



Oregon

STATE BOARD OF EXAMINERS
FOR ENGINEERING &
LAND SURVEYING

670 Hawthorne Ave. SE, Suite 220
Salem, OR 97301
(503) 362-2666
Fax (503) 362-5454
E-mail: osbeels@osbeels.org

LAW ENFORCEMENT COMMITTEE

Minutes of Meeting
April 9, 2015

Members present:

Jason Kent, Ad hoc Chair
Ken Hoffine
Ron Singh

Members absent:

Bill Boyd (excused)
Dave Van Dyke (excused)

Staff present:

Mari Lopez, Board Administrator (arrived at 10:40 a.m.)
Jenn Gilbert, Executive Assistant
Adaira Floyd, Social and Communications Media Specialist
James R. (JR) Wilkinson, Investigator
Monika Peterson, Investigator

Others present:

Katharine Lozano, Assistant Attorney General
J. Kevin Shuba, Attorney for John D. Rasberry
John D. Rasberry
Tim Kent (observer)

The meeting of the Law Enforcement Committee was called to order at 8:06 a.m. in the OSBEELS Conference Room at 670 Hawthorne Avenue SE, Suite 220, Salem, OR 97301. During the March 10, 2015 Board meeting, Ken Hoffine, PLS, was appointed by President Newstetter to serve on the Committee due to previous concerns with the number of land surveyors on the Committee.

Public Comment

There was no public comment.

Case Disposition

2891 – Urban Robotics / OSBEELS

During the February 12, 2015 meeting, the Committee determined to issue Urban Robotics a NOI to assess a \$1,000 civil penalty for falsely offering engineering services. Staff reported that

Urban Robotics returned the options form, submitted payment and did not contest. It was moved and seconded (Hoffine/Singh) to recommend the Board approve the final order for case 2891. There was no additional discussion. The motion passed unanimously.

2897 – Robert Stimson / OSBEELS

During the December 11, 2014 meeting, the Committee determined to issue Stimson a NOI to assess a \$1,000 civil penalty and 30-day suspension of Stimson’s professional registration for failing to provide sufficient supporting documentation to verify all but eight of his claimed PDH units. Staff reported that Stimson did not respond to the Notice within the required 21 days. It was moved and seconded (Hoffine/Singh) to recommend the Board approve a final order by default for case 2897. There was no further discussion. The motion passed unanimously.

2916 – Corey Westermann / OSBEELS

During the February 12, 2015 meeting, the Committee determined to issue Westermann a NOI to assess a \$1,500 civil penalty and a 60-day suspension of Westermann’s professional license for failing to provide documentation to support his claimed PDH units and failing to cooperate with the Board. Staff reported that Westermann returned the options form, requested a payment plan, and did not contest. It was moved and seconded (Hoffine/Singh) to recommend the Board approve the final order for case 2916. There was no further discussion. The motion passed unanimously.

Informal Conferences

2918 – John D. Rasberry

Previously discussed during the February 12, 2015 meeting, the EQC determined to issue a NOI to assess a \$250 civil penalty for the untruthful statements made on Rasberry’s application a violation of OAR 820-020-0025 and a letter of concern to Rasberry regarding his use of the title “engineer” while unlicensed. Before the informal conference began, AAG Lozano explained that she had just been informed that Rasberry holds his EI certification in Maryland and is not a certificate holder in Oregon. Rasberry’s registration lapsed in Oregon over 5 years ago. AAG Lozano continued, explaining that because he holds neither a registration nor certificate issued by Oregon, Rasberry does not fall within the definition of “registrant” under OAR 820-020-0005 (3), so the Board’s rules of professional conduct do not apply to him at this time. She recommended The Committee consider withdrawing the NOI.

Rasberry and Attorney J. Kevin Shuba attended the informal conference on April 9, 2015 in-person. Chair Kent explained AAG Lozano’s legal recommendation and its basis. The Committee determined to withdraw the NOI for case 2918. Rasberry inquired how this would affect his application process. Chair Kent explained that Rasberry’s application has been placed on the Examinations and Qualifications Committee (EQC) agenda for the meeting on April 10, 2015 for recommendation to the Board under Review of Applications – PE Exam. There was no further discussion.

Cases Subject to OAR 820-010-0617

2827 – Ronald McKinnis / Stephen Haddock

Discussed during the February 12, 2015 meeting, the Committee reviewed case 2827 in detail and determined the following based on the information provided: McKinnis was negligent or

incompetent in four surveys, failed on four accounts to follow the BLM *Manual of Surveying Instructions*, failed to file corner monuments, and failed to file maps of surveys within 45-days on three accounts. The Committee determined to issue McKinnis a NOI to assess an \$8,000 civil penalty for eight total violations of ORS 209.250(1) and (9), ORS 209.200(3), OAR 820-020-0020, and OAR 820-030-0060.

While drafting the NOI, staff noted that the Committee did not discuss issuing licensure discipline and pointed out that there was a difference in the way the Committee handled the case against Kenneth Delano (case 2858). In that case, the Committee determined to issue a 90-day suspension due in part to Delano's past responsibilities as the Morrow County Surveyor. Staff noted that McKinnis was also the Morrow County Surveyor from 2000-2004, but did not receive licensure discipline. The case was reintroduced for the Committee to discuss whether or not licensure discipline is warranted.

Upon reviewing the case materials and past discussions, Hoffine recommended that the case be reviewed by an Expert Reviewer due to the complexity of the case and the amount of potential errors made by McKinnis spanning across multiple surveys. AAG Lozano noted that if the case went to hearing, an Expert Witness would be needed regardless. To support his recommendation, Hoffine drew a rough diagram to illustrate proportioned corners, fence lines as boundaries, and boundaries-by-agreement, and then explained how they must be set. Hoffine noted that if it was a boundary-by-agreement, partition, or deed, McKinnis did not state it on his survey. Hoffine wondered if the Committee may wish to look further into the possibility of deeds playing a factor. AAG Lozano inquired if information on existing deeds would determine if the survey was competent. Hoffine explained that a review of any deeds would help determine how egregious the errors were. Chair Kent suggested that due to the possibility of serious license discipline and the complexity of the case, an Expert Reviewer is needed. It was moved and seconded (Kent/Hoffine) to hire an Expert Reviewer for case 2827 and table further decision(s) until the review is completed. Singh and Hoffine wondered if McKinnis could be asked to speak in front of the Committee during the investigation and review. AAG Lozano responded that he can, but that it would be most appropriate for the Committee to request McKinnis to speak before the expert review is conducted, so that the expert reviewer would also have any information from the committee's interview of McKinnis. The motion passed unanimously. Staff was directed to request McKinnis be invited for an interview at the June 11, 2015 Committee meeting. There was no further discussion.

Correction: Delano is the current Harney County Surveyor, but has not served in the capacity of the Morrow County Surveyor as mentioned in the second paragraph.

2836 – Adapt Engineering / Daniel Watkins

As previously discussed during the December 12, 2014 meeting, the Board received a complaint on March 13, 2013 from Daniel Harris Watkins, PE, claiming that Adapt Engineering (www.adaptengr.com) was producing geotechnical reports and performing civil engineering through its Oregon office without having a registered manager, officer, partner, or employee to practice in the discipline of civil and geotechnical engineering. During the December meeting, staff reported that Thomas D. Van Liew, PE terminated employment with Adapt Engineering in October 2013 and as a result the firm's Portland office may be in violation of OAR 820-010-0720. Peterson informed the Committee that Adapt does not currently hold a valid CCB license and therefore does not qualify for an exemption under ORS 672.060. The firm had reportedly

extended an offer to Jeanne Niemer, an Oregon registered geotechnical engineer, to become a full-time employee of the Oregon office by January 1, 2015. As a result of the December 12, 2015 discussion, the Committee had determined further investigation is needed, specifically to verify key dates and if any engineering practice took place after Liew's employment was terminated.

Investigator Peterson's further investigation provided related dates indicating a non-compliant period from October 2013-February 2015. Peterson reminded the Committee that Adapt Engineering was providing geotechnical services with contracted engineers, but did not employ any full-time PEs on staff. Hoffine asked if the PE on staff in Seattle, Washington would affect the case. AAG Lozano pointed out that Adapt Engineering appears to have ongoing client contracts for projects in Oregon without an Oregon PE on staff during the time period. The Committee considered the civil penalty factors listed in OAR 820-010-0617; the Committee agreed to determine the civil penalty factors based on the 18-month period of non-compliance rather than by the number of projects submitted by Adapt Engineering in Oregon. It was moved and seconded (Kent/Singh) to issue a NOI to assess a \$1,000 civil penalty for offering to perform and performing professional engineering services without a full-time employee licensed to practice engineering in Oregon during the period of October 2013-February of 2015 in violation of OAR 820-010-0720(1). There was no addition discussion. The motion passed unanimously.

Staff update: Information came to Board staff after the Committee meeting that Niemer, remained employed with the City of Portland. Niemer stated she is employed with Adapt full-time; however, investigation indicates she is rarely in the Portland office of Adapt. Niemer never disclosed that she would terminate her position with the City of Portland, and she reports that Adapt Engineering is aware that she performs most of her duties from her home office. Therefore, it appears that Adapt Engineering has not met compliance with OAR 820-010-0720 and the Committee may need to re-visit the case.

2841 – Joseph Sturtevant / John Duval

On February 19, 2014, the Board received a complaint form from John Duval, stating that Joseph A. Sturtevant was offering engineering services through his firm's website www.surfacetech.com. During the December 11, 2014 meeting, the Committee determined that more information was needed regarding Sturtevant's work from March 2014- June 2014. During the February 12, 2015 meeting, the Committee directed staff to conduct further investigation, specifically relating to the Sturtevant's statement, "... we have another licensed engineer..." during the period in question.

Investigator Peterson noted that the Surface-Tech website was corrected. She explained that when she asked Sturtevant about the claim that Surface-Tech employed other engineers, he stated that he had referred to engineers he would contract with rather than directly employed by his company. Peterson suggested that although exact dates were not provided for revisions to the company website, it did not appear the website was in non-compliance for longer than 6 months. The Committee agreed that it does not appear engineering work was done during that time period. Upon reviewing the civil penalty factors, the Committee determined that the violation was somewhat continuous, intentional, and steps have been taken toward correction. It was moved and seconded (Hoffine/Singh) to issue a NOI to assess a \$250 civil penalty for offering to perform engineering services without a full time employee licensed to practice engineering in Oregon in violation of ORS 672.020, 672.045, and OAR 820-010-0720(1). The lower civil

penalty proposed is because the time frame of the violation is shorter in this case than in many past cases. The motion passed unanimously.

DOJ Opinion – Industrial Exemptions & Private Timber Companies

The Committee entered into executive session pursuant to ORS 192.660 (2)(f) to review and discuss the DOJ Opinion regarding Industrial Exemptions & Private Timber Companies. 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. It was moved and seconded (Hoffine/Singh) to recommend the Board waive privilege on the DOJ Opinion – Industrial Exemptions & Private Timber Companies. For discussion, Hoffine suggested include an article on the opinion if the Board votes to waive the opinion. The motion passed unanimously. There was no further discussion.

2880 – Collins Pine Co. / OSBEELS

On November 29, 2013, the Board received the application of Paul Harlan for examination as a professional engineer. During a review by the EQC of Harlan's application materials, a potential practice violation was noted. During the EQC meeting, Lopez mentioned that Harlan's experience record indicates he oversaw licensed individuals, although he was a non-registrant. Chair Kent also noted that Harlan couldn't provide a sufficient amount of PE references, yet Harlan states in his application that he supervises PEs. AAG Lozano noted that the work environment at Collins Pine Co. may fall under the "industrial exemptions" of ORS 672.060, but recommend that the Committee consider initiating a preliminary evaluation to be consistent with prior case practices. Investigative staff was directed to gather information to assess if there are any unlicensed practice violations made by Harlan or unlicensed practice violations related to his employer, Collins Pine Co.

The Committee conducted a preliminary review on Harlan on April 10, 2014. Upon review and discussion, the Committee voted to decline opening a case against Harlan. In addition, the Committee determined to conduct a preliminary evaluation on Collins Pine Co. and to request the completion of a Company Questionnaire.

A case file was opened on May 27, 2014, wherein a series of detailed questions were posed to Collins Pine Co. for response. Collins Pine Co. attorney C. Andrew Gibson replied. Using the information Gibson provided, Investigator Wilkinson interviewed Kellie Carlsen, Stewardship Forester, Lakeview, Oregon Department of Forestry (ODF) who sent Wilkinson a printout of Collins Pine Co. notifications under the Forest Practice Act. The printout showed that Collins Pine Co. sent 110 notifications to ODF for their forest operations during the 2009-2013 timeframe. Not knowing the content of such notifications, Wilkinson asked Carlsen to send copies of a small sampling of permits to review. During the interview, Carlsen also informed Wilkinson that road construction and other types of engineering projects would be reported on the notifications; however, Carlsen could not recall any projects specifically tied to Collins Pine Co. Carlsen added that there has not been a lot of road building activity in general and that culvert replacements would be handled through the appropriate Watershed Council.

Wilkinson suggested that the investigation did not reveal land surveying violations and that further investigation into the allegation of possible engineering violations would require a wider review of the Collins Pine Co. notifications that ODF manages. The Committee reviewed the information collected from ODF and discussed that Collins Pine Co. employees possibly

used surveying knowledge to locate boundaries and to determine what lines to mark. Otherwise, Collins Pine Co. employees would not have remained on their property. It was moved and seconded (Hoffine/Singh) to close the case as allegations unfounded for unlicensed surveying practice. There was no additional discussion. The motion passed unanimously. It was next moved and seconded (Kent/Singh) to close the case as allegations unfounded for unlicensed engineering. For discussion, Hoffine noted that Collins Pine Co. appeared to exclude cross stream, in-stream, and drainage culverts. He wondered if Collins Pine Co. may have done these over 7 years ago. AAG Lozano reminded the Committee that the rules and statutes may have been different, especially over 15 years ago. Wilkinson pointed out that Collins Pine Co. was first registered with the Oregon Secretary of State in 1933. The motion passed unanimously. There was no further discussion.

2888 – Mitchell J. Duryea / OSBEELS

During the Committee review of Mitchell J. Duryea's case 2878 on June 12, 2014, it was determined to separate the violation(s) of OAR 820-020-0015(8) and review the remaining allegations as a separate case. Subsequently, case 2888 was opened on June 16, 2014. During the investigation of case no. 2786 for Millman Surveying, Inc., concerns were raised regarding Millman's Oregon registered land surveyor, Duryea, and whether the services he performed for Millman met the requirements for responsible charge. Investigation suggested Duryea was the only Oregon registered professional land surveyor directly employed by Millman and he claimed responsible charge for Millman's survey projects completed in Oregon. Investigator Peterson reminded the Committee that Duryea has another active case (2903) for failure to meet the terms of his Settlement Agreement in case 2878.

Peterson reported that Duryea provided documentation regarding a total of 13 survey projects and an additional survey was submitted by the Jackson County Surveyor as it related to a survey that was filed for 500 YMCA Way in Jackson County. Duryea claimed responsible charge for all survey projects that he submitted. Of the 13 survey projects submitted by Duryea, there were four that he may have done the field work - though it was not clear to Peterson whether Duryea was responsible for drafting the maps themselves. The projects were a combination of Alta surveys, Alta updates, and boundary surveys completed by both Millman Surveying, Inc. and Duryea & Associates. Peterson explained that in Duryea's responses to the Board, he did not always address each survey as an individual survey project, which at times made the responses unclear. She suggested Duryea's lack of knowledge regarding the surveys adds weight to the idea that he did not provide adequate direction or oversight to the staff performing the surveys. Peterson recapped on Duryea's Informal Conference for case 2878 held on August 14, 2014, where he disclosed that he very seldom went on field visits "if at all" and rarely looked at field notes. Duryea relied strongly on the work of his colleague Albright of Millman Surveying and his staff from Duryea & Associates to complete the field work with the presumption that staff knew the process, the project specifications, and how to lay out the survey. During the conference, Duryea stated he did not look at the field data, but did review the finished products. He did not appear to complete any of the research prior to implementing the survey. Peterson also mentioned that Duryea stated that a survey checklist is completed by field staff for each survey as a part of the quality control process that is built in to an Alta survey; Duryea & Associates utilized similar survey checklists. Duryea stated these were completed by field staff and helped ensure that the process was followed; however, Peterson's investigation identified that the checklists were completed by staff other than the reportedly supervised field staff.

Due to amount of potential violations, Hoffine recommended the Committee consider hiring an Expert Reviewer for the case. AAG Lozano added that an Expert Witness may be needed to demonstrate if Duryea was not in responsible charge. Peterson reminded the Committee that only a small sampling of Duryea's surveys was collected and each survey demonstrated potential violations. After discussion on several alleged violations, Chair Kent directed AAG Lozano and Peterson to draft an NOI to be reviewed during the next Committee meeting for the Committee to approve, and determine possible civil penalties. The Committee supported this direction, and Hoffine added that the case is not technically complex. Singh noted that Duryea's work as a professor raises concerns regarding safety. Singh suggested drafting the NOI by violation instead of by survey. Peterson reminded the Committee of the potential title violations listed on the Duryea & Associates website, which listed unregistered employees (LSIs) as "project surveyors." Chair Kent and Hoffine requested to table discussion on the potential title violations until the NOI draft is presented during the next Committee meeting. There was no further discussion.

2892 – Millman Surveying, Inc. / OSBEELS

Previously, the Committee reviewed case 2786 for Millman Surveying, Inc. on February 13, 2014, for the alleged violation of OAR 820-010- 0720(1) for offering land surveying in Oregon without a full-time professional registered land surveyor. The Committee recommended closing the case as allegations unfounded and determined that Millman Surveying, Inc. qualified as a project office under subsection (4) and employed Mitchell J. Duryea as their Oregon registered land surveyor. Peterson recapped on how the case surfaced: Through the investigation of Mitch Duryea (cases 2878 and 2888), Duryea disclosed that he had resigned his position as the registered professional land surveyor for Millman Surveying, Inc. effective the end of March 2014. Duryea further disclosed that he sub-contracted with Millman after the termination of his employment to complete a preliminary partition plat for the Tanner Springs project in West Linn.

For discussion, the Committee reviewed Duryea's contract and Employment Agreement with Millman, the City of West Linn- Preliminary Partition Plat, Millman National Land Services website screen shots, related letters, and email correspondences. The Committee noted that Duryea worked as Millman staff until March 2014 and continued to work on the project by contract. AAG Lozano suggested Millman Surveying Inc. is not in violation of offering to perform services without employing a land surveyor; they are working to complete an existing project. Peterson added that it does not appear Millman Surveying Inc. has done began any new surveying projects in Oregon after Duryea's employment ended. The Committee agreed with AAG Lozano's suggestion and did not find Millman Surveying Inc. in violation of OAR 820-010-0720. It was moved and seconded (Singh/Kent) to close case 2892 as allegations unfounded. There was no further discussion. The motion passed unanimously. Peterson also requested the Committee revisit Millman's previous case no. 2786 due to information received in the investigation of Duryea's cases no. 2878 and 2888 that indicated Duryea did not meet the requirements for responsible charge over Millman's staff performing field work for their Oregon survey projects. The Committee determined to discuss this at the June 11, 2015 Committee meeting after review of the draft NOI for Duryea's case no. 2888.

2893 – Kerry Albright / OSBEELS

During the investigation of case no. 2786 for Millman Surveying, Inc. and cases 2878 and 2888 for Mitchell J. Duryea, concerns were raised regarding the field surveying work completed by

Kerry Albright, Millman Surveying Inc. staff. A case was opened for the alleged practice of land surveying in Oregon without registration. Albright was reported to have performed the field work on a number of surveys that were sealed by Duryea. Due to information received in the aforementioned cases, there were indications that the survey work was performed outside of Duryea's supervision and control. Peterson noted Albright is currently registered as a professional land surveyor in Idaho through June 30, 2016. OSBEELS received an application for registration by comity from Albright on March 4, 2015.

Hoffine noted that Duryea was responsible to oversee Albright's work, and Lopez added that Albright should know the rules surrounding practicing surveying out-of-state. Singh inquired how the Committee has responded in the past to similar situations – AAG Lozano responded that there has not been a substantially similar case in the past. The Committee discussed if Albright's work could be considered the practice of land surveying. An email from Albright to the project-staff was reviewed, and Lopez noted that Duryea was not sent a courtesy copy of the email and that Albright did not send anyone to Duryea with questions about the work. Singh suggested the email indicates that Albright was practicing land surveying. Upon reviewing additional correspondences, Hoffine agreed with Singh's notion. Kent added that the evidence suggests Albright was leading the party and Duryea was not present; perhaps even out of the state. Chair Kent wondered how the case may affect Albright's comity application. Staff informed the Committee that Albright had submitted an application for the 4-hour Oregon-specific land surveying exam to be held on April 18, 2015.

It was moved and seconded (Kent/Singh) to issue a NOI to assess a \$1,000 civil penalty to Albright for the unlicensed practice of land surveying in Oregon in violation of ORS 672.025(1) and ORS 672.045(1). Hoffine opposed. The motion passed by majority vote. The Committee reviewed the civil penalty factors listed in OAR 820-010-0617. The Committee had difficulty determining whether the violation was an inadvertent act or an intentional act (OAR 820-010-0617(1)(d)). Singh inquired if Duryea was not present and gave little direction, does it make the violation more or less serious. The Committee determined it would be more serious the less Duryea was supervising Albright's work. Hoffine also wondered if there were others working on the project that may be in similar violation. There was no further discussion.

2901 – John R. Marks / OSBEELS

On September 17, 2014, a case was opened on John R. Marks due to his disclosure on August 14, 2014, during his informal conference for case 2822, where he stated that his work at WHPacific required engineering knowledge. Investigator Peterson reported that Marks registration has been in delinquent status since December 31, 2012. Marks was employed as a Bridge Engineer with WHPacific until his employment terminated on September 19, 2014. Peterson added that according to both Marks and John H. Baker, WHPacific's legal representative, Marks was employed part-time and worked on two bridge projects in Oregon during the time period his registration was delinquent.

Marks reported that he worked 34 hours observing pile driving on the Lost River Bridge (Johnson Rd) Bridge - Klamath County project. Baker claimed that Marks did not engage in the practice of engineering in the performance of his duties. Baker stated that Marks performed piling inspections for Paul Tappana, the PE in responsible charge for the Johnson Rd. project. Tappana stated in his Declaration that Marks performed field observations and prepared inspection reports over two days of pile driving operations. For the Lost River (South Merrill Rd) Bridge – Klamath County project, Marks reported that he "...drafted the hydraulics report that

compiled site reconnaissance data, digital terrain model survey data and proposed bridge design data that was all provided by others. I perused FEMA flood maps, made inquiries of local irrigation district personnel to get flood history and made calculations using the Manning equation for open channel flow. The draft copy of the hydraulics report, in the form of a Word document, was placed on WHPacific server for their use. I had no further activity and do not possess the document.” Peterson noted that Marks’s statement varied slightly from Lynn Iaquina, the WHPacific PE in responsible charge for the S. Merrill Rd. project, who stated in her Declaration that Marks assisted her with the preparation of the draft report, which she reportedly reviewed and provided comments and then sealed and signed the final report.

The Committee reviewed the documentation that was submitted on December 19, 2014, regarding the Merrill Road Bridge project, which included a Letter of Interest dated February 26, 2013. The document also included information on the WHPacific Team that would be involved in the project. Peterson pointed out that there is no mention of Marks in the team; however contract documents list Marks as the Hydraulics Engineer. The Committee discussed whether Marks is in violation of ORS 672.045 and 672.020 and if his work at WHPacific was exempt under ORS 672.060(3) because he was under the responsible charge of Iaquina. The Committee looked to the Engineering Fee Estimate provided in Peterson’s case summary. Peterson added that Marks was classified as a P6 grade employee which required professional registration as an engineer. The position description stated there was no direct supervision or direction of the work product. The description also indicated Mark’s position title as Sr. Project Engineer/Manager, involved planning, organizing, and supervising the work of a staff of professionals and technicians. Marks was hired at this grade in 2004 as a Bridge Engineer. Neither Marks nor WHPacific disclosed that this position may have changed; only that he went into part-time status. The Committee recognized that Marks and Baker stated that Marks only worked on two projects during the time period his registration was in delinquent status. Both claimed he worked under the supervision and control of WHPacific professional registered engineers, however Marks was given the title of Hydraulics Engineer in contract documents dated 4/25/13 for the S. Merrill Road Bridge.

Peterson informed the Committee that WHPacific was not aware of Marks delinquent registration status until September 2014, at which time his employment was terminated and the project was already completed. Peterson suggested that although Marks did not stamp any documents, it does not appear likely that Iaquina would have supervised Marks work to the level required in ORS 672.002(9)&(10) and OAR 820-010-0010 (5)&(6) because Marks was hired as a professional grade employee. Also, the Letter of Interest dated February 26, 2013, for the S. Merrill Road Bridge as well as the organizational chart for the team, indicated that Paul Tappana was the Project Manager and Iaquina was the Principal in Charge. According to the investigation, there were indications that Iaquina provided oversight of staff in a supervisory role rather than direct supervision as defined by statute and rule.

For the Lost River Bridge (S. Merrill Road) Bridge - Klamath County project, Chair Kent suggested the Committee would need more information regarding whether Marks was assisting Iaquina or if engineering practice had taken place. AAG Lozano noted that the Committee may need a subpoena to receive the records. Hoffine wondered if Marks was assisting or doing technician-level work, why would WHPacific require a high-level professional? Chair Kent agreed with Hoffine’s concern, noting the hiring level could be a red flag. Chair Kent pointed out that Marks appears to be working at \$141 an hour but Iaquina claims Marks was assigned flow analysis/calculations, which Chair Kent explained was simplistic work. The Committee reviewed

the detailed report for the Lost River (South Merrill Rd) Bridge – Klamath County project. Hoffine recommended the Committee request or subpoena the draft documents from Marks. Chair Kent expressed that it is unlikely Mark’s work rose to the level of practicing outside the supervision of a PE. The Committee determined to recommend to the Board that the case be closed as unfounded.

Through the investigation of the case (and another case involving a contracted employee of one of WHPacific’s subconsultants), Peterson noticed there were potential violations regarding other individuals that came to her attention: Andy Bowen, Wayne Bauer, Mike Galuzzi, Jeanne Boyle, Joe Jenkins, WHPacific and Michael Minor Associates (MMA).

Through the review of project documents for the Merrill Road Bridge, it was found that Andy Bowen (88456PE) was the Structural Bridge Engineer assigned to the project. Peterson reported that there were also several engineering projects noted on Bowen’s biography (dated February 26, 2013) that he completed in Oregon. Bowen was not registered as a professional engineer in Oregon until November 12, 2013. Iaquina was the Professional Engineer of record for the project and was aware of the status of Bowen’s license, as his biography (on project documents) noted he was registered in Texas and not in Oregon. Bauer was identified as a PE and Project Manager on a “Full Service A&E Price Agreement for ODOT and Local Agency Transportation Projects – 2012” from WHPacific. Bauer’s P.E. registration history shows several significant time periods where his registration was in delinquent status including July 20, 2010 through August 15, 2014. Peterson reported that Bauer is in charge of the WHPacific team in Portland. It was moved and seconded (Hoffine/Kent) to close case 2901 against Marks as allegations unfounded and open cases against Andy Bowen and Wayne Bauer (delinquent) regarding potential violations of unlicensed practice in Oregon. For discussion, Peterson was directed to obtain a list of Bowen’s projects (and related documents) prior to November 2003 and a list of Bauer’s projects and documents for the time period(s) his registration was in delinquent status. The motion passed unanimously.

Peterson pointed out that there are staff listed on the WHPacific Organizational Chart of the “Full Service A&E Price Agreement for ODOT and Local Agency Transportation Projects – 2012” that do not appear to be registered as professional engineers with the OSBEELS and are given the professional title. In addition, Peterson suggested the firm’s use of Bowen’s engineering services prior to his registration with the Board, and also through the hiring of Joe Jenkins as a “Transportation Design Engineer” on October 2, 2013 though he was not registered with the Board until March 10, 2015, indicates the firm may have engaged in the practice of engineering on other projects in Oregon without a registered professional engineer. The Committee discussed issuing a letter of concern to WHPacific regarding the title violations. AAG Lozano added that for cases regarding title violations, they are often closed with compliance met. It was moved and seconded (Kent/Singh) to open a separate case against WHPacific. Peterson also suggested that WHPacific subcontractor, Michael Minor and Associates be discussed as there were indications that the company was offering engineering services without a full-time registered PE on staff. AAG Lozano added that it appears they are working in the acoustical engineering field. The motion passed unanimously. It was moved and seconded (Kent/Hoffine) to open a case against Michael Minor and Associates. There was no additional discussion. The motion passed unanimously.

Staff update: Research into Wayne Bauer’s registration information revealed that the initial information presented to the LEC was not accurate and that Mr. Bauer’s

registration was consistently in active status. A case will not be opened to investigate the matter of unlicensed practice in Oregon.

2906 – Darren Weigart / Dale L. Hult

The Board received a complaint from Dale Hult on June 18, 2014, alleging that Kelli A. Grover created a survey map that was provided to the Pentecostal Church of God that was incomplete, did not contain a surveyor's seal, and had poor boundary resolution. The complaint also alleged that in the performance of the survey there was no right-of-entry notice provided to the Pentecostal Church of God, the neighboring land owner; an alleged violation of ORS 672.047. Through the investigation it was determined that Grover's employee, Darren Weigart, PLS was the surveyor who prepared the exhibit map. Peterson reported that Weigart stated that it was his understanding the exhibit map (dated November 2013) was to be an "in house" document and was never intended to be a final document. He said it was filed away in the project folder until he was given direction on it and he never was. Weigart reported that the exhibit map was forwarded to the client by Grover on February 20, 2014, and he did not know that distribution to the client was the intended purpose. Peterson reported that Grover provided the client with the exhibit map that illustrated Weigart's findings on the property boundary location. Grover was the project manager and point-of-contact for the client, believing that Weigart knew the exhibit map would be shared with the client. The Committee discussed whether there was a violation of OAR 820-010-0621(2) as the map was not marked as "preliminary" or similar wording to indicate it was not the final work product. The Committee agreed that marking the document as "preliminary" was needed, regardless of whom ended up in possession of the map. The Committee discussed whether there were violations of OAR 820-010-0621(1) and ORS 672.025(2) if the map was determined to be a final document because it was provided to the client with the purpose of illustrating the location of the property boundary. Peterson pointed out that Weigart claimed this was not his understanding of the map's purpose.

Singh expressed that it is the surveyor's responsibility to create the notice of the right-of-entry, not the party chief. Hoffine added that Weigart could have documented that he placed the notice on the door in the survey notes. Kent added that it is also Weigart's responsibility, not Grover's, to indicate the document was "preliminary" from the beginning. AAG Lozano concurred, adding that it is important to protect the public. Singh suggested publishing an article in *The Oregon Examiner* on preliminary documents. AAG Lozano explained that under the Board's rules, whoever is drafting the document is responsible for including the "preliminary" marking.

An in-depth discussion occurred regarding how documents are marked preliminary. Singh described his experience on how his employer develops documents and Hoffine shared, in his experience, the industry's current common practice on marking documents "preliminary." AAG Lozano also explained that, historically and as a matter of consumer protection, the average citizen or non-registrant may not know to look for a stamp or seal and that is why the Board requires documents must be marked "preliminary." It was moved and seconded (Kent/Singh) to issue a NOI to assess a \$500 civil penalty to Weigart for failure to provide proper notice for right to enter the property and for failure to mark a document as preliminary, in violation of OAR 820-010-0621(2) and ORS 672.047. For discussion, Singh was concerned why Grover, a PE, would have provided the unmarked preliminary document to the client, knowing that a final document did not exist. Peterson added that according to Weigart, the document was never intended to be final. AAG Lozano reminded the Committee that its rules do not distinguish

between documents the drafter knows will be provided to the public and those the drafter does not know will be provided to the public. Chair Kent agreed that although it may have been intended to be an internal document, the map crossed into another nearby property. Lopez wondered if the Church received the right-of-entry notice on the door hanger and requested the survey results, would they have been given the same unmarked preliminary document. Singh noted that his course of action would be to only send a final, complete and sealed document. Singh advised that to be safe, it may be best to mark the document as preliminary from its beginning creation; however, this is not common practice. Hoffine agreed and suggested that both Grover and Weigart held fault, but that Grover may have acted in more error. Singh suggested opening a case against Grover regarding the untruthful statements made to the client by providing an unmarked preliminary document, in violation of OAR 820-020-0025(1) and (2). The motion passed unanimously. It was moved and seconded (Singh/Hoffine) to open a case against Kelli A. Grover and issue a NOI to assess a \$1,000 civil penalty for providing a client with an unmarked preliminary document and untruthful statements in violation of OAR 820-020-0025(1) and (2). There was no additional discussion. The motion passed unanimously.

Staff update: The LEC should re-visit the proposed violation of ORS 672.047. They LEC crew that performed the field work was not directly employed by Weigart. Staff recommends that the LEC consider withdrawing the violation of OAR 672.047 from the proposed Notice.

2907 – Firwood Design / Dale L. Hult

The Board received a complaint from Dale L. Hult on October 9, 2014. Hult's complaint alleged that Firwood Design was offering land surveying services without a registered professional land surveyor on staff on two occasions within the last three years, and that the most recent professional land surveyor, Richard J. Niciolek was now employed with another firm.

Peterson reported that Grover, owner of Firwood Design, explained they had never conducted land surveying in Oregon without a registered professional land surveyor providing oversight, supervision and control. The Committee reviewed the list of employees' dates of employment (both direct and contract employees), which identified two time periods where a registered professional land surveyor was not directly employed by Firwood Design. The time periods included September 28, 2011-October 30, 2011 with no registered PLS on staff and February 9, 2013- March 10, 2013 with part-time contracted PLS, Dan Hoekstra. From October 6, 2014, Lee Moore, the PLS on staff worked either full-time or part-time depending on work load. Peterson also provided that during the time period the investigation took place Moore failed to submit his CPD form at the time he applied for renewal and his registration was placed in delinquent status. Moore came to the Board office on March 19, 2015, and submitted the documentation necessary to complete his renewal application. Moore's registration became active effective March 19, 2015. In addition, Peterson added that this resulted in twelve survey projects in process or completed during the time period Moore's registration was in delinquent status (January 1, 2015-March 18, 2015).

The Committee reviewed the exhibits provided and noted that Moore appears to fall under the "full-time" employment definition. The Committee determined there was at least 90 days in which the firm did not employ an active registrant. It was moved and seconded (Kent/Singh) to issue a NOI to assess a \$250 civil penalty against Firwood Design for offering professional land surveying services without a registered professional land surveyor on staff for approximately 90-days in violation of OAR 820-010-0720. There was no additional discussion.

The motion passed unanimously. It was next moved and seconded (Kent/Singh) to open a case on Lee Moore and issue a NOI to assess a \$1,000 civil penalty for the twelve projects Moore provided professional land surveying services during the period his license was in delinquent status in violation of ORS 672.045 and ORS 672.025. There was no additional discussion. The motion passed unanimously.

2919 – Emagineered Solutions / OSBEELS

At the January 15, 2015 meeting, Board determined to open a case on Emagineered Solutions Inc. based on information received through the investigation of Stephen Waring (case 2896). Peterson reminded the Committee that Waring is the owner and Registered Agent for Emagineered Solutions. Peterson's investigation indicated Waring's professional engineering registration was in delinquent status from July 24, 2012-August 6, 2014, and there was no registered professional engineer on staff with the company during that time. The Committee was provided with screen shots of the Emagineered Solutions, Inc. website, which was maintained after February 2014. The web content implied the company may have offered engineering services during Waring's delinquency.

Peterson informed the Committee that Waring renewed his professional engineering registration on August 6, 2014, and the website now appears in compliance. The Committee discussed the project Emagineered solutions completed in Oregon during the time there was not a registered professional engineer on staff. The project was a drill and waterstop repair on the John Day Lock and Dam for the US Army Corps of Engineers (USACE). The USACE Project Engineer, Kevin Hace, completed the designs for the project. AAG Lozano wondered if the John Day Bridge is on federal lands. Chair Kent added that the bridge is on the Columbia River and crosses from Oregon to Washington. Chair Kent explained that although the company was offering engineering services on the web, the company appears to be providing a product rather than engineering work. Peterson added that the offering period without an active registrant was from approximately July 2012-August 2014. Chair Kent wondered if the website was adjusted. Peterson explained that no significant changes to the website appear to have been made; however, the website is now considered in compliance due to Waring's newly active status. It was moved and seconded (Hoffine/Singh) to issue a NOI to assess a \$1,000 civil penalty for offering professional engineering services without a registered professional engineer on staff for approximately two years in violation of OAR 820-010-0720. There was no additional discussion. The motion passed unanimously.

Preliminary Evaluations

AAG Lozano requested that the preliminary evaluations of Thomas C. Larsen / OSBEELS, Raymond L. Whiting / OSBEELS be pulled from the agenda as they were OSBEELS generated and would, therefore, go straight to investigation. She also requested that Miller Farm Retreat be pulled from the agenda as the case was not properly noticed on the agenda.

Pursuant to OAR 820-015-0010, the Committee conducted preliminary evaluation of the following complaints and determined the following:

It was moved and seconded (Kent/Singh) to open a law enforcement case against Stephen Maslan. There was no additional discussion. The motion passed unanimously.

It was moved and seconded (Kent/Singh) to open a law enforcement case against Scean A. Ripley. There was no additional discussion. The motion passed unanimously.

It was moved and seconded (Hoffine/Singh) to decline opening a law enforcement case against Brandon Bickford and issue of letter of concern to Mr. Bickford for his use of the “engineer” title without registration. There was no additional discussion. The motion passed unanimously.

It was moved and seconded (Hoffine/Kent) to open a law enforcement case against Thomas Woldendorp. There was no additional discussion. The motion passed unanimously.

It was moved and seconded (Kent/Hoffine) to decline opening a law enforcement case against Walter L. Cook and issue of letter of concern to Mr. Cook regarding his improper seal. There was no additional discussion. The motion passed unanimously.

It was moved and seconded (Kent/Hoffine) to decline opening a law enforcement case against Dennis Coplin. The complaint alleged that Coplin referred to himself as an engineer; however, the Committee found that evidence submitted did not sufficiently support use of the title “engineer.” There was no additional discussion. The motion passed unanimously.

The Committee reviewed the complaint filed against Gregory Wilson. Through general consensus, the Committee directed AAG Lozano to research and provide a DOJ opinion on if OSBEELS’ has jurisdiction over city surveyors. There was no additional discussion. The motion passed unanimously.

It was moved and seconded (Kent/Singh) to forward the preliminary investigation on Robert Schwarz to the Joint Compliance Committee (JCC). There was no additional discussion. The motion passed unanimously.

It was moved and seconded (Boyd/Singh) to decline opening a law enforcement case against Stockpile Reports. For discussion, the Committee considered whether they found Stockpile to be engaging in practice or providing a tool. The Committee determined that Stockpile did not appear to be engaging in work considered the practice of engineering, land surveying, or photogrammetry. The motion passed unanimously.

It was moved and seconded (Kent/Boyd) to open a law enforcement case against Corbey Boatwright. There was no additional discussion. The motion passed unanimously.

New Business

DOJ Opinion – Third Party Debt Collection

The Committee entered into executive session pursuant to ORS 192.660 (2)(f) to review and discuss the DOJ Opinion regarding Third Party Debt Collection. 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 the types of cases that were sent to the Oregon Department of Revenue for collection. It was moved and seconded (Hoffine/Singh) to recommend the Board grant Administrator Lopez the authority to

solicit third-party debt collection services to collect debts from cases subject to monitoring. Chair Kent directed staff to complete preliminary evaluations of the individuals who have failed to pay case-related debt yet still maintain current registrations in order to begin the process of revocation. There was no additional discussion. The motion passed unanimously.

Contested Case Updates

2697 – Dale La Forest

Investigator Wilkinson reported that the OAH hearing for the case is scheduled for 4/17/2015.

Staff update: Mr. La Forest did not appear for the hearing on 4/17/2015.

2826 – Commstructure Consulting

Investigator Wilkinson reported further investigation in progress.

2898 – Jaime Lim

AAG Lozano reported that the OAH hearing for the case is scheduled for 9/15/2015.

2905 – Timothy A. Wolden

AAG Lozano reported that the OAH hearing for the case is scheduled for 8/5/2015.

2903 – Mitchell James Duryea

AAG Lozano reported that due to Duryea's failure to meet the terms of the settlement agreement, the case has been referred to OAH and a hearing has been scheduled for 9/1/15.

Case Status Reports

The Committee reviewed the case status reported that indicated the total cases open (54), cases subject to monitoring (14), and cases subject to collections (15).

The meeting adjourned at 4:58 p.m.