

**Oregon Board of Examiners for Engineering & Land Surveying
Oregon Board of Geologist Examiners**

**Joint Compliance Committee
Meeting Summary
11/30/2011**

Members Present

Grant Davis, PE
Dan Linscheid, PLS
John Seward, PE
Gary Peterson, RG, CEG
Rodney Weick, RG, CEG

Others Present

Mari Lopez, OSBEELS
JR Wilkinson, OSBEELS
Joanna Tucker-Davis, DOJ (counsel for OSBEELS)
Christine Valentine, OSBGE

The JCC meeting was held at the Association Center, Conf. Rm. "A", Salem, OR. The meeting convened at approximately 1:30 PM, starting with a round of introductions and distribution of handouts for the meeting. The JCC then worked through the meeting agenda as follows.

Unfinished Business

Item A. - August 17, 2010 Meeting Summary.

The past discussion about meeting minutes vs. meeting summaries was revisited. Counsel advised that since an audio recording is being made of the JCC meeting, meeting summaries can be prepared per the past request of the JCC. The meeting summaries were favored by the JCC primarily due to the ability to keep names out of the summaries. OSBEELS has been advised by its counsel that names cannot be kept out of meeting minutes while OSBGE does not have such legal advice, hence the past compromise about meeting summaries. OSBEELS counsel suggested that the JCC does not need to do a formal motion to approve the meeting summaries. The JCC members decided that their goal is to reach agreement that a meeting summary is reflective of their discussions. Where agreement is not found, they will discuss and develop

appropriate modifications to ensure a summary is reflective of what they discussed and the decisions they made.

Gary Peterson, RG, CEG asked if the meeting summary, as prepared for August 17, 2010, is too detailed for a meeting summary. The JCC generally concurred that meeting summaries could be less detailed in the future. The JCC also discussed with staff and OSBEELS counsel the requirements applicable to the audio files and the meeting summaries to ensure all participants are aware of and comply with the Public Meetings Law.

The Committee discussed the summary; most felt it was a reasonable reflection of the meeting discussion. There was some discussion about the difference between meeting minutes and a meeting summary, with the JCC confirming that it still wanted to have meeting summaries prepared for its meeting.

Gary Peterson, RG, CEG did request some specific revisions as follows, and these were discussed by the whole JCC:

- Page 1, next to last line – change the word “value” to “*record.*”
- Page 2, under case #2590, 4th line - note in the summary that the referenced document is not approved by industry (ASFE, AEG, GeoInstitute, OSBGE). Say instead “*rejected by ASFE, AEG, GeoInstitute along with OSBGE and others.*”
- Page 3, under Action Item – rephrase description of Action item to say that JCC *recommends* OSBGE send a Letter of Concern and JCC *recommends* OSBEELS investigate to determine appropriate course of action.
- Page 3, 2nd paragraph under #2589 – clarify that Peterson worked for the *subdivision owner*, not the homeowner.
- Pages 3, 3rd paragraph under #2589 – clarify language, rewording the last two sentences of this paragraph as “*Therefore, the failure zone is deep and subsurface conditions contributed to the failure.*”
- Page 3, 4th paragraph under #2589 – change references GE to PE as the GE title was not available at that time.
- Page 6, 3rd paragraph, - remove the end of the last sentence where it refers to fraudulent activities

Rodney Weick, RG, CEG moved to accept the August 17, 2010 meeting summary with the amendments requested by Gary Peterson incorporated. Dan Linscheid, PLS and John Seward, PE both seconded this. There was no further discussion, and all approved.

Item B. OSBEELS #2590-Letter of Concern & OSBGE CC#10-01-004-Letter of Concern

JR Wilkinson summarized the case and the outcomes. This case involved a certified engineering geologist (CEG) stamping and signing reports for a retaining wall design, gazebo, and site drainage for projects in the Brookings, OR area. Each Board concluded its investigation with issuance of a letter of concern to the respondent. The OSBEELS reminded the CEG of licensing requirements for preparing engineering reports. The OSBGE reminded the CEG that providing structural design recommendations is outside the scope of practice for CEGs. The JCC members appreciated the update, did not have any substantive questions, and indicated that they were ready to move on to the next item under Unfinished Business.

Item C. OSBEELS #2615-Letter of Concern & OSBGE CC#10-11-016-Dismissed

JR Wilkinson again summarized the case and the outcomes. This case involved a CEG and his firm and firm website. He used the term Engineering in his firm name and website and may have been offering services that crossed into engineering. The individual disabled his website and ultimately disbanded his company as he found employment elsewhere. Based partially on this, OSBEELS issued a Letter of Concern in November of this year. OSBGE dismissed the case due to lack of evidence, as the website in question had been removed from the internet. The JCC members appreciated the update, did not have any substantive questions, and indicated that they were ready to move on to the next item on the agenda.

New Business

Item A., OSBEELS #2656, OSBGE CC#11-06-018

JR Wilkinson and Christine Valentine summarized where the two boards are with the review of these cases addressing the same work/report. Wilkinson addressed how an Engineer-in-Training (EIT) signed the report using the title Senior Engineer. OSBEELS has opened a second case for this individual under #2724. The EIT is now licensed with OSBEELS but was not at the time the report was signed. The EIT claims he was working under the CEG's control. OSBEELS is working to bring both cases to its Law Enforcement Committee (LEC) in February 2012.

Rodney Weick, RG, CEG explained that OSBGE referred the case to the JCC as the Board felt that the CEG may have crossed the line into engineering practice in relation to some of the work summarized in the subject report. The JCC discussed this issue of whether the CEG was working within the area of practice overlap or working outside of engineering geology and clearly in the realm of engineering. The JCC also discussed how the roles of the EIT and CEG need to be sorted out to determine who was taking responsibility for the engineering work.

The OSBEELS members of the JCC then shared that they believe most of the work was within the practice overlap area. Grant Davis, PE highlighted Section 5.7 of the report which addresses concrete thickness and minimum compressive strengths as possibly indicated the practice of engineering by the CEG. Jon Seward, PE indicated that there could be issues with the

recommendations in the report about the size of footings, i.e. were they using ASHTO standards or were these based on original calculations?

After some discussion, the JCC decided that it would recommend that OSBEELS look at whether the CEG crossed into the practice of engineering with respect to recommendations provided about minimum concrete thickness, minimum compressive strengths, and rigid pavement. The JCC also decided to recommend that OSBEELS continue to investigate the role of the EIT in the project work. The JCC further decided to recommend that OSBGE investigate the CEG for the reasons laid out in Section 3 of the OSBGE complaint.

The JCC next took up issues of process such as whether there would be a “lead” board or if this case would be a “concurrent” investigation. The idea for “concurrent” investigations was captured in the JCC flowchart but is a process that has not been tried to date. The JCC discussed and ultimately clarified that what they really were proposing is not “concurrent” investigations but “parallel and coordinated” investigations. For this case (OSBEELS #2656, OSBGE CC#11-06-018), the Boards will conduct parallel reviews with staff coordinating to ensure communication occurs regarding the outcomes. Neither board is trying to usurp the authority of the other. The case will not be brought back to the JCC for further action, although a summary of outcomes will be shared at a future meeting.

Dan Linscheid, PLS motioned for the JCC to recommend parallel reviews with the OSBEELS and OSBGE focused on the following areas as discussed, i.e. for OSBEELS whether the CEG crossed into the practice of engineering with respect to recommendations provided about minimum concrete thickness, minimum compressive strengths, and rigid pavement and investigation of the role of the EIT in the project work and for OSBGE whether the CEG violated the geologist Code of Professional Conduct as outlined in the OSBGE complaint. The case will not be brought back to the JCC. Rodney Weick, RG, CEG seconded the motion. There was no further discussion, and all approved.

There was follow-up discussion among board staffs about how to best share information as the cases move forward on parallel tracks. OSBEELS staff offered that the LEC recommendations to the full board would be shared with OSBGE as soon as possible. The anticipated schedule for the OSBEELS investigation is to have an informal conference with the CEG in April 2012, possibly with a draft settlement agreement reached, and then have the case before the full board in May 2012. OSBGE could weigh in on the OSBEELS draft findings sometime between the April and May meeting. Rodney Weick, RG, CEG and Gary Peterson, RG, CEG expressed appreciation for this potential opportunity to participate in the OSBEELS review but suggested that OSBGE does not have any authority to weigh in on the appropriateness of OSBEELS decisions or sanctions. They suggested that this time between meetings be used for information sharing between the boards.

Item B., OSBEELS #2725 (CEG) & #2726 (PE), OSBGE Pending

JR Wilkinson provided an overview of the complaint filed with OSBEELS by a PE/GE; this included a preliminary case summary. The complaint is against a CEG and a PE. He explained that OSBEELS is still working with the complainant to obtain investigatory materials. Christine Valentine noted that OSBGE has not received a complaint and that the JCC referral is what brought this case to the attention of OSBGE. The JCC may recommend that OSBGE open up an investigation.

The situation is that a CEG and PE were involved in the design and construction of a n access road for a trailer/RV park near Brookings, OR, and the complainant alleges numerous issues related to the soundness and safety of the road. The local jurisdiction required that the plans be stamped/signed by an engineer, and this appears to be how the PE became involved. The OSBEELS shared photos of the subject site. JR Wilkinson offered to provide background on the case from the OSBEELS files.

Rodney Weick, RG, CEG, upon reviewing the photos and hearing the OSBEELS summary, suggested that OSBEELS pursue this as the lead board as this seemed to him to first and foremost raises issues related to the practice of engineering. If the OSBEELS finds that the CEG practiced outside the practice overlap, then the case should come back to the JCC for further discussion. He also stated that he would inform the full OSBGE of this case at its December 2, 2011 meeting. The Board may decide to take action since this is a second case involving this particular CEG.

Dan Linscheid, PLS indicated that in his view this as a high priority case and OSBEELS and JCC should treat the compliance review accordingly, moving it up in the queue. OSBGE representatives agreed with this assessment.

JCC recommended that OSBEELS proceed with its investigation as the “lead board” giving this case high priority and keeping OSBGE informed of its progress and decisions. This could come back to the JCC but nothing at this point for the JCC to recommend in relation to possible OSBGE action. If OSBEELS finds that CEG was practicing engineering, then the case could require further review and action by the JCC for consideration of making recommendations to OSBGE with respect to the CEG’s scope of work.

Rodney Weick offered that OSBGE could start an investigation but would really need OSBEELS action before making any decisions as this case involves engineering work. OSBEELS staff explained the anticipated schedule for the OSBEELS investigation. LEC will review in February. April 2012 would be the informal conference with the PE/CEG in April 2012,

possibly with a draft settlement agreement reached, and then have the case before the full board in May 2012.

Item C., Quarterly Meeting Schedule

Christine Valentine explained the reasons for the proposal, to establish quarterly meeting dates, with the primary one being that it has proved very difficult to schedule JCC meetings on short notice. OSBEELS staff also indicated support for the proposal. The JCC agreed to establish a quarterly meeting schedule. The JCC will meet in February, May, August, and November. The JCC members expressed a preference for Wednesdays or Thursday for meeting dates but left it to the board staffs to come up with a final schedule.

Item D., Concurrent Investigations

Christine Valentine explained that, as the newcomer to the JCC process, she had some questions about what the committee intended as a “concurrent” investigation. She stated that the JCC dealt with this earlier in the meeting in the context of #2656/CC#11-06-018. She also had a few other procedural issues that she presented to the JCC. First, she noted that to her knowledge OSBGE has never created separate case summaries as the JCC flowchart suggests. She noted that OSBEELS staff does prepare case summaries as part of its LEC/board process. She was concerned about whether OSBGE will be able to generate case summaries given staffing limitations. Rodney Weick, RG, CEG stated that OSBGE practice is to share case materials with the JCC but not create separate case summaries, and he does not see this changing.

Staff and committee members then briefly discussed the issue of letter templates and notifying those subject to complaints about the JCC involvement in the compliance process. While no decisions were reached, the JCC felt that neither templates nor specific notice of JCC action to respondents would be necessary.

The meeting came to a close and was adjourned at approximately 3:30 PM.