



Oregon

STATE BOARD OF EXAMINERS
FOR ENGINEERING &
LAND SURVEYING

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LAW ENFORCEMENT COMMITTEE

Minutes of Meeting
June 11, 2015

Members present:

Jason Kent, Ad hoc Chair
Ken Hoffine
Ron Singh
Dave Van Dyke

Members absent:

Bill Boyd (excused)

Staff present:

Mari Lopez, Board Administrator
James R. (JR) Wilkinson, Investigator

Others present:

Katharine Lozano, Assistant Attorney General
Chris Aldridge (Observer)
Ron McKinnis, PLS
Stephen Pilkerton, PE
Tim Kent (observer)

The meeting of the Law Enforcement Committee was called to order at 8:09 a.m. in the OSBEELS Conference Room at 670 Hawthorne Avenue SE, Suite 220, Salem, OR 97301. Due to the absence of Committee Chair Boyd, Kent volunteered to act as chair.

Public Comment

There was no public comment.

Case Disposition

Did Not Contest: Recommend Approval of Default Final Order
2841 – Joseph A. Sturtevant

During the April 2015 Committee meeting, the Committee determined to issue Sturtevant a Notice of Intent (NOI) to assess a \$250 civil penalty for practicing engineering while his registration was delinquent in violation of Oregon Revised Statutes (ORS) 672.020, ORS 672.045, and Oregon Administrative Rule (OAR) 820-010-0720(1). Staff reported that Sturtevant did not contest. It was moved and seconded (Hoffine/Van Dyke) to recommend that the Board approve a default final order. There was no further discussion.

Informal Conference

2907 – Firwood Design Group, LLC

Kelli Grover, PE, Registered Agent and Member of Firwood Design Group, LLC, met in an informal conference with the LEC. Steven C. Johnson, attorney for Firwood Design Group, LLC, joined by telephone. After introductions, Johnson turned the matter over to LLC representative Grover.

Grover began by stating that Firwood is a small engineering firm in Sandy, OR. The allegation was advertising land surveying services without employing a land surveyor. Ms. Grover pointed out that in September 2011 they underwent staffing changes and were trying to hire a PLS, so there was a short time period when they advertised without having employed a registrant. She asserted it's a Catch-22 when a firm is trying to hire a PLS, but all references to offering land surveying services are removed from the firm's Web site. She also noted there was a second time, but it too was short and was again caused by a staffing issue. She asked the Board to take these factors into consideration.

In response to a question, Ms. Grover stated that, during the long period of advertising without a PLS on staff, to their knowledge they did have a registered PLS on staff, but were unaware that when he attempted to renew his registration, their staff PLS failed to file proper continuing education documents. When the issue came to their attention, immediate action was taken. In the second instance, they employed a PLS who was hired out from under them.

As a result of the investigation, Ms. Grover observed there has been good education and, now, fair warning about not advertising or performing land surveying services without having a licensee on staff. Firwood is a small firm and she requested that the case be dismissed.

Hoffine asked if any of their procedures need changing. Ms. Grover replied that she will be actively checking professional staffs' registrations to ensure proper renewal. Hoffine then asked if it was practical to update their Web site. Ms. Grover explained that she maintains the Web site, but they don't advertise for employees through their Web site. Firwood uses Craigslist. Their Web site only lists their services. She added that she has two professional engineers on staff. She checks the OSBEELS website for licensure upon hiring, but did not check for the PLS renewal because he had been registered for 30 years. She assumed it was taken care of by the registrant.

Acting Chair Kent announced that the Committee would go out of public meeting to deliberate on a contested case. **The Committee exited its public meeting pursuant to ORS 192.690(1) for private deliberation on a contested case. All members of the audience were asked to leave the room for these deliberations and were invited to return upon resumption of the public meeting. Upon returning to public meeting, it was noted that no decisions were made and no votes were taken.**

It was moved and seconded (Van Dyke/Singh) to withdraw the notice of intent and issue a letter of concern to Firwood Design Group, LLC, explaining that professional services can only be offered if the firm has a full-time partner, manager, officer or employee licensed in that discipline. The motion covered both violations in the NOI and passed unanimously. Ms. Grover accepted. In addition, Ms. Grover asked the members about staffing changes. AAG Lozano

suggested that a Web site can be modified to indicate that services will be offered again once a professional is hired. She qualified that by noting, however, the longer it goes on the more problematic it becomes.

2630 – Jack Watson

Wilkinson introduced the case by informing the LEC that the Board had previously directed a professional reviewer be retained to assist the investigation into allegations of negligence or incompetence in the practice of land surveying. Thereafter, Evelyn Kalb, PLS, JD, was contracted to provide guidance and direction. In addition, Kalb and Wilkinson conducted a field investigation, including several site visits where Watson conducted surveys. Kalb prepared findings on those surveys and determined to examine the deeds. The purpose of evaluating the deeds was to identify whether they were pertinent to the surveys that Watson prepared and whether he had included them in his survey work. The case summary detailed the efforts to date. The deeds were collected; however, Kalb's husband passed away and her priorities shifted. She accepted a position with the Bonneville Power Administration (BPA). Consequently, the case stalled.

AAG Lozano pointed out that the case presents some challenges. It starts with retaining a new professional reviewer. Also, the evidence gathered during the original investigation has aged and some of it is no longer viable. The investigation could start all over, but it would make a more difficult case. Wilkinson agreed suggesting a letter of concern based on the Kalb work already completed. The concerns were: 1) lacking narrative to document corner position, particular the resolution of topography calls; 2) missing or lacking record measurements compared to found measurements; 3) lacking or missing deed references; 4) improper method to reestablish NE corner Section 1, T. 13 S., R. 13 E., W.M.; and 5) improper method to subdivide sections with government lots.

AAG Lozano emphasized that a letter of concern does not suggest there were no violations. The difficulty is the passage of time, the tacit resignation of the expert reviewer, and faltering evidence. However, the conclusions reached by Kalb in the original review are relevant. Wilkinson highlighted that the investigation revealed an improperly surveyed section line that Watson completed, which involved a federal timber trespass matter. This resulted in case #2829 that was closed with a letter of concern to Watson on lacking narratives and an assessed \$1,000 civil penalty for negligence in the erroneous setting of two PLSS corners.

Hoffine asked about the certified water right examination (CWRE) services Watson was advertising. Wilkinson explained that Carl Stout, PLS, CWRE, was his business partner in the building, but was full-time employee of the U.S. Forest Service. Watson cooperated and has removed the CWRE offering.

Kent observed how important a professional reviewer is to a case. AAG Lozano noted that a timeline and deliverables are crucial elements for expert reviewer contracts. Wilkinson emphasized that the Board recently approved convening a panel thus making a timeline and deliverables all the more important. This should offset some of the encountered issues. AAG Lozano added that other than the requirements for corner monumentation and the timeline for filing, professional judgments are a primary factor involved in surveying. The panel should

expose differences of opinions, provide a forum to resolve those differences, and be helpful to the Board in establishing surveying standards of practice via final orders.

AAG Lozano reiterated that the letter of concern does not suggest there were no violations. It will show consistency between what had been found in the prior case and what was found in this case. It was moved and seconded (Van Dyke/Hoffine) to issue a letter of concern to Watson outlining the concerns noted earlier. The motion passed unanimously.

Hoffine then highlighted that Watson received a letter dated August 13, 2001, from Kimberly Bown, U.S. Forest Service, Director Recreation, Lands and Minerals. Bown responded to Watson's inquiry and notified him that he had not "conclusively shown that your recovered evidence should be used to overturn the survey results done by (Douglas) Ferguson." Ferguson completed his survey in 1983. The Bown letter continued,

While there is no law or regulation covering this principle [*of survey corner stability*] within the state authority-surveying arena, I believe that your resurvey merits why corner stability is an important aspect to be considered while conducting resurveys. As professional surveyors, one of the most upsetting things done to the public is to establish multiple monuments at the same corner point. This causes chaos and confusion to the very people that surveyors are licensed by the state to protect. I am enclosing a report from the BLM California office that discusses their stability policy at length.

The Forest Service, through a contract to Ferguson, accepted a survey in this area eighteen years ago. Prior to your resurvey, there is no known protest or objections to the survey that they performed. Therefore, it is the position of the Forest Service that the Ferguson survey will be used for all Forest Service boundary management decisions that it controls.

Hoffine continued to state that cadastral surveying is an art of finding evidence of original surveys. Most surveyors would not do what Watson did. He then observed that the LEC has a case involving a surveyor who admitted to not following the BLM *Manual of Surveying Instructions*, which is a clearer violation. The LEC wanted to see a draft letter of concern on the Board Consent Calendar.

2826-Commstructure Consulting, LLC

The Board office was contacted after OSBEELS registrants mistakenly received a "one-call utility notification" email and exchanged emails about the error with Erik Orton, who is the registered agent and manager for Commstructure Consulting, LLC. The registrants also had reviewed Commstructure's Web site and expressed their concern to Orton about the advertised professional services and whether they employed a registrant.

As background, Commstructure wanted to upgrade their building's electrical and digital capabilities. A husband/wife team owns Commstructure and the building where the services were to be located. Orton worked with PGE and other utility companies to ensure that the services Commstructure received would meet their requirements. The investigation found that Commstructure employees added prescriptive design elements to PGE base designs. Subsequently, PGE submitted a complete design packet to the City of Oregon City and received a construction permit for working in the right-of-way. Since the base design was done by PGE,

Commstructure did not perform creative design work or engineering for their building. Wilkinson also noted there was a title violation that Orton immediately fixed.

It was moved and seconded (Kent/Van Dyke) to close the case as allegations unfounded for the unlicensed practice allegation and compliance met for the title violation. The motion passed unanimously. Singh inquired about referring the case to a professional reviewer. Wilkinson replied that once the case was queued for active investigation, it was found one was not needed. In addition, the LEC authorized issuing a NOI, but further investigation revealed information that changed the basis for action, which is why it came back around.

Wilkinson then introduced broader policy questions about utility companies working in the public right-of-way. He explained there are differences across the state in permitting requirements for utility companies, which have ORS 672.060(5) and (6) exceptions¹ from the engineering statutes. However, some jurisdictions require them to submit applications and obtain construction permits. Van Dyke observed there are jurisdictions that require professional licensure, while others do not. Kent agreed this was a topic needing discussion. AAG Lozano clarified that cities and counties can be more restrictive. The exemption for utilities companies is to work within the “box” of their company. If they submit a permit application to a local jurisdiction in order to work in the public right-of-way, are they still within the box? Wilkinson added that the Appellate Court in *Topaz v. OSBEELS* ruled that a submittal to a public agency is an offering to the public. As a result, a utility company should not enjoy the exceptions when they submit an application for construction in the right-of-way when it requires engineered plans. Van Dyke commented that the investigation uncovered a potential disconnect between what is being done and what the statute requires. He recommended that the matter be referred to Professional Practices Committee.

2827 – Ronald McKinnis

Respondent Ronald McKinnis, PLS, was invited to attend the LEC meeting in order to answer any questions the LEC had about the case. McKinnis introduced himself and commented that he had read the minutes from the discussions. Some of the key points were hit. However, he was unsure where to begin because he has given everything to the Board. AAG Lozano explained that members were interested in learning about his thought process, especially in regards to the advice that the Morrow County Surveyors had offered on his maps of survey. Singh concurred stating there were only two surveys that deal with the BLM *Manual of Surveying Instructions*. He questioned why the events happened as they did.

¹ 672.060 Exceptions to application of ORS 672.002 to 672.325. ORS 672.002 to 672.325 do not apply to the following: * * * *

(5) An individual, firm, partnership or corporation practicing engineering or land surveying: (a) On property owned or leased by the individual, firm, partnership or corporation, or on property in which the individual, firm, partnership or corporation has an interest, estate or possessory right; and (b) That affects exclusively the property or interests of the individual, firm, partnership or corporation, unless the safety or health of the public, including employees and visitors, is involved.

(6) The performance of engineering work by a person, or by full-time employees of the person, provided: (a) The work is in connection with or incidental to the operations of the person; and (b) The engineering work is not offered directly to the public.

McKinnis replied that he disagreed with former Morrow County Surveyor Judson Coppock, PLS, on the Patterson survey. When McKinnis attempted to retrace the original survey done in 1881 by General Land Office (GLO) surveyor Sanderson, the biggest issue was the S1/4 of Section 7, which is also the N1/4 of Section 18. McKinnis found no evidence and asserted that technically Sanderson didn't do his job and was unsure how it should be resolved. He explained that in that section, the GLO plat stated it was a long section, but the monuments found to the east and west of the N1/4 corner measured much shorter than a mile. As a result, there was other evidence that directed him to not proportion the N1/4 corner as per the BLM *Manual*. He commented that the BLM *Manual* says if there is no original evidence, maybe go to proportion. Hoffine questioned if he had contacted the BLM. McKinnis replied that he talked to the BLM and attended a local BLM presentation hosted by the Professional Land Surveyors of Oregon (PLSO). Out of those discussions, he gathered that proportioning was the last resort if there was nothing else to go on. He added that he did not ask BLM for an opinion, but in retrospect he should have done so. McKinnis conferred with other surveyors, but not BLM. Hoffine observed this was a very advanced survey, requiring expertise in cadastral surveying.

In locating the N1/4 corner, McKinnis stated he had other evidence. The Kinzua timber company posted placards to delineate their lines, but no records of survey were filed. He continued that Kinzua had records in their Heppner office. When the Port of Morrow inherited the records, he went through them and there was nothing. What he used was found in the field. While Coppock stated there was unlicensed practice in establishing the lines, which was true, they were full time employees with relevant knowledge. Hoffine remarked that property lines are not the best identification of original section lines. McKinnis countered that the evidence should not be dismissed. Singh clarified that it is collateral evidence and that it should have been assigned weight to the extent it was consistent with original evidence.

McKinnis acknowledged there was contention about establishing section lines from Kinzua markings and an original bearing tree. Each piece was given a priority. However, he could not dismiss the Kinzua field evidence and resort to only proportioning.

Singh asked about comments that Sanderson erroneously broke down the section. McKinnis admitted it was a mistake. He then explained that rather than using proportion to reestablish the N1/4 corner, he used an existing fence line and Kinzua information. If he had proportioned, the corner position would move some 200' to the east, but there was a fence line and Kinzua placards that positioned the corner much further to the west. Reconciling this evidence was the basis of making the comment.

Hoffine observed that the position of the N1/4 corner could be far apart from possession lines. Kinzua was managing timber and logging, which is a business separate from perpetuating the N1/4 corner under the BLM *Manual*. Possession lines are evidence, but moving the N1/4 corner is a problem. McKinnis replied that he was not moving the corner, but establishing it. If he had found original evidence he would have accepted it. However, there was no original field evidence other than Sanderson's notes. According to the original notes, Sanderson crossed a creek and set two bearing trees. When McKinnis proportioned the corner per the County Surveyor, the Patterson property line and the corner were nearly 200' apart. Hoffine countered

that the property line may not be where the N1/4 corner is located. McKinnis replied that the deed was written as aliquot parts. In response, Hoffine reiterated that original surveys are not based on possession lines. McKinnis maintained there was evidence – Kinzua tags agreed with fence lines. These two pieces of evidence fixed the position of the N1/4 corner.

AAG Lozano asked about the Kinzua evidence. McKinnis explained that the markings in the field are tree tags or placards that were posted by different Kinzua employees. He added that the placards refer to corners and not to property lines. In one instance, a tag pointed to the center of section and was marked with a distance. He also called them K-tags.

Singh recalled that Haddock alleged late filing and practicing outside area of expertise. If Sanderson broke the section down as an aliquot section, and not as it should have been done for government lots, then following in his footsteps is one issue. However, the primary issue for him was the proper restoration of the original survey. The second issue was late filing. McKinnis agreed it was “a mess.” He used information outside of Sanderson evidence in an attempt to retrace the Sanderson survey, which is the benefit of the Kinzua objects. He added that he narrated on his map how he recreated the Sanderson survey. Kinzua employees did their work 40 years ago using evidence that is not out there today. For example, they put a tag on a bearing tree based on the Sanderson survey.

AAG Lozano asked him to clarify. Did he attempt to follow Sanderson, but used Kinzua tags as evidence of Sanderson? McKinnis responded, yes. He further explained that he found K-tags marking a bearing tree and stone that was Sanderson. They were spot-on. AAG Lozano commented that Kinzua was a private timber company that never filed surveys, and their employees were not licensed surveyors. McKinnis agreed.

However, McKinnis admitted it was not a shared opinion that there is worth to the Kinzua objects. He noted he found a lot of Sanderson evidence, but at other locations he found nothing. Between logging and fires, original evidence was simply gone. He asserted that possession lines and K-tags are all that is left. He made a determination based on the client’s deed, which refers to section corners. He did not understand the shortcuts Sanderson used to establish original corners. Sanderson never consistently closed the last quarter. He ran to the quarter corner and didn’t continue on, which was evident throughout the Township. By establishing that Sanderson was stubbing-in corners, McKinnis was able to file the Patterson and OHV Park surveys. McKinnis asserted that Sanderson took a shortcut and didn’t do his job right.

It doesn’t make a difference whether the re-surveyor believes the original surveyor did a good job or a poor one, remarked Hoffine. The plat governs. McKinnis replied that Sanderson went a ½ mile and set a quarter corner. Hoffine asserted that the corner should be proportioned in if there is no evidence of the original survey. McKinnis commented that when it was proportioned it didn’t match any other evidence. It matched the Kinzua objects when he adjusted for Sanderson’s methods. Haddock and he were not in disagreement. However, Coppock refused to file the survey until the corner was proportioned. Hoffine expressed that McKinnis was working outside his area of expertise by deciding to not follow the plat map. McKinnis disputed that by stating he followed the plat. He set the corner at a ½ mile rather than proportioning because the line would have been substantially shorter. Hoffine asserted it was

not proper methodology. Once section lines are properly restored, which is a dependent survey, then you come back and survey property lines. The statutory requirement is to follow the BLM *Manual*.²

To clarify, AAG Lozano asked if McKinnis did not proportion as Coppock suggested because he disagreed with him. McKinnis stated that proportioning had a direct influence on where the property lines were located. The client's property lines are based on section corners. He continued that a judge will determine the property lines if the property corner does not match the section line when his client's deed states the NE quarter of the NW quarter of Section 7. That's an aliquot part and the challenge.

What was not fair in the last LEC minutes, McKinnis asserted, was the idea that he was arguing with two county surveyors about the use of BLM *Manual*. It was only one. He elaborated that the survey was accepted and filed after the complaint had been submitted. Coppock contended that McKinnis should have used only Sanderson evidence, ignore the Kinzua objects, and project the line based on Sanderson and not Kinzua. McKinnis thought the issues arose from a personality conflict. He could not defend pins being out there without a filed survey, however. He also acknowledged that he should have sent the information to BLM and asked for their direction, but the survey was submitted three times and it was rejected. The reason it was broken down as a standard section was because it matched the Kinzua evidence and fence lines. However, once McKinnis agreed to move it 9' west, at Haddock's direction, he admitted that it was actually a closer match to the Kinzua evidence.

McKinnis continued that there was another disagreement with the County Surveyor. It was too difficult to overcome and involved an Oregon Department of Transportation (ODOT) survey. Van Dyke asked if there was a filing timeline. McKinnis replied that he can survey and not file a map up to the point that a pin is set. After a lengthy discussion about filing timelines, it was clarified that corrections were made to the map and it was filed.

In a broad question to the LEC, Van Dyke inquired about the process to resolve conflicts between a private surveyor and a county surveyor. If there is an impasse, how is it resolved? With a hypothetical situation, he wondered if a county surveyor demanded changes that are absurd, is the surveyor responsible for meeting filing deadlines. Hoffine recalled a survey where another surveyor had to change his pins based on county surveyor comments. It had an effect on one of his surveys. That surveyor made the adjustments and put a note in his narrative about the change. Not sure if that's what should be done. Ultimately, surveyors are to comply with the BLM *Manual* and county surveyors should be consulted. Van Dyke concluded there was no specific mechanism.

² In the case of *Cragin v. Powell* (128 U.S. 691, 696), the Supreme Court said: "It is a well settled principal that when lands are granted according to an official plat of the survey of such lands, the plat itself, with all its notes, lines, descriptions, and landmarks, becomes as much a part of the grant or deed by which they are conveyed, and controls so far as limits are concerned, as if such descriptive features were written out upon the face of the deed or the grant itself." Restoration of Lost or Obliterated Corners & Subdivision of Sections – A Guide for Surveyors; BLM, 1974.

McKinnis related that he tried to get another county surveyor and other parties involved. Sometimes it worked and others times not. One example was the ODOT survey. In that instance, he had ODOT send a letter to get the map filed. In a separate matter, he disagreed but did it Coppock's way and noted that in the narrative. However, the conflict reached a point where Coppock decided that he would not review any more of his surveys.

Singh noted there is a mechanism for county surveyors to submit maps for Board review under ORS 209.250(4)(c).³ AAG Lozano agreed and read ORS 209.070, Duties in respect to surveys. She concluded that in many ways county surveyors are the final word. However, there is a chain of command and a remedy is provided in ORS 209.250(4)(c).

Singh was not clear how that authority to make a determination is granted to the county surveyor. AAG Lozano replied that it is not where the authority lies, but in the methodology requirements of ORS 209.200,⁴ which is required in ORS 209.250(1). When the DOJ conducted a search of the legislative history on ORS 209.250(1), the text means that surveyors are to follow what the BLM *Manual* says they are to do, in terms of methodology. Furthermore, county surveyors, as noted above, are required to forward non-compliant maps to the OSBEELS when there is an impasse, and all professional surveyors, whether county surveyors or private surveyors, are subject to OSBEELS discipline if they engage in negligent or incompetent work. Finally, she added, civil courts are always available to resolve surveying disputes.

McKinnis stated that he did not reestablish the N1/4. Rather, he set a property pin to establish the Patterson property lines and he left the rest alone. He also did not set a brass cap for perpetuating the N1/4 of Section 18, T. 6 S., R. 26 E., W.M.

Kent summed his observations by noting that McKinnis clarified the Patterson survey. He added that the LEC authorized the NOI in February, but it was brought back due to questions about imposing license discipline. Wilkinson reminded the LEC that they pulled the OHV Park survey out for a professional review. However, the panel is not yet operational. Lopez noted that the Board approved the reviewer for OHV and the reviewer panel at their May Board meeting.

Hoffine remarked that McKinnis was not prepared to properly conduct the Patterson survey. He concluded that McKinnis lacked the technical knowledge regarding cadastral surveys, to which McKinnis acknowledged he had difficulties. Kent agreed indicating that McKinnis should have consulted the BLM regarding proportioning and restoring the Sanderson corners. Even McKinnis agreed the survey was better when fixed.

³ ORS 209.250(4)(c), A map that is not corrected within the specified time period must be forwarded to the State Board of Examiners for Engineering and Land Surveying for action, as provided in subsection (11) of this section.

⁴ ORS 209.200, Resurvey of government-surveyed lands. In the resurvey of lands surveyed under the authority of the United States, the county surveyor or a registered professional land surveyor shall observe the following rules:

- (1) Section and quarter-section corners, and all other corners established and approved by the General Land Office or its successors, must stand as the legal and permanent corners.
- (2) A legal and permanent corner must be reestablished at the identical spot where the original corner was located by the government survey, when the identical spot can be determined.
- (3) When the identical spot cannot be determined, the legal and permanent corner must be reestablished with reference to the current United States Manual of Surveying Instructions.

The LEC discussed disciplinary options. AAG Lozano offered some ideas, but highlighted key points. McKinnis struggled with restoration of the original survey. He also was a county surveyor who did not file surveys for a period of time. Furthermore, he was given direction and did not follow it because he didn't like it. Given these different strands, she suggested dividing the surveys into separate matters and, in turn, dealing with each one. Separating a single respondent's complex case makes it easier to litigate each component because of the complexity of the facts, issues, and law. Breaking a case apart helps the respondent and the Administrative Law Judge (ALJ) understand each piece, e.g., how a specific survey was done, filing deadlines, BLM *Manual*, Oregon Revised Statutes (ORS), and how each piece leads to the outcome. She added that land surveying cases are difficult for lay people to understand, including ALJs, because they deal with issues outside of most people's ordinary experiences and are complex

It was moved and seconded (Hoffine/Van Dyke) to separate the Patterson survey and to issue a NOI that included licensure discipline. A friendly amendment was made to set aside the OHV Park survey. Hoffine accepted, Singh second. The motion passed unanimously.

After further discussion, the LEC determined that the Patterson survey would remain case #2827. The OHV Park survey would receive a new case number. Singh stated that the complaint from Haddock alleged that McKinnis did not know how to subdivide section 7 differently than regular township sections. McKinnis appears to know how to do it properly, but choose not to because he wanted to recreate Sanderson's mistaken survey. If that's true, then maybe it's appropriate. When he finally established the survey properly, was it by using the proper methodology or by recreating Sanderson's footsteps? Hoffine interjected that problems arise where surveyors try to correct original errors. The plat controls. You don't try to recreate a problem, just follow the plat. He then explained that stubbing was common practice, particularly in Western Oregon. Sections will be shorter or wider than the plat, but the plat still governs on the subdivision of the section. Every surveyor can come up with different ideas on how the original surveyor did the survey, with or without mistakes, and ignore the BLM *Manual*. However, that creates problems the statute is meant to prohibit.

The LEC reviewed violations, including ORS 209.250(1) for failing to file within 45 days and for not following the BLM *Manual*. In addition, McKinnis admitted to submitting the maps for filing and knew about filing timelines. Furthermore, there are a number of corner certificates that were not filed in a timely manner.

Another question arose as to his lack of knowledge or preparation. Kent recommended that the Board make a determination at the July meeting once the Board has discussed advice from AAG Lozano. Hoffine agreed to the recommendation for licensure discipline, but also inquired about requiring further education. AAG Lozano replied that the Board does not have the authority to require education; however, it can be negotiated in a settlement. Hoffine recommended a six month suspension for the conduct of the Patterson survey.

AAG Lozano reasoned that the LEC can identify the specific statutory violations under ORS 209 and note the general lack of knowledge and preparation, but defer that discussion to the Board. At that time, members can recommend licensure discipline and the civil penalty amount. She then inquired if the committee summarized the violations as failure to timely file,

make timely corrections, and follow the BLM *Manual* and statutory requirements. They affirmed. Last is the general practitioner issue of lack knowledge and preparation. Rather than determining all of the violations, Hoffine suggested that the LEC assess a civil penalty of a \$1,000 for each occurrence of such practice within the survey, for a total of \$4,000. He believed to do otherwise would result in a tangled timeline and violations. He added that looking at the Patterson work as a whole, it deserves the maximum. AAG Lozano asked if, based on what she understood from the committee's discussion, that was due to the number of problems and the gravity of what happened. The LEC agreed.

It was moved and seconded (Hoffine/Singh) to issue McKinnis a NOI on the Patterson survey for \$4,000. No suspension was considered at the time. The LEC stated that the gravity was high and there were no mitigating factors. The motion passed unanimously.

Hoffine then endorsed a six month suspension. AAG Lozano asked if this was due to McKinnis's failure to file and to correct the maps, which are connected to his interactions with county surveyors, as those were serious violations in and of themselves. Hoffine replied that the more troublesome problems were McKinnis's failure to follow the BLM *Manual* and general lack of knowledge and preparation for this survey. What McKinnis clarified was that he didn't follow the BLM *Manual*, but followed his own particular ideas on what was appropriate. McKinnis's actions are tied, in part, to his not understanding how to do government resurveys. Hoffine opined that this issue is more impactful than failure to file.

Kent observed that part of McKinnis's failure to correct was his steadfast refusal to correct. But, when McKinnis did make the corrections, he realized that it did work out. Kent asserted that the failure to file and correct was just as egregious as not knowing the BLM *Manual*. Kent supported tying the suspension to not correcting, following the BLM *Manual*, and lack of knowledge and preparation. He set forth 60-day suspensions for each violation for a total of 180 days. Kent seconded Hoffine's motion for a six month suspension.

Singh was not ready to agree. He wondered if something more was happening. Kent noted that the investigation was complete and McKinnis was in attendance to answer questions. He added that McKinnis can request an informal conference where the issues can be further discussed. From the beginning, Coppock told him the correct method. When a county surveyor said he was doing it wrong, why did he not change? AAG Lozano commented that having to deal with difficult county surveyors or other professional contacts is not a mitigating factor for the violations.

Van Dyke wondered if a six month suspension was warranted if Patterson was not considered. Does a single survey warrant that suspension level? Kent agreed pointing out that an engineer got a 45-day suspension for falsifying eight fire escape certification reports. AAG Lozano clarified that in that situation the Board entered into a settlement agreement with Wolden for a 45 day suspension. However, she reminded the committee that Wolden's notice proposed revocation. The Board agreed to the suspension via an informal conference. Rather than making that comparison, she asked, the question here is whether the Patterson survey and what happened in the making of it justify the suspension? Hoffine replied that McKinnis accepted the project and made a determination to not follow the statutes and the BLM *Manual*.

Hoffine likened the decision to building a bridge and not using code and known design features. Hoffine further suggested that McKinnis's attempted remedies in the Patterson survey were comparable to, if that hypothetical bridge collapsed, continuing to reject the code and known design features, and simply attempting to rebuild the bridge from ideas in your own head. In this instance, McKinnis ignored the *BLM Manual* and kept trying different solutions he crafted unilaterally in order to make his clients happy.

It appeared McKinnis was trying to use judgment, and he can't be faulted for that, replied Van Dyke. Hoffine emphasized there is a difference between setting a monument for a property corner and establishing a monument for an original survey. The standard for setting an original corner is governed by different methodology and requirements than those for property corners. If you have questions regarding an original survey, you contact the BLM for guidance. Wilkinson added that the original surveys were used to convey title and ownership. Deeds begin with an original conveyance. Van Dyke asked if this survey was to place property corners and not original corners, would it still rise to a suspension. Hoffine replied that it would be appropriate to use judgment in property corner situations under ORS 92, which is what McKinnis asserted. However, that is not the case when dealing with original corners. ORS 92, Subdivisions and Partitions, is not the chapter that governs re-establishing original corners. The appropriate requirements are found in ORS 209 and the *BLM Manual*.

Van Dyke announced he could support the suspension. He expressed that issuing the NOI begins the dialog towards resolution. Hoffine reminded the LEC that McKinnis made a decision to not follow the *BLM Manual*, but to follow ORS 92. That is not done, nor is it the applicable statutory chapter. Lopez commented that professionals need to understand that practicing outside their area of expertise has ramifications. Hoffine agreed commenting that McKinnis had no business doing this type of survey. Lozano observed that the Board's statutes, except for the design of significant structures, allow its professionals to practice in any area in which they are competent, so the Board expects professionals to know whether or not they are competent to take on project. Hoffine declared that is why six months is warranted.

It was moved and seconded (Hoffine/Kent) to issue the NOI and suspend registration for 180 days for failing to correct the Patterson survey map within 30 days, for failing to follow the statutes and the *BLM Manual*, and for a general lack of knowledge and preparation for the Patterson survey, which will be further defined by the Board next month. The motion to suspend excluded the failure to file within 45 days. The motion passed unanimously.

Boardman Rural Fire Protection District Partition Plat

Wilkinson explained that this partition plat involved property that Coppock believed the State had no authority to vacate. Coppock refused to sign the plat. Eventually McKinnis contacted the Oregon Department of Transportation (ODOT) Right of Way Section and received documentation demonstrating they had the authority to transfer title. The map was subsequently filed. Van Dyke asked whether the ability of a party to convey land is a matter for the county surveyor to determine, or for them to require that it be determined before filing. AAG Lozano expressed that the reason given by Coppock does not fall under County Surveyors' statutory authority to refuse to file a map. Singh agreed, stating that Coppock should have filed the survey whether or not ODOT had the authority. Hoffine concluded that it would be a difficult

case to proceed because it seemed to be a difference of opinion. AAG Lozano observed that this matter at first appeared to be a filing deadline issue, but further investigation found something else.

Port of Morrow Partition Plat

Wilkinson explained that the Port of Morrow was alluded to by McKinnis in his opening comments. When the partition plat was submitted for filing, Coppock wanted McKinnis to change the deed. However, McKinnis maintained that the deed should be the legal description that the Port of Morrow got from Kinzua. In order to get the map filed, McKinnis changed his deed according to the metes and bounds description of the lines showed on the plat. He also changed his narrative to include “as required by the County Surveyor.” AAG Lozano noted that a difference of opinion regarding the type of description is not a reason to not file under ORS 209.250.

It was moved and seconded (Van Dyke/Hoffine) to close the investigations regarding the Board Rural Fire District Partition Plat and the Port of Morrow Partition Plat as allegations unfounded. The motion passed unanimously.

Before moving on, Wilkinson informed the LEC that Delano had not been a former county surveyor as reported in the April LEC minutes, but McKinnis had been. The published minutes have been corrected. However, Delano is now the Harney County Surveyor. As a result, the LEC will need to review the Delano case again to discuss disciplinary options.

2864 – Lawrence Fischer

Wilkinson introduced the case noting that it regards disclosure of disciplinary actions in another state. The LEC had reviewed the case and approved issuing a NOI; however, while drafting the NOI it appeared that the original charges might not rise to a level for Board action. Essentially, the original charges did not include a suspension or a revocation, which is required under OAR 820-020-0015. Further investigation found that the original charges only contemplated a civil penalty and that Fischer chose to voluntarily resign his registration rather than pay the penalty. AAG Lozano commented that the Board has proposed a legislative change that would allow the Board to evaluate violations in another state based on the violation itself, and not on the type of discipline imposed on the registrant for it in that jurisdiction. It was moved and seconded (Hoffine/Singh) to close the case as Board lacks jurisdiction. The motion passed unanimously.

2873 – Michael Elsberry

AAG Lozano began by stating that the staff recommendation is to close the case as compliance met for use of the title and as lack of jurisdiction regarding unlicensed practice of engineering. There is an option to refer it to Building Codes Division (BCD) for investigation, but for the sake of Board statutes and rules, Elsberry is in compliance. Wilkinson explained that Elsberry is a supervising electrician, licensed by the BCD as both an electrician and contractor, who performed work by replacing fire alarms. The local building official asked for additional information, which is when Elsberry used the title to convey his role. The BCD has several layers of licensing requirements for electricians. AAG Lozano observed that Elsberry is the type of tradesman the exemption was provided for under OAR 820-040-0010. It was moved

and seconded (Van Dyke/Singh) to close the case as compliance met for use of the title and Board lacks jurisdiction regarding unlicensed practice. The motion passed unanimously.

2884 – Abraham Taylor

Wilkinson explained this case as a “high precision/low precision” surveying complaint. Hoffine recognized the case from prior discussions and investigation. Wilkinson explained that this particular act occurred in time prior to the events that were investigated in case #2480 and for which Taylor already was sanctioned. Kent recalled that Taylor was offering a two-stage survey. Wilkinson added that many people will pay for a less expensive and less accurate estimate “survey,” but then build fences or whatever based on some representation from it. Singh stated this was not appropriate. A surveyor can come out, assess the situation, and make an offer on doing the work. He can say what he found, but not offer an opinion on an approximate corner location.

Kent observed that a careful, skillful, and prudent land surveyor would not have acted in this manner under similar circumstances in a similar community. He also thought there was an issue with knowledge. This was a violation.

The LEC discussed the civil penalty factors. Hoffine could not understand Taylor’s procedures. Did he go beyond to consider proportioning? It appeared to him that Taylor was following in the footsteps of the original surveyor and was not taking into account current conditions and occupation lines. This is the flip side of the McKinnis case.

Singh reviewed Taylor’s report and noted that his client requested help to determine fence placement. Taylor found corners and used a cloth tape. If he stopped there and recommended a survey, he would have been fine. If the landowners took that minimal amount of information and figured out the fence line, then that would be their problem. Hoffine added that Taylor goes farther by offering a professional opinion that the centerline of a curb and found corner were strong indicators of an original fence. He represented this evidence as such, but they were not tested against the adjoiners.

AAG Lozano brought attention to the fact that the report was not marked preliminary. Singh agreed noting that the letter makes an authoritative statement on position of the line. Van Dyke reached the same conclusion that it was an authoritative opinion on what he found. Hoffine believed that Taylor needed to verify the found monument. He continued that a found iron pipe is close to the corner, but until it’s measured and compared to other found monuments you have no idea what the pipe actually is – it could just be old construction debris, etc. Taylor seems to have crossed the threshold into inappropriate practice, Van Dyke commented, because Taylor reports a found iron pipe, but then he called it a monument for a property. That’s where the problem arises; concluding that it is not a random pipe, but the corner, without adequate information to draw that conclusion. Singh pointed out that Taylor, for the additional money, would verify the monument and prepare a map of survey for filing.

Kent questioned whether the landowner hired Taylor to find the corners or to conduct a survey. It was either a misrepresentation of services or the landowner did not understand what he was

purchasing. Is this a business practice issue or a license issue? AAG Lozano replied that it would be difficult to prove intent since no evidence suggests one or the other. Wilkinson reviewed Taylor's prior case and settlement agreement. AAG Lozano highlighted that Taylor set a lath at that property to indicate the approximate location of a property corner. Singh commented that when a surveyor puts a stake in the ground it is settled. If all Taylor intended was a price quote, yet the landowner took his information and built a fence, then the act is on the landowner. Van Dyke argued that if a professional registrant offers a professional opinion then that's professional practice. What was done here was the practice of land surveying and it was not done to the professional level.

Singh agreed that when a professional states an opinion it carries weight in the public; especially if it's in an authoritative document. However, he emphasized that Taylor informed his clients that they should not do anything until a "high precision" survey was completed. Taylor cautioned them and his report shows some level of competence. The clients acted on his professional letter and representation, but ignored the warning. Furthermore, Taylor conducted his background work, retrieved records, and located monuments. Hoffine agreed the client went beyond what Taylor did by not stopping to complete the survey before constructing the fence.

It was moved and seconded (Hoffine/Kent) to close the case with a letter of concern regarding misleading his clients regarding his survey. The LEC wanted to see a draft letter of concern on the Board Consent Calendar. The motion passed unanimously.

2890 – Dave Young

Wilkinson introduced the case by noting Investigator Peterson completed the case prior to her departure. As a result, he was unfamiliar with the case. She did not make note of any pending litigation. Hoffine asked about what initiated the complaint. Kent explained that Lysne reported that Young had completed the design for the culvert. It was part of the original case and why the case was opened against Young. Young refuted the allegation. The investigation found nothing to support that he designed the culvert. It was surmised that Young was involved in the construction staking, but that the staking was done by an unnamed person. Lopez commented that Oregon State University would not release the name. Kent noted the person could have practiced land surveying without registration. After discussion regarding records, the LEC recognized the lack of cooperation. Nevertheless, AAG Lozano described the issue as the installation of a culvert on state lands by state employees, but it was not incidental to their operations. Therefore, the exemption may or may not apply.

Kent commented that this is an important case, which presents competing interests. Hoffine reiterated that the case revolves on interpreting the exemptions. Kent observed that several people involved in the case are no longer with the State. Hoffine countered that the Board needs to make sure that state officials are following the statutes and rules when work is being done. It has implications beyond this case. Lopez noted that the students were not employees of the state. Kent suggested they were not working without oversight because land surveying and engineering work was done by others. Van Dyke concluded that the culvert failed, but no one has stepped forward to accept responsibility. It was moved and seconded (Kent/Singh) to hold the case pending AAG advice. The motion passed unanimously.

2893 – Kerry Albright

Kent introduced the case by observing it emerged from the Duryea case. In response to a question about Albright's comity application, Ms. Lopez recalled that it was on hold pending references. Wilkinson then explained that the LEC met with Duryea in an informal conference where Duryea made several comments that fed into the Albright case. As the NOI for Albright was being drafted, the evidence did not seem to support the allegations. Ultimately, Albright was a Millman Surveying, Inc. employee and their focus is on ALTA surveys.⁵ The revised case summary shows that ALTA surveys are of the as-built environment with no setting of boundary monuments. Field decisions were not of a professional nature under OAR 820-010-0010(5)(g). In addition, setbacks between building footprints and the "building area" were measured to the tenths-of-foot accuracy.

Kent asked about responsible charge. Wilkinson explained that the Millman Surveying, Inc. business model has Duryea and Albright reporting to the Millman head office for instructions. There was little to no communication between the two employees, which gave rise to the allegation of unlicensed practice. In a typical surveying office, there is a direct link between the survey crew and their professional oversight. However, communication in the Millman business model is managed by the firm. As a result, their model does not support the definition of responsible charge outlined in Board rules.

Wilkinson further explained that Millman was described as an ALTA survey "mill." Hoffine commented that Albright was the field guy. They hired someone with experience and he's doing it all. Typically, the Board goes after the company or the professional. However, Albright was not offering services, which makes it difficult to support issuing the NOI. Wilkinson explained that all services originate from and survey information is sent to Millman for processing. Albright only field verified the as-built environment. Duryea takes responsible charge and accepts responsibly when he affixes his seal and signature, which is near the end of the process. Duryea's involvement up to that point was still unclear.

Wilkinson clarified that the proposed NOI evidence against Albright would not support the allegations. The problem is the Millman business model. Wilkinson recalled the instance where Albright emailed that he shot the back of curb to get the 1/16th section line. However, any good party chief would have done the same thing to allow the office PLS to make a decision regarding placement. It was not a decision about property lines or monumentation, but about gathering enough information to depict features and orient the map.

The Board received a letter from Millman's attorney that listed Oregon projects. Wilkinson examined each project and all involved ALTA surveys. For those surveys he sealed, Duryea accepted responsibility. Any boundary work that was needed was completed by others, and there were examples of those as well. Millman had detailed checklists for what was expected. Basically, preparing an ALTA map is prescriptive surveying. It was moved and seconded (Hoffine/Van Dyke) to close the case as allegations unfounded. Kent abstained.

⁵ American Land Title Association. ALTA members conduct title searches, examinations, closings and issue title insurance that protects real property owner and mortgage lenders against losses from defects in titles.

2904 – Richard Sturm

Before discussion began, AAG Lozano questioned why a letter was not sent to the applicant for a title violation. Lopez replied that this case was opened before the Board made the decision to have E&Q issue a letter of concern for title violations found during application reviews. She further explained that Sturm came into the office and gave staff his business card with the title violation. This was before he made application. Kent asked whether he was actively practicing engineering, and what was commission engineering? Hoffine remarked that he was not practicing engineering. He needs to drop the title. Lopez reiterated that this case occurred way ahead of policy change. Regardless, Sturm received licensure in January. It was moved and seconded (Kent/Van Dyke) to close the case as compliance met for the title violation and allegations unfounded on the allegation of unlicensed practice. The motion passed unanimously.

2911 – Paul DeMaggio

This was a title violation case. Wilkinson continued that DeMaggio was hired by the Jackson Soil & Conservation District as a Natural Resource Engineer. However, he was not registered. Once the District was contacted they took immediate steps to change his title and the posting to their Web site. It was moved and seconded (Kent/Van Dyke) to close the case as compliance met. The motion passed unanimously.

Preliminary Evaluations

Wilkinson introduced the preliminary evaluations by stating that the LEC was provided documents as submitted by the complainant for their determination on whether or not to open a case.⁶ No investigations have occurred. The below list begins with the subject of the complaint followed by the name of the complainant.

Kevin Dowd / Miller Farm Retreat

Hoffine commented that this complaint could have used a summary because there was voluminous information. He noted a dispute over a property line. Wilkinson added that a corner may have been improperly set. Hoffine agreed, but pointed out that it appeared a court settlement was not followed. He summed that the surveyor decided to not establish property corners. He thought it was not a survey question. Kent asked if it warrants an investigation. Wilkinson replied that facts suggest an error setting corners and an investigation would clarify, but admitted overall it was a long-standing property line conflict. At this point, there has been no investigation and the details would emerge from that process. Hoffine stated that this is a difficult case. Singh agreed observing the issues presented are for the courts to decide. Hoffine pointed out that the packet included deeds and agreements. His opinion was that the complaint shows a conflict between neighbors that may need a court to resolve. It looks like a settlement was reached and not followed. AAG Lozano clarified that the complaint appears to be a property line and contract dispute. It was moved and seconded (Hoffine/Van Dyke) to decline opening a case. The motion passed unanimously.

⁶ OAR 820-015-0010, Processing Complaints, The Board will process complaints as follows: *(next page)*

(1) Anyone may submit a complaint against a licensed or unlicensed person. Complaints must be in writing and include evidence to document all charges; (2) The Board will conduct a preliminary review of the complaint to establish that there is sufficient evidence to justify proceeding and that the allegations against the respondent are such that, if proven, would result in a penalty or sanction. * * * *

Robert B. Ward / Claussenius & Taylor

There are a number of issues going on with the complaint, Kent reported. Hoffine commented that the complainants are well-versed in what to expect in a survey. Ward discovered an easement description did not include a bearing and distance from a map of the easement, which changed the easement's footprint causing the conflict. The results were not what they were expecting. Hoffine knows the work of the surveyor from the number of surveys he has followed. Kent observed that the complaint does not indicate what violations fall within the Board's jurisdiction. Hoffine clarified that Ward made a judgment call about an easement that was not properly monumented. The complainants called Ward's statements misleading, but all Ward was trying to do was make the disconnection between the map and easement document work in a legitimate way. It's also possible that a different surveyor would reach a different conclusion. He was placing deed calls on the ground. The narrative explains what he did and the reasons why he did what he did. Kent commented that unhappy clients happen and the Board cannot investigate allegations that are not stated within the Board's jurisdiction. Hoffine agreed because this was a surveyor's opinion that appears based on knowledge and experience. It was moved and seconded (Hoffine/Van Dyke) to decline opening a case. The motion passed unanimously.

Galen-Johnson-Krumsick / Shantubhai Shat

Hoffine noted that the complainant alleges that these individuals did not have a professional registered electrical engineer in their Portland office, as well as their failure to meet the requirements of responsible charge. It appeared to him that an architect was involved in the design work. In addition, two professional engineers were involved. However, he also questioned whether there was someone with electrical experience on the project. It was moved and seconded (Kent/Van Dyke) to open a case. The motion passed unanimously.

Franklin Callfas / Charles Hegele

Kent observed that the complaint referred to current litigation regarding "Intuitive Fire, LLC" and two businesses owned and operated by the complainant. AAG Lozano added that she did not see any violations of rules of professional conduct. It's using a business name. Van Dyke noted the allegations were based on attorney letters, but Hegele did not clearly state the violations or provide evidence that places the violations within the authority of the Board. Kent commented that it's concerning activity, but it's also not a violation of Board rules. It was moved and seconded (Kent/Singh) to decline opening a case. The motion passed unanimously.

New Business

Dale Marx, Case #2291

Wilkinson introduced new business from Dale Marx. As a result of a settlement agreement in case #2291, Marx was suspended for 90 days or until he completed an ethics course through New Mexico State University (NMSU). The Final Order was signed on January 9, 2007, but Marx has remained suspended because he has not completed the course. This is a very unique situation. Wilkinson explained that the Marx settlement agreement specified NMSU surveying ethics course SUR 402 – Ethics and Professionalism in Surveying. However, that course is no longer offered. Upon further investigation, NMSE offers SUR 401. Because the settlement agreement specifies SUR 402, the question for the LEC to consider is whether course SUR 402 is equivalent to SUR 401. Wilkinson clarified that he communicated with Steven Frank, NMSU

Associate Professor, and learned that SUR 401 was an on-campus offering, whereas SUR 402 was online. Otherwise, Frank asserted they were equivalent.

Kent emphasized that the settlement agreement is 8.5 years old. Doesn't he have to reapply? Lopez remarked that this is a very unusual situation in that his land surveying registration is not in retired or delinquent status, just suspended. In a normal situation after five years, the individual would have to apply by comity or sit for examination. AAG Lozano added that this is a reactivation, but asked whether he has he done any continuing education. Kent offered his difficulty in reinstating someone who has not practiced.

Wilkinson responded with his understanding that Dan Bauer, PLS, was providing supervision and control for Marx and Associates employees. That was a number of years ago, however. He was unsure as to their current operations.

Van Dyke pointed out the settlement includes a revocation for not complying with the agreement. He has paid the civil penalty, so the issue is the course. The LEC should issue a NOI to revoke registration for failing to meet the terms of the agreement. AAG Lozano replied that the agreement states he is suspended until he completes the course. Van Dyke then asked about the phrase "sole discretion" in the settlement agreement. AAG Lozano informed that it is not the Board's sole discretion to change the terms of the agreement, only to take action if a violation of the agreement is found. If the Board found Marx, while suspended, was practicing, using the title, or whatever, the Board could issue a NOI on those violations.

In sum, Max is asking to renegotiate the settlement agreement. Van Dyke questioned if the Board can accept the other class. He wants to do something by asking for an exception to an existing agreement. AAG Lozano commented the Board can negotiate a new settlement agreement.

Lopez referred the LEC to a form that is available on the Board's Web site, Reinstatement from Inactive or Retired Status. It would not apply to Marx because his registration is neither inactive nor retired. There is no clear pathway. AAG Lozano highlighted that Marx waited so long that the course is no longer offered thereby jeopardizing his registration. Kent agreed commenting that Marx should go through the process as any other registrant would have to if they had resigned their registration for over eight years.

The LEC discussed that Marx would need to meet the requirements for reinstatement of his registration, including completing CPD hours and payment of fees. Kent observed that Marx has been out of compliance for eight years and has not demonstrated his qualifications. At this juncture, AAG Lozano replied, Marx and the committee can either agree to negotiate the settlement or the committee can inform him that the courses he wishes to substitute are or are not equivalent. Lopez suggested that Marx be required to complete 15 PDH units per year. Wilkinson added that the NMSU course would not satisfy his CPD requirements, so he would have to take additional courses to reinstate his registration. Van Dyke agreed declaring that Marx has been suspended and not practicing for eight years.

Kent made a motion that the LEC consider course equivalency and offer to renegotiate settlement agreement, but deny equivalence at this time. Marx would need to complete the course and meet the requirements for reinstatement, including payment of all fees, continuing education requirements, and take-home examination. Lopez identified two cycles of renewal fees. Singh thought that 30 PDH units would be consistent with reinstatement from retired status. Kent replied that only considers five years, and they have to apply by comity or by examination in order to reinstate their registration. Marx is suspended. The LEC should include language that limits the amount of time he has to complete the course. If not, then he is revoked.

After further discussion, Kent withdrew his motion. He made a new motion to deny the request for equivalence. The Board would offer a revised settlement agreement, wherein Marx can reinstate if he completes the following:

1. The NMSU course;
2. Requirements for reinstatement, including payment of reinstatement fee and biennial renewal fees;
3. All delinquent continuing education requirements; and,
4. Successfully pass the take-home examination.

Marx will be required to submit 15 PDH units for each year of his suspension, or a prorated portion thereof. No retroactive PDH units will be accepted. If Marx does not complete all of these requirements within 12 months, then the Board will revoke his registration. Marx can either make a counter offer or decline this offer of the committee. This motion would include the mentoring and other requirements already in the settlement. It was moved and seconded (Kent/Van Dyke) to make the above recommendation to the Board. The motion passed unanimously.

Lopez also noted that Marx has an outstanding balance on another case. Wilkinson explained that the amount was turned over to the collections division for the Department of Revenue, but was unsuccessful. Wilkinson added that Marx contends that payment was made, but he has been unable to submit proof of payment. It was moved and seconded (Van Dyke/Kent) to add the outstanding balance to the renegotiated settlement. The motion passed unanimously.

Unfinished Business

AAG Advice: Negligence, Gross Negligence, Incompetence Update

The Committee entered into executive session pursuant to ORS 192.660 (2)(f) to review and discuss the DOJ Opinion regarding Negligence, Gross Negligence, and Incompetence. All members of the audience were asked to leave the room and were invited to return upon resumption of the public meeting. Upon returning to public meeting, it was noted that no decisions were made and no votes were taken while in executive session. The Committee briefly discussed waiving privilege. It was moved and seconded (Kent/Hoffine) to recommend to the Board to waive privilege. The motion passed unanimously.

Contested case updates

AAG Lozano informed that she is drafting Motions for Summary Determination for Wolden and Duryea. If she discovers new information for Duryea, then she will bring it back.

Case Status Reports

Wilkinson noted that with the departure of Peterson the work load has shifted. In reviewing the case involving Adapt Engineering, a registered geologist signed the report. However, he did not affix his RG seal. Lopez commented that it either will be a referral to OSBGE or to the Joint Compliance Committee (JCC).

Lopez also recalled that in case #2879 the LEC wanted an expert reviewer to evaluate the respondent's Web site. She pointed out that Aldridge is a registered photogrammetrist who has been appointed to the Board. AAG Lozano added that if Aldridge has the expertise then he should take a look and offer his opinion. In response, Aldridge stated that he and respondent Andrea Laliberte met when she was a student. After a few questions, AAG Lozano observed that he can review her work because knowing someone casually or following their work is different than having social or business connections with a person that could lead to conflict of interest or bias. Kent commented that Laliberte removed terms from her Web site that referred to photogrammetry, but her description of what she is doing seemed like it was still photogrammetry. Aldridge replied that Laliberte is a remote sensing person, which is different than the professional practice of photogrammetry. He agreed to review.

Collections

Lopez informed that the Board in May approved entering into contracts with outside collection agencies. This is a work in progress.

The meeting adjourned at 4:18 p.m.