



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

Minutes of Meeting
September 8, 2009

CALL TO ORDER

President Davis called the meeting to order at 9:00 a.m. in the conference room of the Oregon State Board of Examiners for Engineering and Land Surveying (OSBEELS) office at 670 Hawthorne Avenue, SE Suite 220, Salem, Oregon 97301.

Members Present:

Grant Davis
Edward Butts
Dan Linscheid
Sue Newstetter
John Seward
Carl Tappert
Ken Hoffine (excused absence)
Sue Laszlo (excused absence)
Mari Kramer (excused absence)
Amin Wahab (excused absence)

Visitors Present:

Michael Hardy, PE, Professional Engineers of Oregon Liaison
Tracy Bacon

Others Present:

Mari Lopez, OSBEELS Executive Secretary
Jenn Gilbert, OSBEELS Executive Assistant
Jill Jamros, OSBEELS Investigator
Allen McCart, OSBEELS Investigator
JR Wilkinson, OSBEELS Investigator
Joanna Tucker-Davis, Assistant Attorney General

APPROVAL OF AGENDA

Mr. Linscheid requested to add an item (Release of AAG Advice, DOJ File #917-001-GB0019-05) under the Law Enforcement portion of the Agenda. It was moved and seconded (Linscheid/Tappert) to approve the agenda as amended. The motion passed unanimously.

APPROVAL OF MINUTES

Mr. Seward commented that the last paragraph under Unfinished Business of the July 14, 2009 Board Meeting minutes were not as he recollected. It was his understanding that further discussion would be held during a Law Enforcement Committee (LEC) meeting. Although Mr. Seward admitted this may have been a side conversation of the meeting, he was also under the impression that he was to submit suggestions to streamline the enforcement process for the LEC to consider, especially with regard to the violations of Professional Development Hours (PDH).

In addition, the rights of an individual are preserved regardless of streamlining the enforcement process; therefore, no trade-off would occur. It was moved and seconded (Linscheid/Tappert) to approve the minutes of the July 14, 2009 Board Meeting as amended. The motion passed unanimously.

PUBLIC INPUT

President Davis welcomed the guests. Tracy Bacon introduced herself and stated that she was in attendance to participate in the discussion regarding her request for an appeal of the Board's previous decision to deny her entrance to the Washington Structural III Examination. It was moved and seconded (Linscheid/Tappert) to rearrange the Agenda and discuss the New Business. The motion passed unanimously.

Ms. Bacon explained the history of her applications for registration by examinations to obtain a structural engineering registration. She originally sat for the National Council of Examiners for Engineering and Surveying (NCEES) Structural II and Washington Structural III examinations in the Fall of 2005. She successfully passed the NCEES Structural II examination, but not the Washington Structural III examination. Ms. Bacon further explained that she entered into graduate school at the University of Oregon, but attempted the Washington Structural III examination again in the Fall of 2006. Since she was unsuccessful again, she determined to wait until completing graduate school before attempting the examination again. After completing graduate school in March of 2009, she started preparing to take the Fall 2009 Washington Structural III examination. However, she was unaware of a rule adopted in September of 2007 that required applicants to hold a professional registration prior to applying for the structural designation. Ms. Bacon is requesting a waiver from this requirement since it was not in place at the time of her initial application.

President Davis stated that the rule, Oregon Administrative Rule (OAR) 820-010-0417 was adopted due to the similar requirements in the State of California and the State of Washington. Staff informed the Board that Ms. Bacon is not the only applicant facing this issue; there are approximately a dozen other applicants in the same circumstance. Therefore, after discussion, it was determined that applicants who previously applied for the structural designation and have successfully passed the NCEES Structural II examination prior to the rule adoption in September 2007, may still be allowed to sit for the Washington Structural III examination until the October 2011 administration. These applicants will not be required to hold a professional engineering registration. Staff will inform these applicants accordingly and provide Ms. Bacon with an admission letter to the October 2009 Washington Structural III examination administration.

EXECUTIVE SECRETARY'S REPORT

Committee Activities

Ms. Lopez reported that the Examinations and Qualifications (E&Q), External Relations (ERC), Finance, LEC, Professional Practices (PPC), and Rules and Regulations (R&R) Committees each met during the month of August and the Committee minutes were included in the packets.

Administrative Activities

October 2009 Examination Administration

Ms. Lopez reported that staff has been preparing for the October examinations. The local

examinations will be held at the Lane County Fairgrounds in Eugene, Oregon from October 23 – 24, 2009. She further noted that the Board received one application for the October 2009 administration of the California Geotechnical examination. However, this applicant has requested to forward his application and fees to the next administration. She continued to state that of the 460 examinations, there are currently 396 applicants scheduled to take the examinations at the Lane County Fairgrounds and 64 applicants scheduled to take the examinations outside of Oregon.

NCEES 88th Annual Meeting

Last month, Grant Davis and Sue Newstetter attended the NCEES Annual meeting in Louisville, Kentucky with Ms. Lopez. Staff members JR Wilkinson and Allen McCartt also attended. A report will be given during the next LEC meeting in October. Ms. Lopez stated that during the Annual meeting, several matters were voted on that may create an impact on the Board, such as the B+30 and NCEES examinations offered at a University or Foreign Country. She noted that a NCEES News Release dated August 28, 2009 was included in the packets for further information. It appears that OSBEELS will not be authorized to conduct examinations in Korea for non US Military personnel (see attached motions; EAP 5 & 10). She stated that she will request clarification from Jerry Carter, NCEES Executive Director and that further discussion will be held during the next E&Q meeting.

Additionally, Ms. Lopez briefly reported that Davy McDowell, PE was appointed as the new NCEES Associate Executive Director. Susan Whitfield, current NCEES Associate Executive Director, announced her retirement effective later this year.

Department of Administrative Services (DAS) Review

Ms. Lopez directed the members attention to the email corresponded from Laurie Grenya, Classification and Compensation Analyst, Human Resource Services Division. This information was provided as a result of direction given to Ms. Lopez during the July Board Meeting. After a brief discussion, it was moved and seconded (Newstetter/Seward) to proceed with a review of classifications and compensation for the OSBEELS staff. The motion passed unanimously.

2007-2009 Biennial Audits

Ms. Lopez informed the members that requests have already been received for information from Moss Adams, LLP. Moss Adams will be conducting the regularly scheduled audit for the Board.

Governor's Suggestion to Senate and House/Kafoury Contract

Ms. Lopez provided a Press Release regarding Governor Kulongoski's plan (Executive Order 09-13) to restructure State Government. She further noted that a contract between the Semi-Independent Boards and Stephen Kafoury has been initiated to prevent the repeal of the Oregon Revised Statute (ORS) 182.455 through 182.472. After discussion, it was moved and seconded (Linscheid/Newstetter) to authorize Ms. Lopez to sign the contract. The motion passed unanimously. Ms. Lopez stated that she will sign the contract during the next SIBA meeting scheduled for Tuesday, September 15th at the Appraiser Board's office.

Department of Justice (DOJ) Client Legal Training

Ms. Lopez briefly stated that she and Ms. Gilbert are scheduled to attend various courses from

September thru November 2009 given by the Department of Justice (DOJ). The courses include Core Public Law, Advanced Public Records Training, Advanced Public Meetings Workshop, Interpreting Statutes and Rules Training, New Law Changes & Important Recent Cases, and a Rulemaking Process Training.

Engineering on Tribal Land

Ms. Lopez informed the members that Rick Galloway, Camas Go-On Principal Planner has requested a copy of the Assistant Attorney General (AAG) Opinion related to Engineering on Tribal Land (see DOJ File No. 917-001/GB0044-04). It was moved and seconded (Tappert/Seward) to release the AAG Opinion (DOJ File No. 917-001/GB0044-04). The motion passed unanimously. However, after discussion, emphasis was given on the fact that the opinion was provided on February 17, 2004, and that each circumstance would still need to be reviewed on an individual basis. Staff is to further inform Mr. Galloway that seeking additional legal counsel is highly advised.

Board Vacancies

Ms. Lopez noted that the Board has yet to fill the engineer position that was vacated by George Gross and no replacement has been found for Sue Laszlo's position.

Staffing

Ms. Lopez informed the members of new employees hired to fill two vacant positions; Jill Jamros was hired as an Investigator on September 1, 2009 and Amanda Sloan was hired as an Administrative Specialist 1 on September 14, 2009. She noted that the position Ms. Meyer resigned from in April 2009 has yet to be filled. However, she anticipated the outcome of the classification and compensation review to assist in this matter.

PRESIDENT'S REPORT

President Davis briefly reported on topics discussed during his attendance at the 2009 NCEES Annual meeting. Topics included promoting the engineering and surveying profession regardless if a student excels in math, and counterfeit building cranes in Chicago and New York. He stated that there is still opposition to the BS+30 concept. He also noted that the State of Nebraska is reviewing construction services for engineering contracts as a conflict of interest, the State of Montana is attempting to define the difference between GIS and land surveying, and the California Board is authorized to turn off telephone services to a business as part of a law enforcement sanction.

President Davis also discussed the quorum requirements for Board and Committee meetings. He stated the importance of having a quorum to conduct the business of the Board or Committee; especially for the purposes of an informal conference. In the past, to have a quorum, he found himself on the side of the road during vacation so that he could phone in to participate. He further explained the ease of this task since meetings, including any informal conferences, are noticed with a specific date and time. Finally, he requested the members to make a more conscious effort regarding their attendance; whether in person or by telephone.

Lastly, President Davis discussed the possibility of joint meetings with the professional societies and associations. Although schedules can be very hectic, especially during the holiday season,

promoting relationships with the professional societies and associations is very important. He also remarked that the usual holiday lunch during the November Board meeting could include families so that the family member could have a better understanding of each member's involvement. After discussion, it was moved and seconded (Seward/Newstetter) to further the discussion on a future agenda of the External Relations Committee meeting. The motion passed unanimously.

EXAMINATIONS AND QUALIFICATIONS COMMITTEE

Mr. Butts reported that the E&Q Committee met on August 14, 2009 to discuss the matters contained in the Committee minutes. Additional discussion was held by the Board regarding the following matters:

Photogrammetry Contract

The members reviewed the latest revised draft contract completed by AAG Julie Penry that incorporated the revisions discussed by the Committee in August. Ms. Lopez noted that there would still be minor revisions related to the NCEES policies and procedures. She stated that only the applicable policies and procedures would be contained in the exhibits. After a brief discussion, it was moved and seconded (Linscheid/Seward) to delegate authority to Ms. Lopez to finalize the details of the contract. The motion passed unanimously.

Public Information and Privacy

The members discussed a request from George Modini regarding the information posted on the OSBEELS Web site. Mr. Modini requested that the Board use better discretion in determining the type of information posted online related to applicants and registrants. For example, he would not like the names of applicants included on the agenda when considered during E&Q Committee meetings. It was noted that his request does not meet the requirements of ORS 192.445 or OAR 137-004-0800 and that the Board has previously decided to post the information as it currently appears. After discussion, it was moved and seconded (Linscheid/Tappert) to maintain the information as it is currently posted. The motion passed unanimously.

Registration

Comity Applications – Mr. Butts directed the members' attention to the list of 54 professional engineer applicants for registration by comity. It was moved and seconded (Butts/Linscheid) to approve the list of 54 professional engineer applicants as presented. The motion passed unanimously.

1st Registration Applications – Mr. Butts directed the members' attention to the 12 applicants seeking 1st registration. It was moved and seconded (Butts/Seward) to approve the 12 applicants as presented. The motion passed unanimously.

Prior Practice Applications – Mr. Butts directed the members' attention to the 3 applicants seeking Geotechnical registration by prior practice. It was moved and seconded (Butts/Seward) to approve the 3 applicants as presented. The motion passed unanimously.

EXTERNAL RELATIONS COMMITTEE

Ms. Newstetter reported that the ERC met on August 14, 2009, to discuss the matters as

contained in the Committee minutes. Additional discussion was held by the Board regarding the following matters:

Summer 2009 Oregon Examiner

Ms. Newstetter directed the members' attention to the *Temporary Permit to Practice Engineering* article intended for printing in the Summer 2009 Oregon Examiner. It was moved and seconded (Newstetter/Seward) to approve the article. The motion passed unanimously.

Forms

Ms. Newstetter directed the members' attention to the Registrant Information Update form. Mr. Seward inquired if the form was created to complement a rule. OAR 820-010-0605 requires registrants to notify the Board within 30 days of an address, email, or name change. It was moved and seconded (Newstetter/Seward) to approve the form. The motion passed unanimously.

The Rulemaking Process

Ms. Newstetter directed the members' attention to *The Rulemaking Process* article that was included in the Board packets. Ms. Newstetter allowed a moment for the members to review the article. It was moved and seconded (Newstetter/Seward) to approve *The Rulemaking Process* article. The motion passed unanimously.

Registrants and Certificate Holders Serving in the United States Military

Ms. Newstetter directed the members' attention to the *Registrants and Certificate Holders Serving in the United States Military* article that was included in the Board packets. Ms. Newstetter allowed a moment for the members to review the article. After a brief discussion, it was moved and seconded (Newstetter/Linscheid) to approve the *Registrants and Certificate Holders Serving in the United States Military* article as amended. The motion passed unanimously.

FINANCE COMMITTEE

Mr. Tappert reported that the Finance Committee met on August 14, 2009, to discuss the matters as contained in the Committee minutes. There was no further discussion. However, discussion was held by the Board regarding the FDIC insurance.

Mr. Tappert stated that the Committee was educated by an email from Julia Quintal, a representative of West Coast Bank, regarding the FDIC insurance coverage of the Board's funds. She stated that there is currently unlimited FDIC coverage for the checking account. However, the monies held in the sweep account are not FDIC insured nor can a collateral certificate be issued for monies in this type of account. It was moved and seconded (Tappert/Linscheid) to close the sweep account and transfer the funds to the checking account. The motion passed unanimously.

Finance Reports

Members reviewed the Statement of Net Assets (Balance Sheet), Statement of Activities (Profit & Loss Statement), and Income and Expense graphs for the period of July 1, 2009 through July 31, 2009. This time period reflects the latest data received in bank statements for the 2009 –

2011 biennium. There was no further discussion.

LAW ENFORCEMENT COMMITTEE

Mr. Linscheid reported that the LEC met on August 13, 2009, to discuss the following matters:

Case 2481 – Lee Spurgeon

Mr. Linscheid reported that the Committee met in an informal conference with the respondent Lee Spurgeon, PLS, to discuss a Notice of Intent to Assess a \$2,000 Civil Penalty for negligence or incompetence when Mr. Spurgeon set a monument in the wrong location and mislabeled several monuments on a map of survey violating ORS 209.250(3)(e), ORS 672.200(2), ORS 672.025(2), OAR 820-010-0621(2), and OAR 820-020-0015(10). Mr. Spurgeon reestablished boundaries for a flag lot and filed a record of survey. The adjoining owner disagreed and hired a second surveying firm to verify the work. When errors were discovered, Mr. Spurgeon corrected the matter, but he failed to sign the preliminary map. In addition, a Committee review of the map revealed possible violations of ORS 209. Upon discussion, the Committee determined there was no harm to the public as Spurgeon had corrected the mistakes. Furthermore, since the map in question was printed without Spurgeon's proprietary font, it was unclear who distributed the map. Regardless, the Committee determined to issue Spurgeon a letter of concern for improper marking of monuments as the basis of bearing on his filed record of survey. It was moved and seconded (Linscheid/Tappert) to close the case with a letter of concern. The motion passed unanimously.

Case 2480 – Abraham Taylor

Mr. Linscheid reported that the Committee met in a second informal conference with the respondent Abraham Taylor, PLS, to discuss a Notice of Intent to Assess a Civil Penalty of \$1,000 (NOI) for failing his professional duties to properly monument a property corner violating ORS 209.250(1), ORS 672.200(2), and OAR 820-020-0015(1),(2). Mr. Linscheid reminded the Board that Mr. Taylor made a statement at the last Board meeting. In essence, Mr. Taylor established a conflicted boundary line by setting stakes for fence construction without setting property monuments, which Mr. Taylor believed does not trigger the filing requirement of ORS 209.250. Mr. Taylor asserted that ORS 209.250 requires the filing of a map of survey only upon setting of a boundary monument and he did not set a monument.

AAG Tucker-Davis stated that the Committee discussed Mr. Taylor's comments. The Committee would amend the NOI to remove the ORS 209.250 reference and focus on whether Mr. Taylor engaged in negligent or incompetent surveying. She raised a question, however, about comparison penalties. In another case the Committee is reviewing, which also involves negligent or incompetent surveying, the Committee decided to revoke the individual's registration. To ensure some consistency, she emphasized that the Board should discuss whether the current sanction of a fine against Mr. Taylor should remain and not become an action against his registration. It was moved and seconded (Linscheid/Tappert) to amend the NOI to remove the ORS 209.250 reference. The motion passed unanimously. The second issue discussed was resolving the sanction. Mr. Linscheid observed that a sanction is determined on a case-by-case basis. In Mr. Taylor's case, it was his first violation whereas the other individual was suspended in the past for similar violations. Also, Mr. Taylor's fine was determined prior to learning of his surveying methodology. In addition, there was arguably no harm to the public in the Mr. Taylor case. It was noted that the Committee has met with Mr. Taylor for two informal conferences and

there are real concerns with his methodology and judgment, particular in this case. However, Mr. Taylor would not acknowledge that his surveying practice may constitute negligence. Ms. Newstetter also noted that in reading the case summary, Mr. Taylor's methodology to set a boundary would not meet her standard of practice nor would it meet the standard set by other competent surveyors. She voiced additional concern that there was harm to the public by staking a boundary line and not setting a monument between conflicted parties. Regardless, it was stated that while there may be potential harm to the public, the discussion was on the level of the sanction to be applied. Other cases of negligence or incompetence have resulted in revocations or suspensions. Upon discussion, Board members agreed that revocation was off the table. However, it was the responses given by Mr. Taylor during the informal conferences that caused the additional review of his methodology. It was also observed that if Mr. Taylor pays the civil penalty and does not change his practice, then there will be more problems in the future. The question was then raised if a fine was sufficient to cause a change in practice. It was moved and seconded (Linscheid/Newstetter) to amend the NOI to include a six month suspension. The motion passed unanimously.

Case 2486 – John DeJong

Mr. Linscheid reported that the Committee met with respondent John DeJong in an informal conference to discuss a Notice of Intent to Assess a \$1,000 Civil Penalty (NOI) for violating ORS 672.045(3). Mr. DeJong affixed a replica of a seal and signature of Thomas Amberg, PE, without his knowledge to engineering plans that he then provided to a client. The client submitted the plans to Washington County for grading review. Upon Committee discussion, Mr. DeJong admitted to the allegations and agreed to a reduced civil penalty of \$500. Because of his past violations, however, Mr. DeJong also agreed to never do it again and, if so, he also would be assessed the abated civil penalty. The Committee would also issue Mr. Amberg a letter of concern for not maintaining control of his seal and signature. It was moved and seconded (Linscheid/Tappert) to approve the Board President to sign the DeJong settlement agreement. The motion passed unanimously.

Case 2332 – Maurice Farr / Paul Allen

Mr. Linscheid reported that the Committee approved issuing Maurice Farr a Notice of Intent to Revoke registration (NOI) for negligent engineering violating ORS 672.200(2) and OAR 820-020-0015(2). The Committee reviewed a report by Grant Davis, SE, regarding two exempt structures that Mr. Farr designed for Domino's Pizza and a Glide High School football grandstand cover. A question arose regarding the Board's responsibility and reporting requirements if the Board suspected negligent engineering with life safety concerns. In response, it was noted that a Mr. Wilkinson received additional information from the Douglas County Building Department, which alerted the Committee that a review was occurring as part of the investigation. However, nothing regarding engineering concerns was formally transmitted because it was prior to the Mr. Davis completing a review. Now that the Committee has completed their review and a NOI has been issued, there are tangible issues pointing to a potentially dangerous structure at Glide High School. The discussion resulted in directing staff to share the case summary and the Davis report with the Building Codes Division (BCD). This would provide them notice that the Board is investigating the engineering and is working through a legal process. Mr. Wilkinson informed the Board that a complaint was recently opened regarding another engineer who designed a building that allegedly has life safety issues. These

cases raise important policy questions regarding constructed projects. AAG Tucker-Davis clarified that before a design is found dangerous, the individual has due process rights with a right to a hearing. However, there are public records that discuss the concerns the Board has regarding the design.

It was also noted that a building department has the authority to condemn a building if they see fit; whereas the Board does not. It will be important to share public records with county building officials and allow them to make the judgment. In addition, county building officials may become witnesses if a hearing is required. The key is due process and the Board reviewed the engineering plans to support the allegation of negligence or incompetence in the NOI. If the Board did nothing with the investigation results because the enforcement process is not closed, then the Board has not protected the public. However, the Board cannot pass judgment on the building or its construction.

Mr. Davis observed that Douglas County affixed a stamp to the Glide High School plans that states, *“The approval of the plans and specifications shall not prevent the Building Official from thereafter requiring the correction of errors in said Plans and Specification or from preventing building operations being carried on when in violation of the Oregon Structural Specialty Code or any other Ordinance of Douglas County.”* He suggested that the statement be evaluated as it appeared the County was under some pressure to get the job done. On the other hand, the building could have been built fine. Rather than wait for the OSBEELS enforcement process to end, alert the County that the Board discovered some potential problems that they need to look into. In addition, the Board would like to thank them for their cooperation.

Mr. Davis observed that this may be more than a communication problem since building officials are the first line of defense against substandard engineering since they see everything. If a plan requires numerous reviews until approved, then the issues should be addressed with the engineer. If a building department has an engineer who has difficulty designing a compliant project and they do not report the individual to OSBEELS, then the Board cannot take action to protect the welfare of the public in safeguarding life, health, and property. This is a huge risk in the state.

It was also noted that building departments may do an expedited review in response to builders and contractors, but the engineering is not being thoroughly evaluated other than for strict code compliance. There is a relationship between engineering plans, building official review, and code compliance, and there is a need to reach out to ensure that engineered plans not only meet code, but are safe for public use. Engineering is more than approved plans that get out the door. Board members expressed an interest in helping in whatever way they can, including meeting with building officials to talk about the issues.

Case 2487 – Lawrence Hansen / OSBEELS

Mr. Linscheid reported that the Committee reviewed a report co-authored by the respondent Lawrence Hansen. The report, which was an investigation of deep cracks in a cul-de-sac’s asphalt and the “significant gaps” between the curb and gutters, was mistakenly sent to the Board. Processed as an anonymous complaint, the report was sealed and signed by James Dransfield, PE. Mr. Hansen also signed the report, but used the title of “Senior Geotechnical Engineer” without registration. Mr. Hansen admitted during the investigation that he was not

registered in Oregon and changed his title to avoid future problems. The Committee authorized issuing Mr. Hansen a NOI for the unlicensed practice of engineering violating ORS 672.007(1)(a) and ORS 672.045(2).

Case 2489 – Chris Fischborn / Linda Younger

Mr. Linscheid reported that the Committee reviewed allegations from complainant Linda Younger concerning the respondent Chris Fischborn, PLS, who failed to provide proper notice for right of entry. She also alleged that Mr. Fischborn damaged her rock wall when he set a monument. Mr. Fischborn admitted he entered the Younger property to survey and set property corners without providing notice as required. However, the investigation found no evidence to support the Younger allegation of property damage. The Committee determined that Mr. Fischborn already had been sanctioned for a right of entry violation in law enforcement case number 2444. Since the Younger violation occurred before the violation in law enforcement case number 2444 and Mr. Fischborn met those sanction obligations, it was moved and seconded (Linscheid/Seward) to close the case with a letter of concern. The motion passed unanimously.

Case 2492 – David Snodgrass / Conor O’Shea

Mr. Linscheid reported that the Committee reviewed the allegations from complainant Conor O’Shea regarding the respondent David Snodgrass who oversaw the design and construction of a retaining wall. Mr. Snodgrass owns a landscaping company that constructed the wall for landscape planting and lawn area. Shortly after construction, run-off from the above properties washed soil down the hill causing damage to the O’Shea home. The investigation found that the wall was less than four feet in height exempting it from permitting requirements. In addition, the wall did not fail. Furthermore, an employee of Mr. Snodgrass informed the complainant that if he wanted to control runoff he would need to hire an engineer. Regardless, the wall is an appurtenant to an exempt, single-family residence. It was moved and seconded (Linscheid/Seward) to close the case as Board lacks jurisdiction. The motion passed unanimously.

Case 2494 – Thomas Swart / Robert Hovden

Mr. Linscheid reported that the Committee reviewed allegations from complainant Multnomah County Surveyor Robert Hovden, PLS, regarding the surveying activities of Thomas Swart, PLS, and determined to issue Mr. Swart a Notice of Intent to Revoke Registration and Assess a Civil Penalty of \$16,500 for violations of ORS 672.200(2),(4); ORS 672.025(1),(2); ORS 672.045(1),(4),(6); ORS 209.250(1),(3),(4); OAR 820-010-0605; OAR 820-010-0620(1),(4); OAR 820-010-0621(1),(2); OAR 820-020-0015(9),(10); OAR 820-020-0020(1),(2); OAR 820-020-0025(1); OAR 820-030-0060; and OAR 820-030-0070. Mr. Hovden alleged that Mr. Swart was grossly negligent or incompetent in the practice of land surveying by continually submitting insufficient survey work for review. Subsequent complaints of a similar nature were received from Washington County Surveyor Jim Elam and from Clackamas County Surveyor Charles Pearson.

During the investigation, however, a potential violation of ORS 209.250(4)(b) was found, which requires a county surveyor to return a map of survey to a surveyor for corrections within 30 days. In one instance, a map of survey that already had received several reviews by Clackamas County was not returned to Mr. Swart within 30 days. Clackamas County Senior Counsel submitted a

letter to the Board to address the issue. Mr. Linscheid asked the Board to go into Executive Session in order to consult with legal counsel regarding the matter. **President Davis took the Board into Executive Session as provided by ORS 192.660(2)(h) to consult with the AAG concerning the legal rights and duties of the Board with regard to litigation that may be filed.**

Upon returning to open session, it was noted that no action was taken during Executive Session.

President Davis reported that the Board is aware of the Clackamas County letter. The County argued that the initial review cycle was within 30 days and after that it was a refusal to file the map. In response, AAG Tucker-Davis informed the Board that ORS 209.250(4)(d) and (e) provides “safe harbors” for county surveyors. She noted an action may not be maintained against a county surveyor for recording a map that does not comply with ORS 209.250 or for refusing to file a map survey that does not comply with ORS 209.250. It was also observed that the County’s interpretation of the 30 day requirement sets an unacceptable precedence. Regardless, the Board recognized the cooperation county surveyors provide the Board and authorized that a thank-you letter to be sent to the Clackamas County Surveyor acknowledging his cooperation on law enforcement cases.

Case 2495 – Mathew Smith / OSBEELS

Mr. Linscheid reported that the Committee reviewed anonymous allegations that the respondent, Mathew Smith, advertised as an engineering company and offered engineering services without employing a licensed professional engineer. The investigation found that Mr. Smith is part-owner of Smith Herrick Engineering, LLC, which is an “electro mechanical engineering company” that assists companies in the product design and manufacturing of machines, devices, and components. Mr. Smith and Mr. Herrick are not registrants. Mr. Smith asserted that their activities are covered by an industrial exception under ORS 672.060(6). However, Mr. Smith admitted to providing engineering services via the Web and to some confusion in the public about the services they do offer. The exception does not appear to apply. The Committee determined to issue Mr. Smith a Notice of Intent to Assess a Civil Penalty of \$1,000 for violations of ORS 672.007(1)(a),(b),(c); ORS 672.020(1); ORS 672.045(1)(2), and OAR 820-010-0720(1).

Professional Reviewer and Expert Witness Policy

Mr. Linscheid reported that the Committee reviewed modifications to the *Professional Reviewer and Expert Witness Policy* in order to streamline the approval process for those individuals who are known by the Board to be an expert in their field. The change will make it easier to solicit professional reviewers when a particular expertise is required. It was moved and seconded (Linscheid/Tappert) to approve the revised Policy. The motion passed unanimously.

PLSO January 2010 Conference: presentation request

Mr. Linscheid reported that the Committee discussed a request from the Professional Land Surveyors of Oregon (PLSO) for participation in the conference and to conduct a presentation. He explained that Mr. Hoffine developed a case scenario previously for a PLSO Umpqua chapter

presentation where the facts of a case were discussed by participants. Case identifiers were removed, but the exercise proved successful because it put them in a position to review ORS 672, OAR 820, and ORS 209.250 against the facts to reach a sanction. Mr. Linscheid stated that the participants settled in a way similar to the Committee. The Board agreed that investigators should attend the Conference.

ODOJ Memorandum: NCEES National Comity Database and Oregon Public Records Law
Mr. Linscheid reported that the Committee briefly discussed the law enforcement database administered by NCEES. Currently, investigators report revocations and suspensions to the database, but individuals who receive civil penalties are not routinely added. The Committee directed that civil penalties also be reported. In addition, social security numbers will not be reported.

Investigator memorandum: preliminary evaluation of Embassy Suites
Mr. Linscheid reported that the Committee discussed a job announcement for a Chief Engineer published by the Embassy Suites Portland Airport. Upon preliminary review of the complaint, the Committee determined that the job advertisement shows the duties exclusively relate to their facility, so the position falls under the industrial exception of ORS 672.060(6). Staff responded that the Committee determined to not open a law enforcement case.

Investigator memorandum: preliminary evaluation of Edgar Stacy, III
Mr. Linscheid reported that the Committee discussed notification from Edgar Stacy III, PE, that he had inadvertently practiced under an expired New Jersey license. Mr. Stacy settled with the New Jersey State Board of Professional Engineers and Land Surveyors on a letter of reprimand and a \$500 civil penalty. The Committee reviewed OAR 820-020-0015(6), which requires a conviction of a felony without restoration of civil rights or the revocation or suspension of a license for a cause in violation of ORS 672.020 to ORS 672.310. Staff responded that the Committee determined to not open a law enforcement case since Mr. Stacy was not convicted, revoked, or suspended.

Investigator memorandum: preliminary evaluation of Susan Walker allegations
Mr. Linscheid reported that the Committee discussed an email from Susan Walker, who is a professional home inspector, regarding a professional engineer who conducts home inspections. She found that the engineer prepared an inspection report during a period when he was delinquent on his renewal. Engineering single-family residences is excepted by ORS 672.060(10), including home inspection reports. However, the Committee noted that the Construction Contractor's Board oversees the requirements for home inspection and she should contact them for information. Staff responded that the Committee determined that the complaint was outside the Board's jurisdiction and to not open a law enforcement case.

Case 2465 – Richard Montgomery / OSBEELS

Mr. Linscheid reported that the Committee was scheduled to meet prior to the Board meeting in an informal conference with Richard Montgomery, PLS, and his attorney Wesley Hill, but a quorum was not reached. As a result, the informal conference was rescheduled for October 8, 2009. However, Mr. Hill requested that the Board release an opinion authored by AAG Kathleen Dahlin, which was provided under attorney-client privilege. The opinion dated September 8,

2005, was entitled Meaning of “Negligence”, “Gross Negligence” and “Incompetence” as the Basis for Sanction (DOJ File No. 917-001-GB0019-05). Mr. Linscheid requested that the Board go into executive session to consult with legal counsel regarding its release. **President Davis took the Board into Executive Session as provided by ORS 192.660(2)(h) to consult with the AAG concerning the legal rights and duties of the Board with regard to litigation that may be filed.**

Upon returning to open session, it was noted that no action was taken during Executive Session.

It was moved and seconded (Linscheid/Tappert) to publicly release DOJ File No. 917-001-GB0019-05. The motion passed unanimously.

Professional Reviewer and Expert Witness Applicants

Brandon W. Erickson, SE – Mr. Linscheid reported that the Committee reviewed a professional reviewer and expert witness application submitted by Brandon W. Erickson, SE. The Committee reviewed the application and recommended approval. It was moved and seconded (Linscheid/Tappert) to approve Erickson as a professional reviewer and expert witness. The motion passed unanimously.

The Board briefly reviewed the Cases Subject to Collections, Cases Subject to Monitoring, and Case Status and offered no comments.

PROFESSIONAL PRACTICES COMMITTEE

Mr. Seward reported that the PPC met on August 14, 2009, to discuss the matters contained in the Committee minutes. There was no further discussion.

RULES AND REGULATIONS COMMITTEE

Mr. Seward reported that the R&R Committee met on August 14, 2009, to discuss the matters contained in the Committee minutes.

Action was taken by the Board on the following rules:

OAR 820-010-0010 – Definitions

It was moved and seconded (Seward/Tappert) to approve the rulemaking process to amend OAR 820-010-0010 as presented. The motion passed unanimously.

OAR 820-010-0215 – Form of Applications

It was moved and seconded (Seward/Linscheid) to approve the rulemaking process to amend OAR 820-010-0215 as presented. The motion passed unanimously.

OAR 820-010-0305 – Fees

It was moved and seconded (Seward/Tappert) to approve the rulemaking process to amend OAR 820-010-0305 as presented. The motion passed unanimously.

OAR 820-010-0510 – Registrants or Certificate Holders Qualified to Practice

It was moved and seconded (Seward/Tappert) to approve the rulemaking process to amend OAR 820-010-0510 as presented. The motion passed unanimously.

OAR 820-010-0520 – Registrants Not Qualified to Practice

It was moved and seconded (Seward/Newstetter) to approve the rulemaking process to amend OAR 820-010-0520 as presented. The motion passed unanimously.

OAR 820-010-0505 – Biennial Renewal of Registration or Certification

It was moved and seconded (Seward/Linscheid) to approve the rulemaking process to amend OAR 820-010-0505 as presented. The motion passed unanimously.

OAR 820-010-0605 – Address Changes; Service of Notice; and Name Changes

It was moved and seconded (Seward/Newstetter) to approve the rulemaking process to amend OAR 820-010-0605 as presented. The motion passed unanimously.

OAR 820-010-0227, OAR 820-010-0228, OAR 820-010-0415, OAR 820-010-0425, and OAR 820-010-0427

It was moved and seconded (Seward/Newstetter) to approve the rulemaking process to amend the OARs as presented. The motion passed unanimously.

OAR 820-010-0204, OAR 820-010-0206, and OAR 820-010-0208

It was moved and seconded (Seward/Linscheid) to approve the rulemaking process to amend the OARs as presented. The motion passed unanimously.

Senior Rights/Precedence of Monuments

Mr. Seward reported that the Committee briefly reviewed a proposed draft rule that attempts to define the standards of the practice of land surveying. After a brief discussion, it was determined that the Committee would include the 2 professional land surveyors (Dan Linscheid and Sue Newstetter), the dual registrant (Ken Hoffine), and a professional engineer (Carl Tappert) on the Board. The first meeting will be held with the October Committee meetings.

ADJOURN

The meeting was adjourned at 1:53 p.m.

NEXT MEETINGS

Next Board Meeting:

November 10, 2009

Next Committee Meetings:

LAW ENFORCEMENT:

Standards of Practice for Land Surveying
(Subcommittee)

Thursday, October 8th at 8:00 a.m.

Thursday, October 8th at 2:00 p.m.

PROFESSIONAL PRACTICES:

Friday, October 9th at 8:00 a.m.

RULES & REGULATIONS:

Friday, October 9th at 9:00 a.m.

EXAMINATIONS & QUALIFICATIONS:

Friday, October 9th at 10:00 a.m.

FINANCE:

Friday, October 9th at 1:00 p.m.

EXTERNAL RELATIONS:

Friday, October 9th at 2:00 p.m.