



# 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  
May 11, 2010

## **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  
Ken Hoffine  
Mari Kramer  
Sue Laszlo  
Dan Linscheid  
Carl Tappert  
Amin Wahab  
Sue Newstetter (excused absence)  
John Seward (excused absence)

## **Visitors Present:**

Gary Anderson, PLS, Professional Land Surveyors of Oregon Liaison  
Scott Fein, LSIT  
Bob Neathamer, PLS  
Joyce Woodring, US Bank  
Marv Pyles, PE (arrived at 1:00 p.m.)

## **Others Present:**

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

President Davis welcomed the visitors to the meeting and requested the visitors, Board members, and others present to introduce themselves.

## **APPROVAL OF AGENDA**

In reviewing the agenda, President Davis noted that Marv Pyles would be in attendance after the lunch hour to attend the Professional Practices portion of the Agenda. Ms. Laszlo also noted that the visitors were in attendance for the Examinations and Qualifications and Finance portions of the Agenda. As a result, the Finance Committee portion was moved after the Approval of the Minutes, the Examinations and Qualifications Committee portion was moved to occur next, and

the Professional Practices Committee portion was moved to occur after the Rules and Regulations portion of the Agenda. Furthermore, a report on the history of the Oregon Specific Land Surveying examination was added as Item B to the Examinations and Qualifications portion of the Agenda. It was moved and seconded (Laszlo/Butts) to approve the agenda as amended. The motion passed unanimously.

### **APPROVAL OF MINUTES**

President Davis noted that there was no resolution of the Farr case in the Law Enforcement portion of the March 9, 2010 meeting minutes. He stated that this may have been overlooked due to a Special Meeting held on February 19, 2010; however, the Board approved signing the settlement agreement during the March 9, 2010 meeting. It was moved and seconded (Linscheid/Laszlo) to approve the minutes of the March 9, 2010 Board Meeting as amended. The motion passed unanimously.

### **FINANCE COMMITTEE**

Mr. Tappert reported that the Finance Committee met on April 9, 2010, to discuss the matters as contained in the Committee minutes. Additional discussion was held with Joyce Woodring, US Bank representative, regarding the investment options available to the Board. Ms. Woodring briefly summarized the options that included Agency Discount Notes, Bankers' Acceptances, Certificates of Deposit, Treasury Bills, Treasury Notes, and Bonds. Ultimately, she informed the members that the investment would be made compliant with the Oregon Revised Statutes (ORSs) which limits the investment to a term of no longer than 18-months; rates are established for these term limits. Mr. Tappert further stated that the Committee will review and draft an investment policy during the next meeting in June. Ms. Lopez also noted that she has received investment policy information from a few of the other Semi-Independent Boards for the Committee to consider.

Besides investing with US Bank, Mr. Tappert reported that the Committee discussed the current banking business of the Board. After discussions with representatives from the Oregon Employees Federal Credit Union, West Coast Bank, and US Bank, the Committee recommends that the Board transfer all accounts held with West Coast Bank to US Bank, and closing the West Coast Bank accounts. This recommendation was based on the knowledge of the US Bank representatives with regard to governmental banking and the uncertainty of West Coast Bank's solvency. It was moved and seconded (Tappert/Laszlo) to approve the transfer of the checking and payroll accounts to US Bank and closing all accounts with West Coast Bank. The motion passed unanimously.

Furthermore, it was moved and seconded (Tappert/Laszlo) to approve re-allocating funds included in the 2009-2011 budget for giving presentations. Ms. Laszlo reiterated that this act would not increase the budget, but move monies already budgeted for the biennium to a new account line item designated to promoting registration and giving presentations to educational institutions or associations. The motion passed unanimously.

### *Finance Reports*

Members reviewed the Statement of Net Assets (Balance Sheet), Statement of Activities (Profit and Loss Statement), Profit and Loss Budget Overview, and Income and Expense graphs for the

period of July 1, 2009 through March 31, 2010. This time period reflects the latest data received in bank statements for the 2009 – 2011 biennium. Mr. Tappert reassured the members that a reassessment of the income and expenses will take place during a future Committee meeting in which the budget for the next biennium is determined.

## **EXAMINATIONS AND QUALIFICATIONS COMMITTEE**

Ms. Kramer reported that the Examinations and Qualifications (E&Q) Committee met on April 9, 2010 to discuss the matters contained in the Committee minutes. Additional discussion was held by the Board regarding the following matters:

### *Oregon Specific Land Surveying Examination*

Mr. Neathamer distributed information related to the results of the Oregon Specific Land Surveying examination administered on April 17, 2010. The passing rate for this administration was 44%. 7 examinees obtained a score within 5 points of the 70 point cutoff score and will be allowed to review their examination upon request per Oregon Administrative Rule (OAR) 820-010-0470. He strongly requested that the results be distributed as soon as possible to these individuals. Staff stated that the results would be distributed immediately to those who did not sit for the National Council of Examiners for Engineering and Surveying (NCEES) 6-hour professional land surveying examination. Upon receipt of the results from NCEES, those individuals who sat for both examinations would receive all result information together.

Mr. Neathamer also provided the history of the Oregon Specific Land Surveying examination to the extent of his knowledge and participation. Back in the 1990's, the land surveying community determined 7 items to be included on the syllabus. In January 2009, the Board adopted the syllabus to include 5 items. Prior to the 5 item syllabus, an examinee could successfully pass the examination without completing or receiving any points on questions related to Public Lands or Datums. He further noted that the knowledge and experience regarding these topics are very important in parts of the state. With the 5 item syllabus, the topics are equal weight and cover matters as required by rule.

Furthermore, with regard to the individuals that assist with the development, compilation, scoring, and grading of the Oregon Specific Land Surveying examinations, Mr. Neathamer stated that these individuals represent a diverse group. Included in the group for this administration were professors from the Oregon Institute of Technology (OIT) Geomatics Department, employees from the Bureau of Land Management (BLM), a professor from Clark Community College, a private professional land surveyor involved in geodetic work, and a land use attorney. He also noted that one of the questions was previously used in a past examination administration. Mr. Neathamer also informed the Board that he is not involved in the grading of the examinations; only if there is concern by the grader then the group as a whole will review the question and answers provided.

Discussion then moved on to the process for all Oregon Specific examinations. Ms. Lopez noted there is a documented process included in the Memorandum of Understanding with the Washington Board for the Washington Structural III examinations and in the previous contract with the California Board for the Geotechnical examination. A process is also provided for the photogrammetric mapping examination and the NCEES examinations. However, the

individuals that assist with the development, compilation, scoring, and grading of these examinations is not included in the documentation. Documentation for the Oregon Specific Land Surveying, Acoustical, and Forest examinations should be developed.

Scott Fein then inquired on the scoring process. He briefly explained to the Board a question he recalled on the October 2009 Oregon Specific Land Surveying examination, along with the method in which he answered. Mr. Fein questioned how the scoring was determined. Since the question was an essay question, he believes that there is not always a clear defined answer and often a matter of professional judgment and difficult to grade objectively. Mr. Fein also noted in his email that he reviewed the ORSs and OARs and could not find where this process was provided. Mr. Fein further addressed the Board regarding his experience, mentors, employment history, and the fact that he has successfully passed the NCEES 6-hour professional land surveyor examination, which he believes is sufficient to meet the requirements for licensure.

**President Davis then took the Board into Executive Session as provided by ORS 192.660(2)(h) to discuss the emails submitted by Scott Fein and the Oregon Specific Examinations.**

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

#### Registration

*Comity Applications* – Ms. Kramer directed the members’ attention to the list of 71 professional engineer applicants and the 4 professional land surveyor applicants for registration by comity. It was moved and seconded (Kramer/Linscheid) to approve the list of 75 professional applicants as presented. The motion passed unanimously.

*1<sup>st</sup> Registration Applications* – Ms. Kramer directed the members’ attention to the 8 applicants seeking 1<sup>st</sup> registration. It was moved and seconded (Kramer/Laszlo) to approve the 8 applicants as presented. The motion passed unanimously.

*Prior Practice Applications* – Ms. Kramer directed the members’ attention to the 56 applicants seeking Geotechnical registration by prior practice. It was moved and seconded (Kramer/Laszlo) to approve the applicant as presented. The motion passed unanimously.

#### **PUBLIC INPUT**

Gary Anderson, PLS, Professional Land Surveyors of Oregon (PLSO) liaison, was in attendance to observe the meeting. He expressed his appreciation in the Board’s communication with the PLSO Executive Secretary. He also noted his approval with the re-allocation of funds for outreach.

#### **EXECUTIVE SECRETARY’S REPORT**

##### Committee Activities

In addition to the Finance and E&Q Committees, Ms. Lopez reported that the External Relations (ERC), the Law Enforcement (LEC), the Professional Practices (PPC), and the Rules and Regulations (R&R) committees each met during the interim. Additionally, the Standards of

Land Surveying Practice Committee met on April 9, 2010. The Committee minutes were included in the packets.

### Administrative Activities

#### *October 2009 Oregon Specific Examinations/NCEES*

Ms. Lopez reported that the NCEES PE, PLS, FE, and FLS examinations took place at the Oregon State Fairgrounds in Salem on April 16 and 17, 2010. Although OSBEELS did not participate in observing the NCEES' administration, Jennifer Carmack, Matt Bryan, Amanda Sloan, and Amelia Volker staffed the Oregon Specific Land Surveying examination administrations at the Chemeketa Community College Winema Place and the OSBEELS office on April 17, 2010. Ms. Lopez also reported that the numbers of "No Shows" for the NCEES administered exams have yet been received; a total of 724 applicants were approved for the April examination administration. The numbers of "No Shows" for the Oregon Specific administered exams were: Oregon Specific Land Surveying-3, and CWRE-0.

### Registration

Ms. Lopez stated that registration renewal for June is underway. Staff mailed approximately 3,000 courtesy reminders in the second week of April.

Additionally, she noted that the Continuing Professional Development audit is almost complete. Of the 356 PEs requested to participate, 14 have yet to respond and of the 36 PLSs requested to participate, 2 have yet to respond. These individuals will be mailed a final notice to respond. The 3 RPPs have responded and are cooperating with staff. Outstanding are 5 PEs that are not receiving notification of their required participation with the audit due to the return of Board notifications (returned mail). These individuals will also be transferred to the LEC for further review.

### Examination Agreements

Ms. Lopez reported the following with respect to agreements related to examinations and the administration of examinations:

*NCEES* – The only item left to agree upon is:

Sect. B(1)(d): Notifying NCEES which applicants are eligible to take NCEES **Examinations** at least ~~forty-five~~ **thirty** days in advance of the scheduled NCEES **Examinations**.

OAR 820-010-0442 currently holds deadlines of December 1<sup>st</sup> for the Spring examinations and June 1<sup>st</sup> for the fall examinations. These deadlines are for the primary application package but not for documents submitted to OSBEELS by outside parties. The problem remains with OAR 820-010-0215(5). This rule requires all documents to be received by OSBEELS no later than March 1<sup>st</sup> for the Spring examinations and September 1<sup>st</sup> for the Fall examinations.

Consequently, staff will not have knowledge if the applications are complete until after these dates and after OSBEELS has had the opportunity to verify each applicant's application package. This timing issue affects both the Spring and Fall administrations. Hence, OSBEELS' request is for a 45-day notice period; NCEES request is for a 30-day notice period.

On April 22, 2010, Jerry Carter informed Ms. Lopez that NCEES has no other options to provide OSBEELS. Consequently, the Board must decide on an immediate temporary rule change to

continue with the NCEES Agreement.

*CSBSR (Photogrammetric Mapping)* – Doyle Allen, contact for the Colonial States Boards of Surveyor Registration (CSBSR) and Ms. Lopez held a telephone meeting in April to discuss and review the CSBSR agreement in its entirety. Ms. Lopez reported that at this time, AAG Penry is making minor revisions to the contract. In addition, the Department of Administrative Services (DAS) Risk Management Division has been consulted for a response to the question of: Does the existing state insurance (The Oregon Tort Claims Act, ORS 30.260 - 30.300) that covers OSBEELS include coverage for negligent test administration?

*CA Geotechnical* – Ms. Lopez reported that unfortunately, there was no additional news to offer at this time.

#### 2010 Joint Central/Western Zone Meeting

As of this date, Ms. Lopez reported that Grant Davis, Dan Linscheid, Sue Newstetter, and Carl Tappert will represent OSBEELS at the 2010 Western Zone Meeting in Salt Lake City, Utah.

She also noted that the members of the Washington Board respectfully requested support of Daniel Parker, PE for Western Zone Vice President. Likewise, the members of the Nevada Board respectfully requested support of Patty Mamola, PE for Western Zone Vice President.

#### NCEES 89th Annual Meeting

Ms. Lopez informed the members that arrangements have been made for the NCEES Annual Meeting on August 18-21, 2010 at the Marriott Denver City Center in Denver, Colorado. Grant Davis is the NCEES Funded Delegate (NCEES funds the travel expenses of one voting delegate from each Member Board to attend the Annual Meeting). Business Delegate Notification response is needed by July 12, 2010. There was no further discussion.

#### Oregon Department of Justice (DOJ)

Ms. Lopez briefly stated that the DOJ is sponsoring the Core Public Law training on May 26, 2010 for Board and Commission members. Ms. Laszlo noted her interest in attending. If anyone else is interested, Ms. Lopez directed interested parties to inform Ms. Gilbert so that she can make the arrangements accordingly.

#### Board Vacancies

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. Ms. Gilbert presented each member with a list of registrants that reside in Congressional District (CD) 3 to assist in efforts to fill the vacancy.

#### Staffing

Ms. Lopez reported that Jill Van resigned on April 16, 2010 from the Investigator position. Additionally, the position that Ms. Meyer resigned from in April 2009 has yet to be filled.

Moreover, DAS Human Resource Services (Class and Compensation) Division has accepted, in

accordance to Oregon Revised Statute (ORS) 182.460(3), OSBEELS' request for a review of 7 positions at the OSBEELS office to ensure that the classifications and compensations accurately reflect the work performed by staff and the work is inline with the state position description; even though OSBEELS is exempt from ORS 240. Interviewing staff and a ½ hour desk audit per classification is one of the services included in the review. Ms. Lopez informed the members that the target date for completion of this review is July 2010.

### **PRESIDENT'S REPORT**

President Davis briefly reported that he has been communicating with the Structural Engineers of Oregon (SEAO) to inform the association of recent Board activities. Since his contact with SEAO has been on informative, AAG Tucker-Davis stated that public notice of the informal communication was not necessary. This completed his report and there was no further discussion.

### **EXTERNAL RELATIONS COMMITTEE**

Ms. Kramer reported that the ERC met on April 9, 2010, to discuss the matters as contained in the Committee minutes. Additional discussion was held by the Board regarding the following matter:

#### Board & Associations Forum

The Committee discussed matters related to holding a forum for associations to attend. The purpose of the forum is to discuss different issues that face the professions, along with building stronger communications with the professional associations of the Board. As a result of the Committee discussion, it was moved and seconded (Kramer/Laszlo) to hold a Spring 2011 symposium. The motion passed unanimously.

### **LAW ENFORCEMENT COMMITTEE**

Mr. Linscheid reported that the LEC met on April 8, 2010, to discuss the following matters:

#### *2531 – Stephen L. Swinehart*

Mr. Linscheid reported that the Committee met with the respondent Stephen Swinehart, PLS, in a second informal conference. The Board opened a case against Mr. Swinehart when he failed to respond to an audit of his Professional Development Hour (PDH) units. The Committee issued a Notice of Intent to Suspend Registration and Assess a \$3,000 Civil Penalty for violations of ORS 672.200(4), OAR 820-010-0635(1),(5), OAR 820-015-0026(1),(2), OAR 820-020-0015(7),(8) and OAR 820-020-0025(1) and, upon the first informal conference, reduced the civil penalty to \$1,000 and suspended Mr. Swinehart's registration from March 9, 2010 through June 30, 2010. However, Mr. Swinehart refused to later sign the agreement because he wanted certain language included.

In particular, Mr. Swinehart wanted to indicate that he had responded to the Board. In addition, he requested ideas and recommendations to help him and others become compliant with continuing education requirements. While the Committee acknowledged that he responded to the Board, the Committee did not provide any suggestions for obtaining PDH units. Regardless, the Committee and Mr. Swinehart were able to agree to a revised settlement agreement. The revised settlement agreement suspends Mr. Swinehart's registration to practice land surveying

from May 11, 2010 until August 9, 2010, in addition to requiring him to complete 30 PDH units for the period of July 1, 2008 to June 30, 2010. These PDH units need to be completed and Mr. Swinehart must also renew his registration by August 9, 2010, or his registration will be considered delinquent. Since he is renewing after the deadline provided in OAR 820-010-0505, the Committee reduced the civil penalty to \$920; accounting for the delinquency fee. A motion to approve the settlement agreement was made and seconded (Linscheid/Laszlo). The motion passed unanimously.

#### *2516 – Edward M. Tanner*

Mr. Linscheid reported that the Committee met with the respondent Edward M. Tanner, PE, in a second informal conference. The Board opened a case against Mr. Tanner when he failed to provide documentation of compliance with PDH requirements, failed to cooperate with the Board, and submitted untruthful statements. The Committee issued a Notice of Intent to Assess a \$3,000 Civil Penalty for violations of OAR 820-010-0635(1),(5), OAR 820-020-0015(7),(8) and OAR 820-020-0025(1) and, upon the first informal conference, Mr. Tanner agreed to retire his registration in lieu of a civil penalty. The Committee included a statement in the settlement agreement that Mr. Tanner would not reapply for reinstatement of his professional registration, which Mr. Tanner disagreed with and would not, therefore, sign the agreement.

When the Committee met with Mr. Tanner in his second informal conference, an agreement was reached wherein Mr. Tanner would pay a \$1,500 civil penalty, complete the required PDH units, and renew his registration by June 30, 2010. A motion to approve the settlement agreement with Mr. Tanner was moved and seconded (Linscheid/Butts). The motion passed unanimously.

#### *2543 – Daniel Shafer*

Mr. Linscheid reported that the Committee met with the respondent Daniel Shafer to discuss a Notice of Intent to Assess a \$2,000 Civil Penalty for violations of ORS 672.020, ORS 672.0451),(2) and OAR 820-010-0720(1). The Board investigated an anonymous complaint that alleged Mr. Shafer was advertising engineering services on the World Wide Web without registration. Mr. Shafer met with the Committee in an informal conference in February, but plead he was not prepared at the time due to a request for public records. The Committee accepted his request for a delay until April 8, 2010. When the Committee met with him again, the Committee, in particular Mr. Davis educated Mr. Shafer about ORS Chapter 672.060 exceptions and advertising engineering services. Upon consideration, the Committee determined to issue Mr. Shafer a letter of concern because he demonstrated the changes made to bring his advertisements into compliance. A motion to approve issuing Mr. Shafer a letter of concern was moved and seconded (Linscheid/Laszlo). The motion passed unanimously.

#### *2552 – Linda Damon*

Mr. Linscheid reported that the Committee met with the respondent Linda Damon in a teleconference to discuss a Notice of Intent to Assess a \$1,000 Civil Penalty for violating ORS 672.025(1). The Board investigated allegations that Ms. Damon advertised to perform land surveying without registration. The Committee learned during the informal conference that Damon intended to never hold out surveying services, only to advertise their tree removal business. Furthermore, the business was not a success and had closed over a year prior. Upon consideration, the Committee determined to issue Ms. Damon a letter of concern. A motion to

approve issuing Ms. Damon a letter of concern was moved and seconded (Linscheid/Tappert).  
The motion passed unanimously.

*2542 – Douglas C. McHaney*

Mr. Linscheid reported that the Committee met with the respondent Douglas McHaney, PE, in an informal conference to discuss a Notice of Intent to Assess a \$1,000 Civil Penalty for violating OAR 820-010-0720(1). The Board investigated allegations regarding his operation of an office without employing a registered engineer. Mr. McHaney explained that he had two offices with one in California and the other in Ashland, OR. The Committee learned about how Mr. McHaney managed his time as he divided his work more or less equally between the two offices. Furthermore, Mr. McHaney appeared to be compliant with OAR 820-010-0720(3)(a). Ms. Lazlo commented that additional review of the rule should occur, in particular subsection (3)(a) since it appeared that Mr. McHaney was not operating outside its intent. Mr. Tappert added that he had worked with the firm. Upon consideration, the Committee determined that Mr. McHaney had complied with the requirements of the rule and recommended closing the case as allegations unfounded. A motion to close the case as allegations unfounded was moved and seconded (Linscheid/Laszlo). The motion passed unanimously.

*2505 – Matthew E. Dunckel*

Mr. Linscheid reported that the Committee met with the respondent Matt Dunckel, PLS, Certified Water Right Examiner (CWRE), and his attorney Norm Webb in an informal conference to discuss a Notice of Intent to Revoke Registration and Assess a \$2,000 Civil Penalty. The Board investigated allegations that he failed to follow accepted land surveying standards in preparing a record of survey.

Mr. Linscheid explained that Mr. Dunckel surveyed property in connection with a property line adjustment using 1999 deeds as justification for monumenting the east line of two tax lots. In a subsequent survey, another surveyor determined that Mr. Dunckel set monuments on a line approximately 33' east of an existing fence line. Mr. Linscheid noted that the essential question was whether or not Mr. Dunckel should have used the bearing tree and the ¾" iron pipe located about 33' west of the point that he used. The Committee found that the same individual originally owned all the involved tracts. Following the setting of the original corners, a private surveyor came in and failed to correctly measure 33 feet thus setting a monument past where it should have been. Mr. Linscheid noted that the deeds are silent as to the bearing trees since the deeds only call out distances. Lastly, Mr. Dunckel did not show a fence on the survey as required by Yamhill County Ordinance 658 Section 3(2) because it was not a boundary fence, but meandered to corral livestock. Upon consideration, the Committee determined that Mr. Dunckel justified his actions and that it was a civil matter. A motion to issue Mr. Dunckel a letter of concern regarding showing fences in compliance with the Yamhill County Ordinance was moved and seconded (Linscheid/Butts). The motion passed unanimously.

*2495 – Matthew Smith*

Mr. Linscheid reported that the Committee met with the respondent Matthew S. Smith and attorney Mary Kim Wood in an informal conference to discuss a Notice of Intent to Assess a Civil Penalty of \$1,000 for violations of ORS 672.007, ORS 672.020, ORS 672.045, and OAR 820-010-0720. The Board investigated an anonymous complaint that Smith Herrick

Engineering, LLC, advertised as an engineering company and offered the services of an engineer without employing a licensed professional engineer. Ms. Wood explained that their work for companies is exclusive to product development and they do not offer their services to the public. Ms. Wood informed the Committee that they would remove the term engineering from their name, Web site, and other advertisement materials. The Committee reached a settlement agreement that would assess Mr. Smith \$500 and require changes to their firm's name and advertisements by June 30, 2010.

Mr. Linscheid continued that the signed settlement agreement had not been returned to the Board office. Mr. McCartt replied that he called Ms. Wood on several occasions and left messages. However, she has not responded. AAG Tucker-Davis observed that the Board can not approve entering into an unsigned settlement agreement. The Board could delegate the authority to the Board President to sign the agreement if it is unchanged. If there are changes, then it would need to go back to the Committee for discussion. Upon further review, a motion was made and approved to authorize the Board President to sign the agreement dependent on no changes and its receipt prior to June 30, 2010 (Linscheid/Laszlo). The motion passed unanimously.

#### *2549 – Floyd Holcom*

Mr. Linscheid reported that the Committee met with the respondent Floyd Holcom and attorney Hafez Darae to discuss a Notice of Intent to Assess a \$1,000 Civil Penalty for violating OAR 820-010-0720. The Board investigated the allegation that Mr. Holcom engaged in the unlicensed practice of engineering by offering to perform professional services without a licensee. The allegation was that the registration for the professional engineer that Mr. Holcom used in preparing the bid, Michael Dubb, PE, was in exempt status at the time of the bid.

Mr. Linscheid stated that Mr. Holcom has IBIS Group, LLC, which was a consulting firm hired by the Port of Tillamook to act as their agent to coordinate reconstruction. Mr. Holcom and IBIS Group offered engineering services on the mistaken belief that Mr. Dubb held a current registration when he did not. IBIS Group itself did not hold out as an engineering firm nor did Mr. Holcom. To the extent they require engineering services, they retained engineers. Mr. Holcom relied on Mr. Dubb to ensure compliance. The Committee recognized that Mr. Holcom signed the bid document as the IBIS Group representative and not as an individual and would therefore recommend issuing IBIS Group a letter of concern for offering to practice engineering without registration. A motion was made and approved to issue IBIS Group a letter of concern (Linscheid/Kramer). The motion passed unanimously.

#### *2539 – Larry Crowley*

Mr. Linscheid reported that the Committee issued Mr. Crowley a Notice of Intent to Assess a \$9,000 Civil Penalty for violations of ORS 672.007, ORS 672.020(1), ORS 672.045(2), and OAR 820-010-0720(1). The allegations were that he engaged in the unlicensed practice of engineering when he identified himself as a professional engineer and while conducting business as Evergreen Geotechnical Engineering. The Committee sent the NOI to Mr. Crowley, but he failed to respond, so the LEC discussed seeking an injunction against Mr. Crowley pursuant to ORS 672.215. AAG Tucker-Davis added there was no evidence of his current activities with which to seek an injunction against. While the Committee discussed other options, the Committee decided to recommend approving a Default Final Order and then review options once

the appeal period has ended. A motion was made and approved to issue Mr. Crowley a Default Final Order to Assess a \$9,000 Civil Penalty (Linscheid/Laszlo). The motion passed unanimously.

### **Cases Reviewed**

Mr. Linscheid reported that the Committee reviewed the following cases:

#### *2519 – Mark P. Patterson / OSBEELS*

Mr. Linscheid reported that the Committee discussed that respondent, Mark P. Patterson, PE, was a non-resident Oregon registrant selected to participate in an audit of his PDH units. However, all Board correspondence regarding the audit was returned undelivered. The Committee found that Mr. Patterson notified the Board of a change of address prior to the audit, but it was not updated until after the audit letters were returned. Once contacted by a Board Investigator, Mr. Patterson provided proof of his PDH units for the audit period. The Committee examined the documentation and recommended that the Board approve closing the case against Mr. Patterson as allegations unfounded. A motion was made and approved to close the case as allegations unfounded (Linscheid/Laszlo). The motion passed unanimously.

#### *2522 – Kenneth M. Clark / OSBEELS*

Mr. Linscheid reported that the Committee discussed that respondent Kenneth M. Clark, PE, was a non-resident Oregon registrant selected to participate in an audit of his PDH units. Mr. Clark had not initially responded to the audit due to his travel schedule, but once contacted he apologized for the delay and provided documentation of his PDH units for the audit period. The Committee recommended the Board approve closing the case against Mr. Clark as allegations unfounded. A motion was made and approved to close the case as allegations unfounded (Linscheid/Laszlo). The motion passed unanimously.

#### *2526 – Deron A. Jyo / OSBEELS*

Mr. Linscheid reported that the Committee discussed that respondent Deron A. Jyo was a non-resident Oregon registrant selected to participate in an audit of his PDH units. The Committee determined to issue Mr. Jyo a Notice of Intent to assess a \$2,000 civil penalty for violating OAR 820-010-0635(1),(7). Mr. Jyo is also registered in Hawaii and his license was active in Hawaii during the time of the audit, but Hawaii does not require PDH units. However, Mr. Jyo would be responsible for the prorated portion of PDH units. Since Mr. Jyo failed to respond to Board inquiries, it was not until Mr. McCartt contacted him that Mr. Jyo was informed he was responsible for holding an Oregon registration and for PDH compliance.

#### *2532 – Thomas E. Neubauer / OSBEELS*

Mr. Linscheid reported that the Committee discussed that respondent Thomas E. Neubauer, PE, was a non-resident Oregon registrant selected to participate in an audit of his PDH units. However, Mr. Neubauer did not respond to the audit. When he responded to the investigation, Mr. Neubauer claimed he had contacted the Board office and explained his former employer's refusal to provide his PDH records. Mr. McCartt contacted Mr. Neubauer's former employer and received documentation showing Mr. Neubauer's PDH units in excess of the requirement for the audit period. The Committee recommended the Board approve closing the case against Mr.

Neubauer as allegations unfounded. A motion was made and approved to close the case as allegations unfounded (Linscheid/Kramer). The motion passed unanimously.

*2548 – Jim W. Fitzgerald / Roy MacMillan*

Mr. Linscheid reported that the Committee discussed that respondent Jim W. Fitzgerald had allegedly used complainant Roy K. MacMillan's official PE seal and was practicing engineering without a license. Upon investigation, the Committee learned that the drawings in question did not show Mr. MacMillan had produced them and that the changes were made at the Washington State job site under the direction of the electrical contractor and/or electrical engineer. A motion was made and approved to close the case as allegations unfounded and Board lacks jurisdiction (Linscheid/Laszlo). The motion passed unanimously.

*2550 – James E. Bussard / Anonymous*

Mr. Linscheid reported that the Committee discussed that respondent James E. Bussard, PLS, had allegedly provided engineering services without having a licensed engineer and failed to hold paramount the safety, health, and welfare of the public in performance of his duties by not ensuring the proper completion of a right-of-way acquisition. Upon investigation, Mr. Bussard was able to substantiate his compliance with the resident registrant rule. In addition, he showed he was not the surveyor for the right-of-way acquisition. A motion was made and approved to close the case as allegations unfounded (Linscheid/Laszlo). The motion passed unanimously.

*2554 – David H. Krumbein / Dwight French*

Mr. Linscheid reported that the Committee discussed that respondent David H. Krumbein, PE, PLS, CWRE and Umatilla County Surveyor, allegedly failed to submit a corrected Claim of Beneficial Use and Site Report to the Oregon Water Resources Department in violation of OAR 690-014-0220. In addition, Mr. Krumbein failed to cooperate with the Board by failing to respond to the OSBEELS in violation of OAR 820-020-0115(8). Because of questions about the OSBEELS authority to issue sanctions against a CWRE, there was additional Committee discussion regarding assessing a civil penalty for violations of CWRE rules under OAR 690. As a result, the Committee determined to issue Mr. Krumbein a Notice of Intent to Revoke CWRE Registration and Assess a \$1,000 Civil Penalty for violating OAR 690-014-0220 and OAR 820-020-0015(8).

*2555 – Robert J. Bayer / OSBEELS*

Mr. Linscheid reported that the Committee discussed that respondent Robert J. Bayer allegedly was engaged in the unlicensed practice of engineering. The Committee first reviewed the case in February 2010, but the Committee requested an AAG opinion on the matter. Mr. Linscheid added that the Committee met in Executive Session to discuss the opinion and took no action during the session. The Committee then discussed that Mr. Bayer made changes to the JBR Web site as soon as they were notified and that JBR is a registered contractor and is excepted under ORS 672.060(12). Regardless of compliance, JBR's original Web site contained the violation. A motion was made and approved to send a letter of concern to Bayer (Linscheid/Laszlo). The motion passed unanimously.

*2558 – Ralph Dunham / William Galli*

Mr. Linscheid reported that the Committee discussed that respondent Ralph Dunham, PLS, PE,

practiced engineering outside his area of competence. Upon review, the Committee took note that there was a pending civil court case on the same matter. As a result, the Committee determined to postpone review of the case until such time as the civil court case has concluded. A letter will be sent to Mr. Dunham requesting he advise the Board upon its completion.

*2559 – Lance Marshall / Paul Hayman*

Mr. Linscheid reported that the Committee discussed that respondent Lance Marshall allegedly was engaged in the unlicensed practice of engineering by advertising on his Web site offering to perform foundation engineering certificates. Upon investigation, Mr. Marshall works on single-family dwellings, which is an excepted activity under ORS 672.060(10). Due to no found record of Mr. Marshall's business registration or construction contractor's license, the Committee recommended the Board approve closing the case against Mr. Marshall as Board lacks jurisdiction and by referring the information to the Construction Contractors Board (CCB) and the Secretary of State Corporation Division. A motion was made and approved to close the case as Board lacks jurisdiction and to refer case to CCB (Linscheid/Lazslo). The motion passed unanimously.

*2560 – Russell Elliot / Paul Hayman*

Mr. Linscheid reported that the Committee discussed that respondent Russell Elliot was allegedly engaged in the unlicensed practice of engineering by advertising and/or offering to perform engineered foundation certifications on his company Web site. Upon investigation, the Committee learned that Mr. Elliot is a licensed Construction Contractor and a Certified Home Inspector. As such, he is allowed under OAR 820-010-0715 to offer services. To comply, Mr. Elliot updated his Web site to identify the professional engineer performing the services. The Committee recommended the Board approve closing the case against Mr. Elliot as compliance met. A motion was made and approved to close the case as compliance met (Linscheid/Lazslo). The motion passed unanimously.

*2561 – Greg J. Zartman / Renee Clough*

Mr. Linscheid reported that the Committee discussed that respondent Greg Zartman, PE, was allegedly advertising for or offering to perform services without employing a licensed land surveyor. LEI Engineering & Surveying has two offices, but their Web site did not initially identify which offices offered which services. Upon notification Mr. Zartman updated the Web site to clarify that the Eugene office does not offer surveying services. The Committee recommended the Board approve closing the case as compliance met. A motion was made and approved to close the case as compliance met (Linscheid/Lazslo). The motion passed unanimously.

*2562 – Michael N. Schmid / Anonymous*

Mr. Linscheid reported that the Committee discussed that respondent Michael N. Schmid allegedly was offering land surveying services without employing a resident land surveyor. Because Committee member Davis recused himself, the Committee did not have a quorum and determined to postpone the discussion until the next Committee meeting.

*2563 – Raymond C. Hansen / William Cloran*

Mr. Linscheid reported that the Committee discussed that respondent Raymond C. Hansen, PE,

allegedly violated the code of professional conduct and was practicing without registration. Upon investigation, the Committee found that Mr. Hansen offered professional deposition testimony while in delinquent status and was negligent when expressing an opinion. Mr. Wilkinson noted that Mr. Hansen was an engineer at the time that he conducted his initial evaluation of the contract documents, but he was in delinquent status when he provided the deposition. The initiating concern was the Mr. Hansen offered contrary opinions between his first round of testimony and the subsequent deposition. However, Mr. Hansen claimed to have alerted the attorneys and it was they who initiated the lawsuit. The investigation also raised concerns about how LEI, the contractor, conducted its business on this project, but the Committee determined there was not enough information to proceed with opening a new investigation. The Committee recommended the Board approve closing the case against Mr. Hansen with a letter of concern and not opening a case against LEI. A motion was made and approved to close the case with a letter of concern regarding providing deposition testimony while in delinquent status (Linscheid/Laszlo). The motion passed unanimously.

*2564 – Charles A. Rowles / Anthony Rocci*

Mr. Linscheid reported that the Committee discussed that respondent Charles A. Rowles, PE, allegedly failed to follow accepted engineering standards when he prepared plans for an aircraft hanger. Upon investigation, it was found that a number of authorities in a cost-saving measure reviewed an alternative water-based fire protection system for the hanger, but the City eventually returned to the original foam-based fire protection system. The complainant alleged that no one would reasonably even suggest such an alternative system. Because there were lingering questions about such a decision, the Committee determined to refer the case to a Professional Reviewer for evaluation.

*2566 – Thomas G. Nelson / Aidan Gronauer*

Mr. Linscheid reported that the Committee discussed that respondent Thomas G. Nelson, PLS, allegedly failed to provide right of entry notice. Upon request, Mr. Nelson provided documentation to support his claim that he had provided notice to the complainant Aidan Gronauer. However, Mr. Nelson made the claim he didn't need to provide notice because he did not enter Mr. Gronauer's property since his crew only set a monument on the line. The Committee recommended the Board approve closing the case against Mr. Nelson with a letter of concern to remind him that compliant with ORS 672.045(4) means providing notice when setting a monument. A motion was made and approved to close the case with a letter of concern regarding providing notice of right of entry when setting boundary monuments (Linscheid/Laszlo). The motion passed unanimously.

*2570 – Roy Stamp / Linda McDermott*

Mr. Linscheid reported that the Committee discussed that respondent Roy Stamp, who is a contractor allegedly presented the certificate or seal of another and engaged in the unlicensed practice of engineering. The engineer who had designed the plans had given Mr. Stamp the authorization to submit the plans as he had provided them to Mr. Stamp. The Committee recommended the Board approve closing the case against Mr. Stamp as allegations unfounded. A motion was made and approved to close the case as allegations unfounded (Linscheid/Laszlo). The motion passed unanimously.

Mr. Linscheid reported that the Committee reviewed the following matters:

Mr. Linscheid reported that he received a call from Marion County Surveyor Mark Riggins regarding Thomas Swart. Mr. Riggins had received a record of survey for filing that Mr. Swart had sealed and signed after the date of his revocation. Mr. Wilkinson informed the members that Mr. Riggins also called the Board to confirm that the effective date of revocation was prior to him sealing and signing the map of survey. As a result, a new case would be opened against Mr. Swart for the unlicensed practice of land surveying rather than reopen his revocation case. In response to a question, Mr. Wilkinson added that Mr. Riggins had informed the owner that Mr. Swart was revoked prior to sealing the map.

AAG Tucker-Davis updated the Board on a pre-hearing scheduled for case #2545 concerning Dwayne Kliewer, PE, on June 8, 2010.

### **Settlement Agreements**

#### *Cases Subject to Collections & Cases Subject to Monitoring*

Information regarding law enforcement cases subject to collection and law enforcement cases subject to monitoring was provided in the packets. There was no further discussion.

### **Case Status Report**

Upon review of the list of cases, there was no further discussion.

### **RULES AND REGULATIONS COMMITTEE**

In the absence of Mr. Seward, Mr. Linscheid reported that the R&R Committee met on April 9, 2010, to discuss the matters contained in the Committee minutes.

Action was taken by the Board on the following rules:

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

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

#### *OAR 820-010-0520 – Registrants or Certificate Holders Not Qualified to Practice*

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

As a result of the Rules Hearing held at 1:30 p.m., the following action was taken by the Board:

#### *OAR 820-010-0530 – United States Military Registrants*

It was moved and seconded (Laszlo/Linscheid) to adopt OAR 820-010-0530. The motion passed unanimously.

#### *OAR 820-001-0000 – Rule Changes*

It was moved and seconded (Laszlo/Linscheid) to amend OAR 820-001-0000. The motion passed unanimously.

*OAR 820-010-0212 – Applications for Registration as Professional Engineers (PE) Based on Examination*

It was moved and seconded (Laszlo/Kramer) to amend OAR 820-010-0212. The motion passed unanimously.

*OAR 820-010-0213 – Applications for Registration as Professional Land Surveyors (PLS) Based on Examination*

It was moved and seconded (Laszlo/Kramer) to amend OAR 820-010-0213. The motion passed unanimously.

*OAR 820-010-0214 – Applications for Registration as Professional Photogrammetrists (RPP) Based on Examination*

It was moved and seconded (Linscheid/Kramer) to amend OAR 820-010-0214. The motion passed unanimously.

*OAR 820-010-0215 – Forms of Applications*

It was moved and seconded (Laszlo/Kramer) to amend OAR 820-010-0215. The motion passed unanimously.

*OAR 820-010-0305 – Fees*

It was moved and seconded (Wahab/Kramer) to amend OAR 820-010-0305. The motion passed unanimously.

*OAR 820-010-0440 – Schedule of Examinations*

It was moved and seconded (Linscheid/Kramer) to amend OAR 820-010-0440. The motion passed unanimously.

*OAR 820-010-0450 – Branches Examined by the Board*

It was moved and seconded (Laszlo/Wahab) to amend OAR 820-010-0450. The motion passed unanimously.

*OAR 820-010-0470 – Review of Examinations*

It was moved and seconded (Laszlo/Wahab) to amend OAR 820-010-0470. The motion passed unanimously.

*OAR 820-010-0610 – Certificates*

It was moved and seconded (Linscheid/Wahab) to amend OAR 820-010-0610. The motion passed unanimously.

*OAR 820-010-0625 – Registration and Certificate Number*

It was moved and seconded (Wahab/Linscheid) to amend OAR 820-010-0625. The motion passed unanimously.

*OAR 820-010-0635 – Continuing Professional Development*

It was moved and seconded (Laszlo/Kramer) to amend OAR 820-010-0635. The motion passed

unanimously.

## **PROFESSIONAL PRACTICES COMMITTEE**

In the absence of Ms. Newstetter, Ms. Laszlo reported that the PPC met on April 9, 2010, to discuss the matters contained in the Committee minutes. Additional discussion was held by the Board regarding the following matter:

### Professional Practice in Forest Engineering

Ms. Laszlo reported that Marv Pyles, PE, and Professor of Forest Engineering and the Gene D. Knudson Chair in Forestry at the Oregon State University (OSU) was in attendance to discuss the practice of Forest Engineering. Specifically, questions and hypothetical scenarios were presented to the Committee as a result of the curriculum taught in the senior level professional practice course in Forest Engineering. Mr. Pyles provided a statement of the task involved along with a series of considerations that surround the task, a brief synopsis of the “engineering” involved, and a series of questions for the Committee to consider for each hypothetical scenario. Questions posed also related to the exceptions contained in ORS 672.060. It was stated that many individuals in the Forestry Industry believe that the “industrial exemption” allows all forms of forest engineering practice to be engaged in by any employees or contractors of the company that owns the land without regard for any other provisions of ORS Chapter 672. After an extensive discussion held by the Committee, Ms. Laszlo informed the members that AAG Tucker-Davis was requested to conduct additional research to determine the history and intent of ORS 672.060 subsections 5 and 6.

### Speaker Request at Engineering Day

The Committee reviewed a request from Trish Land, Manager of Meetings and Outreach for NCEES. Ms. Land received a request from the Oregon Department of Transportation (ODOT) for a 30-45 minute presentation to be given on July 14, 2010 in Salem for Engineering Day. The topic for the presentation has been requested to relate to licensure and how licensure can help your career. Although NCEES has the capability and staff to meet the ODOT’s request, they prefer a local professional engineer, perhaps a Board member, to attend. Ms. Laszlo offered to attend and give a presentation depending on additional details. Staff will contact Ms. Land for more specific information.

### Letter from the Washington Board

AAG Tucker-Davis noted that Mr. Pyles commented that negligence or incompetence may also apply for violation of ORS 209.250. Mr. Linscheid noted that the response to Mr. Pearson did not include comment related to negligence or incompetence. Mr. Linscheid will communicate this discussion to Mr. Pearson and contact staff if additional communication with the Committee is needed.

## **UNFINISHED BUSINESS**

As a result of the discussion held earlier with Mr. Fein and related to examinations not prepared and scored by NCEES, the Oregon Specific Examination Task Force was created. Members assigned to the Task Force were; Carl Tappert, Dan Linscheid, Ed Butts, and Bob Neathamer. President Davis will also participate. The purpose of the Task Force is to develop policies related to the Oregon Specific Examinations.

**ADJOURN**

The meeting was adjourned at 3:20 p.m.

**NEXT MEETINGS**

Next Board Meeting:

July 13, 2010

Next Committee Meetings:

LAW ENFORCEMENT:

Thursday, June 10<sup>th</sup> at 8:00 a.m.

Oregon Specific Examination Task Force:

Thursday, June 10<sup>th</sup> at 12:00 p.m.

PROFESSIONAL PRACTICES:

Friday, June 11<sup>th</sup> at 8:00 a.m.

RULES & REGULATIONS:

Friday, June 11<sup>th</sup> at 9:00 a.m.

EXAMINATIONS & QUALIFICATIONS:

Friday, June 11<sup>th</sup> at 10:00 a.m.

Standards of Practice for Land Surveying  
(Subcommittee)

Friday, June 11<sup>th</sup> at 12:00 p.m.

FINANCE:

Friday, June 11<sup>th</sup> at 1:00 p.m.

EXTERNAL RELATIONS:

Friday, June 11<sup>th</sup> at 2:00 p.m.