment with engineers or land surveyors for their reviewing services until after the best qualified candidate has been chosen, and (2) the reviewing fees must stay within the \$100,000 direct procurement threshold.

In addition, AAG Lozano explained that the Board can choose to direct appoint individuals because a majority of the services required by OSBEELS are well below the \$100,000 threshold. After discussion, it was moved and seconded (Newstetter/Van Liew) to approve Mr. Tyvand for use as an expert review, with cost of services to be negotiated when services are needed. The motion passed unanimously. There was no further discussion.

Review proposed order in the matter of Case# 2601

The Board received the Proposed Order for Case#2601 against the Rick Franklin Corporation for the Office of Administrative Hearings (OAH).

The Board exited its public meeting pursuant to ORS 192.690(1) to deliberate on a contested case hearing (Case #2601). All members of the audience were asked to leave the room for these deliberations and were be invited to return upon resumption of the public

meeting. No decisions were to be made and no votes were to be taken outside of the public meeting.

Upon returning to public meeting, it was noted that no decisions were made and no votes were taken during the contested case hearing deliberations.

Mr. Hoffine indicated that he thought there should be no civil penalty because of the high likelihood of continued litigation to avoid the penalty. He recommended sending a letter of concern instead. Ms. Newstetter supported the civil penalty because it shows the Board takes unlicensed engineering claims seriously. Mr. Hoffine said he didn't think the company intended to continue offering engineering services after being contacted by OSBEELS. Rather, he thought there was a breakdown in communication between OSBEELS and the company. He said once it was clear that the website language was the issue, it was amended. However, this process took nearly two years.

Mr. Burger said he thought the suggested civil penalty was appropriate because it had been determined in a logical and unbiased manner. Ms. Newstetter agreed, saying that she believed the Board was making a reasonable determination in this situation. It was moved and seconded (Newstetter/Van Liew) to amend the proposed order against the Rick Franklin Corporation to correct factual errors and change the penalty to \$250. The motion passed. President Tappert and Mr. Hoffine were opposed.

PROFESSIONAL PRACTICES COMMITTEE

Ms. Newstetter reported that the PPC met on June 14, 2013, to discuss the matters contained in the Committee minutes. There was no additional discussion.

RULES AND REGULATIONS COMMITTEE

Mr. Hoffine reported that the RRC met on June 14, 2013, to discuss the matters contained in the Committee minutes. It was moved and seconded (Hoffine/Newstetter) to approve the consent agenda containing the following:

- Proceed with the rulemaking process to amend OAR 820-010-0227, OAR 820-010-0228 and OAR 820-010-0305
- Proceed with the rulemaking process to repeal OAR 820-010-0260

Additional discussion took place on the following topics:

Definition of Certificate Authority and Digital Signature

The Board discussed how best to describe certificate authority and digital signatures to registrants and the public. Mr. Singh has a great deal of experience dealing with digital signatures and has guided the Board in the past when making rules regarding digital signatures. President Tappert wanted to know how a person becomes a certificate authority. Mr. Singh explained that a certificate authority is similar to a notary public, as they verify a person's identity to others. However, there is no process in place to oversee validity of those claiming to be certificate authorities. There are a number of reputable companies which offer services as certificate authorities.

To further assist in the definitions, Mr. Singh explained the digital certificate components and process. The digital certificate is a public and private key combination. The signor is issued the

private key, which is used when digitally signing. The public key is embedded in the signature at the time of signing. When a digitally signed document is received, the recipient downloads the certificate, of which only the public key is accessible. The public key allows the recipient to view confirmation of the identity of the signor, which was initially validated when the key was issued by the 3rd party.

Following this discussion, appropriate language was drafted and it was moved and seconded (Hoffine/Newstetter) to begin the rulemaking process to incorporate these definitions into OAR 820-010-0010. The motion passed unanimously. There was no further discussion.

UNFINISHED BUSINESS

There was no unfinished business to address.

NEW BUSINESS

Legislative Counsel Proposed Negative Determination

Following an audit by Legislative Counsel, it was discovered that OAR 820-010-0225 and OAR 820-010-0226 are not within the intent and scope of enabling legislation. These rules were drafted to allow applicants who applied to sit for the exam using a Dean's Stamp six months following their examination to provide transcripts demonstrating the receipt of an accredited degree. However, this is in conflict with ORS 670.010 and ORS 670.020, which only allow for a four-month period. AAG Lozano recommended the Board adopt a temporary rule, retroactive to April, which repeals the offending provisions and replaces those with language consistent with the statutes (four months after the first day of the month after the exam is given to complete a degree and four months after the first day of the month after the exam was given for an applicant to provide evidence that the degree was completed). After discussion, it was moved and seconded (Newstetter/Hoffine) to adopt temporary rules OAR 820-010-0225 and OAR 820-010-0226. The motion passed unanimously. There was no further discussion.

Comity Application for Dennis Stanton

Mr. Stanton submitted an application for Electrical PE registration by comity. He provided a detailed experience record describing more than 30 years of experience, official verification from the Wisconsin board verifying his current registration, five references verifying his engineering experience and correspondence requesting special consideration. In 1989, Oregon required successful passage of the 8-hour NCEES FE examination. Based on official verification from the Wisconsin Board, Mr. Stanton's FE examination requirement was waived. There is also no record of Mr. Stanton taking the PE examination on the verification from Wisconsin. Staff noted that Mr. Stanton wrote an examination date on the verification, but Wisconsin crossed that information out. Mr. Stanton said this was because Wisconsin doesn't verify their examination information. Staff called the Wisconsin board, which said there is no record of Mr. Stanton on their examination rosters between October 1986 and October 1996 – the timeframe during which Mr. Stanton said he took the PE. Wisconsin board also confirmed that examination information is included on verifications sent from their state. Wisconsin also confirmed that it is possible to obtain licensure there with an accredited degree and eight years of experience. Ms. Lopez explained to the Board that our statute doesn't allow for licensure without verification of examination. The Committee discussed that this information indicates that Mr. Stanton may have been untruthful in his application. After discussion, it was moved and seconded (Hoffine/Burger) to deny Mr. Stanton's comity application, as there is no verification his PE

examination and his FE was waived, both of which are required for licensure in Oregon.

LEGAL BRIEFING

AAG Lozano reported that Douglas Knight, PE, has requested a second informal conference, to be scheduled during the August 2013 LEC. Additionally, the Board was denied its motion for summary determination regarding Ruben Martinez because the judge determined that Mr. Martinez was licensed in Washington and not actively practicing land surveying during the timeframe in question. However, Mr. Martinez was only using Oregon contact information and offering services in Oregon without being registered in Oregon.

BOARD MEMBER COMMENTS

Board members had the opportunity to comment on Board or non-Board related issues. They discussed the following:

- Mr. Van Liew apologized to the other Board members for missing committee meetings on June 14, 2013, due to a scheduling error.
- Ms. Newstetter said she was grateful for Christine Shirley's flood plains presentation during June's Committee meeting. She said this is a very important issue for the public, especially in areas such as Eastern Oregon where reviews of the 100-year floodplain are under way and may triple flood insurance costs.
- President Tappert said he was grateful the Governor nominated additional Board members, who all seem like they will be great assets to the Board.
- Mr. Hoffine and Ms. Newstetter asked Staff to provide information packets on the Friday preceding Board and Committee meetings to allow an appropriate amount of time to process information.

ADJOURN

The meeting was adjourned at 2:02 p.m.

November 2012 ACTION ITEMS:

- Draft an RFP for research and consulting services to better understand the public's perception of OSBEELS.

March 2013 ACTION ITEMS:

- Complete CA Geotechnical examination contact and Certified Water Right Examiner MOU.
- Coordinate with Christine Valentine, OSBGE Administrator to determine a date and time for a joint meeting of the Boards to discuss the overlap of practices and Joint Compliance Committee (JCC).

May 2013 ACTION ITEMS:

- Invite a representative from the Architect Board to explain the written testimony provided in reference to OAR 820-010-0622.

June 2013 ACTION ITEMS

- Respond to KPEA regarding Korean non-registrants temporarily practicing in Oregon.
- Respond to Mr. Kerber with the Board-approved letter regarding CPD compliance.

- Send a reminder letter to Forest Engineering and Acoustical Engineering Exam Development Team Liaisons regarding annual team roster approval requirements.

NEXT MEETINGS

Next Board Meeting:
September 10th, 2013

Next Committee Meetings:

LAW ENFORCEMENT:	Thursday, August 8 th at 8:00 a.m.
RULES & REGULATIONS:	Friday, August 9 th at 8:00 a.m.
EXAMINATIONS & QUALIFICATIONS:	Friday, August 9 th at 9:00 a.m.
EXTERNAL RELATIONS:	Friday, August 9 th at 11:00 a.m.
FINANCE:	Friday, August 9 th at 11:30 a.m.
Oregon Specific Exam Task Force:	Friday, August 9 th at 12:00 p.m.
PROFESSIONAL PRACTICES:	Friday, August 9 th at 1:00 p.m.